

STATE OF NEW JERSEY

PARTICIPATING ADDENDUM AND STANDARD TERMS AND CONDITIONS

Under

**NASPO ValuePoint Contract for Cloud Solutions
[State of Utah Master Contract Number AR3107]**

This Participating Addendum is made as of the last date of signature below (the "Effective Date"), by and between, International Business Machines Corp, whose address is 7100 Highlands Parkway, Smyrna GA 30082 ("Contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("Participating State" or "State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers" (as defined below). For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated. Capitalized terms used but not defined shall have the meaning ascribed to them in the Master Agreement (as defined below).

WHEREAS, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property the "Director"), within the Department of the Treasury ("DPP") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;" and

WHEREAS, the State of Utah ("Lead State") and Contractor have entered into Master Agreement # AR3107 (the "Master Agreement"), which may be found at the following URL: <https://www.naspovaluepoint.org/portfolio/cloud-solutions-2016-2026/ibm-corporation/>, awarded in accordance with the State of Utah Solicitation CH16012 for Cloud Solutions; and

WHEREAS, the State of New Jersey participated in the publicly advertised, competitive bidding process with fifteen other states and evaluated the proposals; and

WHEREAS, the Director has determined that entering into a Participating Addendum with Contractor under the Master Agreement to provide cloud solutions is the most cost effective method of procuring the Services available under the Master Agreement, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

1.0 Term and Extension Option; Order of Precedence; Entire Agreement

1. The term of this Participating Addendum shall be effective from the Effective Date and shall continue for a period ending on the effective date of a termination of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement or this Participating Addendum, whichever shall occur first. Notwithstanding anything to the contrary contained in the Master Agreement, the State reserves the right, in its sole discretion, to extend this Participating Addendum upon an extension of the Master Agreement under the same terms and conditions as stated in this Participating Addendum. There shall be no automatic renewals of the Participating Addendum.
2. The entire agreement, and all rights and obligations between the parties, shall consist of the following documents (which shall be collectively referred to as the "Agreement"):
 - a. This Participating Addendum, including the State of New Jersey Compliance Terms and Conditions, attached hereto as Exhibit A;

- b. The Master Agreement terms and conditions, including Exhibits 1-3 to the Master Agreement, attached as Attachment A to the Master Agreement, incorporated herein as Exhibit B;
 - c. Rider For Purchases Funded In Whole Or In Part By Federal Funds (the "Federal Rider"), dated July 31, 2020, incorporated herein as Exhibit C;
 - d. IBM Ordering Documents, attached as Attachment E to the Master Agreement, incorporated herein as Exhibit D;
 - e. A Service Level Agreement, Order and/or Statement of Work issued against the Participating Addendum;
 - f. Scope of Services Awarded to Contractor, attached as Attachment B to the Master Agreement, incorporated herein as Exhibit E;
 - g. Pricing Discounts, attached as Attachment C to the Master Agreement, incorporated herein as Exhibit F; and
 - h. Contractor's Response to Solicitation # SK18008, attached as Attachment D to the Master Agreement, incorporated herein as Exhibit G.
3. These documents shall be read to be consistent and complimentary. In the event of any conflict between the terms of the documents comprising the Agreement, the conflict shall be resolved by giving priority to these documents in the order listed above.
4. The Agreement sets forth the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. No Contractor terms and conditions shall apply to this Participating Addendum except those that are expressly accepted by the Lead State in the Master Agreement.
5. In the event the Lead State approves Contractor to offer new or additional Services under the Master Agreement after the Effective Date of this Participating Addendum and such Services incorporate any different, inconsistent, or additional terms into the Master Agreement, including, but not limited to any software license agreement or service level agreement, such terms and conditions are subject to this Agreement as set forth below.
6. In the event that Contractor presents terms and conditions, including but not limited to software license agreements or service level agreements, in response to an order by an Authorized Purchaser, through any medium whatsoever, and if accepted by an Authorized Purchaser for an order (such as service specifications described in a Statement of Work), such additional terms and conditions shall become applicable only to that order as set forth in the Ordering Documents with the Authorized Purchaser.
7. References to external documentation; Software License Agreements and Service Level Agreements:
- a. Any external information incorporated by reference within any of the documents comprising the Agreement, including, without limitation, click-through, shrink-wrap, software license agreements or service level agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
 - b. Any changes in the information incorporated by reference by any of the documents that comprise the Agreement, including, without limitation, click-through, shrink-wrap, software license agreements or service level agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.

- c. Any reference in Contractor's documents to website URLs that contain additional terms and conditions are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
8. Amendments – This Participating Addendum may not be amended except in a writing signed by both parties.
9. Contractor's Response to Solicitation SK#18008 is not intended to expand the scope of obligations of Contractor, the State, or a Purchasing Entity, or alter the plain meaning of the scope or terms and conditions of the Statement of Work or Order. To the extent the scope or terms and conditions of the Statement of Work or Order are unclear or ambiguous, such scope and terms and conditions are to be construed so as to be consistent with the goals and objectives of Contractor's Response to Solicitation SK#18008.

2.0 Scope of Participating Addendum

1. The scope of Services that may be procured by Authorized Purchasers defined in Section 6.0(1) of this Participating Addendum (State Agencies) shall be those Services established in the Scope Addendum attached to this Participating Addendum as Attachment 1 as may be amended by the parties in writing from time to time. For all other Authorized Purchasers, the full suite of Service offerings available under the Master Agreement may be procured under this Participating Addendum.
2. Contractor shall only accept orders for Services that are within the scope of the Master Agreement as approved by the Lead State.

3.0 Reporting Requirements

The Contractor shall deliver a copy of the detailed sales data reports described in Section 42 of the Master Agreement ("Reports") to the Procurement Specialist and State Contract Manager within ten (10) days of providing the Reports to the Lead State and NASPO ValuePoint Cooperative Development Team. The Reports may be limited to Sales made to Authorized Purchasers under this Participating Addendum.

4.0 Restrictions

1. Any restrictions or limitations regarding the State's use of this Agreement will be set forth in the State's Method of Operation, as may be amended from time to time and posted on the State's website. The foregoing statement does not impose additional responsibility on the Contractor and is meant as a notification to Authorized Purchasers only.
2. Financing, leasing, and renting is not permitted under this Participating Addendum for State agencies. Authorized Purchasers, as defined in Section 6.0(2)-(5) may finance their purchase, if permitted under law. If financing is through a lease agreement, that agreement is separate from this Participating Addendum and is between the Contractor and the respective Authorized Purchaser only.

5.0 Termination of Contract

1. For Convenience-
 - A. Notwithstanding any provision or language in the Agreement to the contrary, the Director may terminate at any time, in whole or in part, this Participating Addendum or any contract entered into pursuant to this Participating Addendum, for the convenience of the State, upon no less than forty-five (45) days written notice to the Contractor.
 - B. Contractor shall not have the right to terminate this Participating Addendum for convenience.

2. For Cause-
 - A. Where the Contractor fails to perform or comply with the Agreement or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond and cure within the thirty day period.
 - B. Where in the reasonable opinion of the Director, the Contractor continues to perform poorly under the Agreement as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond prior to termination.
3. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
4. In the event of termination of this Participating Addendum or a Statement of Work or Ordering Document, the Contractor will be compensated for work performed or goods supplied in accordance with the Agreement or Statement of Work or Ordering Document, up to the date of termination, as well as any charges associated with such termination as set forth under the applicable document (Statement of Work or Order). Such compensation may be subject to adjustments. In the event of a termination for convenience under Section 5.0(1), or in the event of a termination for cause under Section 5.0(2), (a) the Purchasing Entity or State (as applicable) shall reimburse Contractor for any documented termination fees agreed in writing in the applicable document (Statement of Work or Order); and (b) Contractor shall issue Authorized Purchaser(s) a pro-rata refund of unused, amortized pre-paid fees, if any, to the extent any are remaining, provided such fees have been identified in advance in the Statement of Work or Order as "pre-paid fees".
5. The Contractor shall not have the right to terminate this Participating Addendum. Any provisions in the Agreement regarding the Contractor's right to terminate or cancel this Participating Addendum are superseded by and replaced in their entirety by this Section 5.0 of this Participating Addendum. However, this Participating Addendum shall terminate on the termination or expiration date of the Master Agreement. In addition, in the event that an Authorized Purchaser violates its obligations under the Agreement, Contractor may (a) refuse to accept or process orders from such Authorized Purchaser immediately upon written notice to the State and such Authorized Purchaser, until such time as Authorized Purchaser submits a plan to correct such violations satisfactory to Contractor, which approval will not be unreasonably withheld; or (b) treat such failure as an event of default under the terms of the Master Agreement. Any action taken as a result an event of default shall be limited to the specific order. Notwithstanding anything to the contrary, Contractor shall continue to process orders submitted by other Authorized Purchasers. Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement shall apply in the event of a termination or cancellation pursuant to this section.
6. Any termination under this provision shall not affect the rights and obligations attending Orders outstanding at the time of termination, including but not limited to any right of any Authorized Purchaser to indemnification by the Contractor, rights of payment for Services performed or as otherwise agreed to in writing by a Purchasing Entity, data ownership, Contractor obligations regarding Data and Confidential Information, rights attending default in performance in an applicable Order or Ordering Document, Contractor obligations under Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement, and any responsibilities arising out of an Incident Security Breach or Data Breach.

7. The following applies only to Professional Services: The State may, for valid reason, issue a stop order directing the Contractor to suspend Professional Services for a specific time. The Contractor shall be paid for Professional Services requested and performed until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order (which shall not exceed ninety (90) days from the start of the suspension), or upon such other date as the State Contract Manager and Contractor may agree in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance and Contractor's failure to perform its responsibilities under an Order or to meet any agreed upon service levels shall be excused to the extent they are caused by any such suspension. The Parties will make an equitable adjustment, if any is required, to the Statement of Work price to reflect any changes resulting from the suspension. The Contractor shall provide whatever information that Director may require related to the equitable adjustment. In the event Contractor disagrees with the final adjusted contract price, Section 10, paragraph 5 - Defaults and Remedies of this agreement shall apply.
8. Notwithstanding anything to the contrary in any of the documents comprising the Agreement, Orders shall not automatically renew.

6.0 Authorized Purchasers

"Authorized Purchasers" (referred to as "Purchasing Entities" in the Master Agreement) under this Participating Addendum shall mean the State and the following:

1. State agencies.
2. Quasi-State Agencies - A "Quasi-State Agency" is any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member, as defined in N.J.S.A. 52:27B-56.1, provided that any sale to any such bi-state governmental entity is for use solely within the State of New Jersey.
3. Political Subdivisions, Volunteer Fire Departments And First Aid Squads, And Independent Institutions Of Higher Education - Counties, municipalities and school districts as defined in N.J.S.A. 52:25-16.1., volunteer fire departments, volunteer first aid squads and rescue squads as defined in N.J.S.A. 52:25-16.2, independent institutions of higher education as defined in N.J.S.A. 52:25-16.5, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.
4. State Colleges –in accordance with N.J.S.A. 18A:64-60.
5. County Colleges - in accordance with N.J.S.A. 18A:64A- 25.9.

Authorized Purchasers as defined in Section 6.0(2)-(5) are responsible for the full cost of their purchases. The State and Authorized Purchasers as defined in Section 6.0(1) are responsible for the full cost of their purchases. Authorized Purchasers may order Services from Contractor in accordance with the terms and conditions of this Participating Addendum. By placing an order under this Participating Addendum, each Authorized Purchaser agrees to be bound by the terms and conditions of the Agreement, as defined in this Participating Addendum. For the purposes of such Order, the "State" as used in this Participating Addendum, shall be deemed to refer to such Authorized Purchaser, unless indicated otherwise herein. Each Authorized Purchaser shall be responsible for its compliance with and breach(es) of such terms and conditions.

7.0 Modified Master Agreement Terms

1. **Section 8 Confidentiality, Non-Disclosure, and Injunctive Relief**, in the Master Agreement is amended to add the following:

- e. The State's obligation to maintain the confidentiality of Contractor Confidential Information (as defined below) provided to the State under the Agreement is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any lawful document request or subpoena.
- f. Contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the Contractor acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
- g. In the event that the State receives a request for Contractor Confidential Information related to the Agreement pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.
- h. In addition, in the event Contractor receives a request for Confidential Information (as defined in the Master Agreement and amended by this Participating Agreement) pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the Contractor of its obligation to take action to protect such information if the Contractor is aware of a legal reason to do so.
- i. Notwithstanding the requirements of nondisclosure described in this Section either party may release the other party's Confidential Information:
 - (i) if directed to do so by a court or arbitrator of competent jurisdiction,
 - (ii) pursuant to a lawfully issued subpoena or other lawful document request,
 - (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in subsection (g) above, or if Contractor is unsuccessful in defending its rights as described in subsection (g), or
 - (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection (h) above, or if the State is unsuccessful in defending its rights as described in subsection (h).
- j. Except as permitted above and for confidentiality obligations related to information about a party's intellectual property, which shall never expire, neither party will use or disclose the other's Confidential Information for seven (7) years after the termination of the Agreement or such longer time period as required by applicable law.

2. **Section 13 Indemnification**, in the Master Agreement is amended to delete paragraph (a) and replace with the following:

Indemnification – Other than for Intellectual Property. The Contractor shall indemnify and hold harmless by defending (which includes paying fees and related costs of defense and

paying settlement amounts and final judgments relating to the claims for which indemnification was sought) NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against applicable, third-party claims, damages or causes of action brought against an Indemnified Party, for any death, bodily injury, or damage to real or tangible personal property arising directly from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, in the performance under the Master Agreement. As used in this Section 13(a), the term "tangible personal property" shall not include software, documentation, data or data files. Contractor shall have no liability for any claim of bodily injury and/or tangible personal property damage arising from use of software or hardware. This Section 13(a) states Contractor's entire liability and an Indemnified Party's exclusive remedy for bodily injury and property damage.

3. **Section 13 Indemnification**, in the Master Agreement is amended to delete paragraph (b(3)) and replace with the following:

The Contractor's obligations under this section shall not extend to any claims arising from, and Contractor has no responsibility for claims based on, the combination of the Product with any other product, system or method, unless the Product, system or method is: (a) provided by the Contractor or the Contractor's subsidiaries or affiliates; (b) specified by the Contractor to work with the Product; or (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function. Contractor has no responsibility for claims based in whole on non-Contractor Products, items not provided by Contractor, or any violation of law or third-party rights caused by Participating Entity's content, materials, designs, specifications, or use of a non-current version or release of a Contractor Product when an infringement claim could have been avoided by using a current version or release. Contractor reserves the right to modify or replace a Service with an equivalent non-infringing one or, if replacement is not reasonably available, to discontinue a Service and provide a credit for any pre-paid unexpired term. The Indemnified Parties are responsible for any violation of law or any third-party rights caused by its content or, except as provided in this paragraph, its use of a Service.

4. **Section 13 Indemnification**, in the Master Agreement is amended to add the following:

- d. Neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the New Jersey Department of Law and Public Safety and to the Director of DPP.
- e. Notwithstanding anything to the contrary contained in the Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
- f. The Contractor's indemnification and liability obligations under the Agreement are not limited by, but are in addition to the insurance obligations contained in the Agreement.
- g. Notwithstanding anything to the contrary in the Agreement or any contract document, under no circumstances will the State indemnify, defend or hold harmless Contractor, and any such provision in the Agreement or any contract document shall be of no force and effect. The State will not pay or reimburse for claims absent compliance with the terms of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

5. **Section 16 Insurance**, in the Master Agreement is amended as follows:

a. Subsection 16(b)(3) is amended to state the following:

- i. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE
\$1,000,000 DISEASE EACH EMPLOYEE
\$1,000,000 DISEASE AGGREGATE LIMIT

b. The following section is added as subparagraph (f):

g. New Jersey Requirements:

- i. The Provider shall provide the State with current certificates of insurance for all coverages and renewals thereof. If the Provider receives a notice of cancellation, the Provider will promptly replace such coverage so that no lapse in insurance occurs.
- ii. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided.
- iii. The certificates of insurance shall indicate the contract number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates shall be emailed to the State at ccau.certificate@treas.state.nj.us.

6. **Section 21 Charges, Taxes and Payment** is amended as follows:

Orders under this Master Agreement are fixed-price or fixed-rate orders, not cost reimbursement contracts. Unless otherwise stipulated in the Participating Addendum, Payment is normally made within 60 days following the date of a correct invoice is received. Purchasing Entities reserve the right to withhold payment of a portion (including all if applicable) of disputed amount of an invoice. Payments may be remitted by mail or electronically. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge. Purchasing Entity agrees to pay all applicable charges specific for a Service by Contractor. Charges are exclusive of applicable taxes, levies, or fees imposed by any governmental authority resulting from Purchasing Entity's acquisitions under this Master Agreement, and any late payment fees. Charges shall be identified on Contractor's invoice. Prepaid Services must be used within the applicable period. Contractor does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid unless otherwise permitted in this Participating Addendum.

7. **Section 26 Records Administration and Audit**, subsection b, is deleted and replaced with the following:

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records. For IBM Cloud Services in which provisioning and access for Purchasing Entity's end users is not handled directly by Contractor, Contractor may verify, using an independent auditor, Purchasing Entity's compliance with the Purchasing Order and the terms of the Master Agreement and Purchasing Entity will provide upon request, records, system tool outputs, and access to Purchasing Entity's premise, as reasonably necessary, for Contractor and its independent auditor to verify Purchasing Entity's use of the Services is in compliance with the Purchasing Order and the terms of the Master Agreement. The Purchasing Entity agrees to cooperate with Contractor's audit and provide to IBM and the

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independent auditor reasonable assistance. Any such audit shall not unreasonably interfere with the Purchasing Entity's normal business operations. The Purchasing Entity agrees to pay within 60 days of written notification any fees applicable to the Purchasing Entity's use of the Services in excess of the Purchasing Entity's rights at IBM's then-current prices. If the Purchasing Entity does not pay, Contractor can end the Purchasing Entity's Services and/or the Purchasing Entity's Order. The Purchasing Entity agrees that Contractor shall not be responsible for any of the Purchasing Entity's costs incurred in cooperating with the audit.

8. **Section 32 Transition Assistance**, subsection c, is deleted and replaced with the following:

The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services, and thereafter as required in the Participating Addendum or as required by law.

9. **Section 34 Assignment of Antitrust Rights**, in the Master Agreement is amended to add the following:

In connection with this assignment, the following are the express obligations of the Contractor:

1. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. It will advise the Attorney General of New Jersey:
 - a. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 - b. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
3. It shall notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

10. **Section 40 Contract Provisions for Order Utilizing Federal Funds**, in the Master Agreement is deleted and replaced with the following:

Pursuant to Section 40 of the Master Agreement, the Participating Entity has proposed RIDER FOR PURCHASES FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS (the "Federal Rider"), dated July 31, 2020, to be included in an Order under the Agreement if such Order is subject to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. The Federal Rider is attached to this Participating Addendum as Exhibit C, is incorporated herein by reference and shall apply to any Order that is subject to Appendix II to 2 CFR Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

To the extent United States federal grant or federal financial assistance rules as identified in the Federal Rider are applicable to any such Order as required by 2 CFR Part 200, they are applicable only to the extent they apply to Contractor as a contractor or vendor of the goods and services being provided under the Order. When fulfilling an Order, Contractor will at all times act as a contractor or vendor and not as a sub-recipient or sub-grantee, as those terms are defined in federal financial assistance regulations.

11. Section 44(f) Limitation of Liability, in the Master Agreement is deleted and replaced with the following:

f. Limitation of Liability:

Unless otherwise agreed in writing and signed by the Director, the following limitation of liability shall apply:

A. Contractor's aggregate liability for all damages arising out of or related to this master agreement or a purchasing entity's order, whether in contract or tort, or otherwise, shall in no event exceed the greater of (i) two (2) times the total amounts actually paid to ibm in the twelve (12) month period immediately preceding the event giving rise to such liability less any refunds or credits received by the purchasing entity from contractor under such order or (ii) one million dollars (u.s.\$1,000,000).

B. Notwithstanding the above, neither the contractor nor the purchasing entity shall be liable for any consequential, indirect, incidental, punitive or special damages of any kind arising directly or indirectly out of this master agreement or a purchasing entity's order, including, without limitation, damages resulting from loss of use or loss of profit or revenue (excluding fees under this master agreement), data, or data use by the purchasing entity, the contractor, or by others.

C. Notwithstanding the language in sub-sections 44(f)(A) and (B) above, Contractor's obligation to indemnify for (i) infringement claims or damages under Sections 13(b), or (ii) claim(s) of bodily injury and tangible personal property damage under Section 13(a) shall apply without regard to whether the damages under such claim(s) (y) are classified as direct, indirect, or otherwise, or (z) exceed the limits on liability under this Section 44(f) (Additional Terms and Conditions: Limitation of Liability). In addition, Contractor's liability for claims or damages brought by the State or an Authorized Purchaser due to Contractor's misappropriation, Contractor's misuse, or Contractor's unauthorized use of Confidential Information shall not be subject to the limits of liability under this Section 44(f) provided that for the purposes of this section, "Confidential Information" does not include any (a) Data (including but not limited to Personal Protected Data); (b) Purchasing Entity's records, (c) personnel records, or (4) information concerning individuals

D. Notwithstanding the foregoing exclusions, if a Purchasing Entity retained Contractor to encrypt Personal Data in accordance with an applicable Transaction Document, and Contractor's breach of its contractual obligation to encrypt Personal Data directly resulted in a Data Breach, the Contractor shall, subject to the conditions set forth at the end of this subsection (D), bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) completing all corrective actions as reasonably determined by Contractor based on root cause of the Data Breach, provided that:

- (a) contractor's entire obligation for all damages and expenses related to a data breach shall be subject to the limitation set forth in sub-section (a) above, which shall be modified as follows solely in the event of a data breach: (i) in connection with orders received in aggregate value between one million dollars (u.s. \$1,000,000) and five million dollars (u.s. \$5,000,000), subsection (a)(ii) shall be modified to read "two million, five hundred thousand dollars (u.s. \$2,500,000)"; and (ii) in connection with orders

- received in aggregate value that exceeds five million dollars (u.s. \$5,000,000), subsection (a)(ii) shall be modified to read "three million dollars (u.s. \$3,000,000)";
- (b) this section 11.f(d) sets forth contractor's entire obligation and, when applicable, shall constitute purchasing entity's sole and exclusive remedy for all damages and expenses related to a data breach.

E. Where Contractor, Authorized Purchaser, and the Director agree in writing to a different limitation of liability than that established in this Section 7.0(11) ("Negotiated LOL"), the Negotiated LOL shall only apply to the specific Order for that Authorized Purchaser. The Negotiated LOL shall not be deemed an amendment to this Participating Addendum. For the avoidance of doubt, all other terms of the Order shall be subject to the order of precedence established in Section 1.0 of this Participating Addendum.

8.0 Contractor Business Models; Roles and Responsibilities

1. Certain Contractor-authorized resellers ("Fulfillment Partners") are eligible to resell Contractor's Services to Authorized Purchasers under this Participating Addendum. Such Fulfillment Partners, if any, are authorized to take orders under this Participating Addendum and invoice and receive payment from such Authorized Purchasers. Contractor is responsible for any reports and/or fees that are required per the terms and conditions of the Master Agreement and/or this Participating Addendum, unless expressly stated otherwise herein. Participation of such Fulfillment Partners, if any, will be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum.
2. In the event Contractor offers Fulfillment Partner Services to Authorized Purchasers, each Fulfillment Partner must be approved by the State. A Fulfillment Partner has no authority to amend this Agreement or to bind Contractor, State, or Authorized Purchasers to any additional terms and conditions. Contractor may add Fulfillment Partners to its Participating Addendum at any time during the contract term, upon agreement of the parties.
3. Fulfillment Partners will be required to supply the State of New Jersey with all required forms outlined in Section 14.0 of this Participating Addendum.

9.0 Ordering and Compensation

1. Pricing shall be in accordance with the terms set forth in the Master Agreement, as amended by this Participating Addendum.
2. The State of New Jersey Contract number and the Master Agreement number ("M-4002, AR3107") MUST be shown on all Ordering Documents issued against this Participating Addendum.
3. All orders and payments will be issued to either the Contractor or the Fulfillment Partner and shall be in accordance with the terms set forth in the Agreement, as amended by this Section 9.0 of this Participating Addendum.
4. Orders shall not automatically renew.
5. The State of New Jersey's obligation to make payment under the Agreement is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State of New Jersey for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency which is an Authorized Purchaser by the New Jersey State Legislature and made available through receipt of revenues. Notwithstanding the foregoing, the parties agree that performance under this contract is contingent upon the appropriation of funds. Therefore, the Authorized Purchaser's

issuance of a purchase order under the Participating Addendum shall signify to Contractor that all funds for such order have been appropriated at the time of the purchase order.

6. [Reserved]

7. Payments shall be made to the Contractor or Fulfillment Partners pursuant to the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq. The Act requires state agencies to pay for goods and services within sixty (60) days of the state agency's receipt of a properly executed State Payment Voucher. Interest will be paid on delinquent accounts at a rate established by the New Jersey State Treasurer (the "State Treasurer"). Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

8. Cash discounts and other payment terms included as part of the Agreement are not affected by the New Jersey Prompt Payment Act.

9. Contractor and Fulfillment Partners are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest quote.

Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.

Contractor does not offer cash discounts based on expedited payment.

10. The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

10.0 Additions to the State of New Jersey Compliance Terms and Conditions

1. Compliance With State Laws-

It is agreed and understood that any contracts and/or orders placed under this Participating Addendum and any claims and any and all litigation arising there from or related thereto shall be governed and construed and the rights and obligations of the parties hereto and of the Authorized Purchasers shall be determined in accordance with the laws of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court. Notwithstanding the preceding sentence, the Parties agree that venue and jurisdiction for any action involving prospective injunctive relief may be brought in any federal or state court located in New Jersey. For the avoidance of doubt, no actions for monetary damages may be brought in a federal court.

2. Open Public Records Act-

All documents and information submitted by Contractor to the State under this Participating Addendum are considered public information, notwithstanding any disclaimers to the contrary submitted by a Contractor, except as may be exempted from public disclosure by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

3. Maintenance of Records-

The Contractor shall maintain records for Services directly related to sales orders and corresponding invoices, including product specifications at time of shipping, issued in accordance with this Participating Addendum for a period of five (5) years from the date of final payment. Such records shall be made available to the State, including the State of New Jersey, Office of the State Comptroller, for audit and review.

4. Organ and Tissue Donation –

As required by N.J.S.A. 52:32-33.1, the State encourages Contractors to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. §1320b-8 to serve in this State.

5. Tax Exemption-

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

11.0 RESERVED

12.0 Miscellaneous

1. Mergers, Acquisitions and Dissolutions-

Merger or Acquisition:

If, during the term of this Participating Addendum, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. Any such merger or acquisition will require the assignment of the Agreement, as amended by this Participating Addendum, pursuant to the provisions related thereto set forth therein. The Contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents shall be submitted within thirty (30) days of the request. Failure to do so may result in termination of this Participating Addendum for cause.

Dissolution:

If, during the term of this Participating Addendum, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director, in writing, the names of the parties proposed to perform under this Participating Addendum and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved business entity submit the required documents to the Director.

2. Announcements and/or Advertisements-

All publicity and/or public announcements pertaining to this Participating Addendum shall be approved in writing by each party prior to release.

Contractor must obtain prior written (email) approval, no less than seven (7) business days before release for any and all advertisements pertaining to this Participating Addendum during its effective term.

3. Contractor and/or Fulfillment Partner Audit-

The State and Authorized Purchasers reserve the right to audit the Contractor and/or Fulfillment Partner's compliance with the Agreement. Such audit shall be in accordance with Section 26, Records Administration and Audit, in the Master Agreement. The State or Authorized Purchaser shall provide Contractor and/or Fulfillment Partner thirty (30) days' written notice of intent to audit and such audit shall be conducted during normal business hours.

4. Reserved

5. Audit of Authorized Purchaser use of Intellectual Property-

1. Notwithstanding anything to the contrary in the Agreement, in the event that the Contractor seeks to exercise a right in the Agreement to audit the State's use of Contractor's intellectual property, the Contractor shall deliver simultaneous written notice, no less than thirty (30) days in advance of the audit start date (unless the Contractor's notice provides a longer notice period), to:

- a. the Director of the New Jersey Department of Treasury, Division of Purchase and Property:
Procurement Bureau, Technology Unit
P.O. Box 230
Trenton, NJ 08625-0230

- b. the Chief Data Officer of the New Jersey Office of Information Technology:
Office of the Chief Technology Officer
300 Riverview Plaza
Trenton, NJ 08625

- c. and the State Contract Manager for this contract.

2. The notice shall reference the specific audit provision(s) in the Agreement being exercised and include copies of same, specify the means by which the Contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.

3. To the extent the agreement permits Contractor to conduct periodic audits of the State's usage of the Products and/or Services provided thereunder, such provision is amended to include the following dispute resolution process:

If the State, in good faith, provides Contractor with written notice of an alleged error in the amount of underpaid fees due Contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the license agreement, while they endeavor to resolve the dispute under this paragraph.

4. Notwithstanding anything to the contrary in the Agreement, the State will not pay or reimburse Contractor for costs or expenses associated with the performance of an audit.

5. In the event that the Agreement does not permit audits of the State's usage of the Contractor's Intellectual Property this provision shall not be interpreted to provide such an audit right.

6. *Dispute Resolution*–

The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

7. *Arbitration or Mediation*–

Any provision regarding arbitration or binding mediation within the Agreement is deleted in its entirety.

13.0 Waiver

No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.

14.0 The State of New Jersey Mandatory Certification Requirements

The following are New Jersey procurement requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an order and Contractor shall consider such requirements and will advise the Authorized Purchaser if unable to comply. Contractor shall not unreasonably refuse to comply with the additional requirements of the Authorized Purchaser.

1. New Jersey Business Registration (N.J.S.A. 52:32-44);
2. Ownership Disclosure (N.J.S.A. 52:25-24.2);
3. Disclosure of Investment Activities in Iran (N.J.S.A. 52:32-55 et seq.)
4. Executed MacBride Principles (N.J.S.A. 52:34-12.2);
5. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et. seq.);
6. Disclosure of Investigations and Actions Involving Bidder
7. Vendor Certification (P.L. 2005, c.271);
8. Proof of insurance as specified herein;
9. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et. seq.):
 - a. New Jersey Form AA-302 Affirmative Action Employee Information Report; or
 - b. New Jersey Affirmative Action Certificate; or
 - c. Federal Affirmative Action Approval Letter.

15.0 Primary Contacts

The Division of Purchase and Property contact for this Participating Addendum is as follows:

Name:	Angelica Morales
Title:	Procurement Specialist
Participating Entity Name:	Division of Purchase and Property, Department of the Treasury State of New Jersey
Address:	33 West State Street, 8 th Floor PO Box 230 Trenton, New Jersey 08625-0230
Telephone:	(609) 292-6839
E-mail:	Angelica.Morales@treas.nj.gov

The State Contract Manager for this Participating Addendum is as follows:

Name:	Lynne Gash
Title:	State Contract Manager
Participating Entity Name:	Office of Information Technology, State of New Jersey
Address:	300 Riverview Plaza Trenton, New Jersey 08625
Telephone:	(609) 376-0888
E-mail:	Lynne.Gash@tech.nj.gov

The primary Contractor contact for this Participating Addendum is as follows:

Name:	Karen Schneider
Title:	NASPO Program Manager
Contractor:	International Business Machines Corporation
Address:	US Contracts Team 7100 Highlands Parkway Smyrna, GA 30082
Telephone:	720-397-5563
E-mail:	kasch@us.ibm.com

The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.

[Remainder of page intentionally blank. Signature page to follow.]

IN WITNESS WHEREOF, authorized representatives of Contractor and the State have executed this Participating Addendum to be effective on the Effective Date.

State of New Jersey
Department of the Treasury
Division of Purchase and Property

International Business Machines Corp.

M.A. Griffin
Maurice A. Griffin, Acting Director

9/16/2020
Date

K. Schneider
Karen Schneider, NASPO Program Manager

Sept 16 2020
Date

Approved as to Form:
Gurbir S. Grewal, Attorney General of the State of New Jersey

Aimee Manocchio Nason
Signature

Aimee Manocchio Nason

Print Name of Deputy Attorney General

9/17/2020
Date

EXHIBIT A
STATE OF NEW JERSEY COMPLIANCE TERMS AND CONDITIONS

The following terms and conditions shall be deemed incorporated by reference into each Participating Addendum entered into by the State of New Jersey under an awarded Master Agreement. The State of New Jersey reserves the right to add, by written agreement with Contractor, additional terms and conditions to each Participating Addendum.

1. LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS -

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625. The Contractor will comply with all laws to the extent that such laws, by their terms, are applicable to Contractor's provision of Services under this Participating Addendum and impose obligations directly upon Contractor in its role as an information technology services provider with respect to the Services. The Authorized Purchaser may not provide Contractor access to any health, payment card or other sensitive personal information that requires the application of specific regulatory, legal or industry data security obligations unless the applicable obligations are specified in the applicable Order.

Note that Purchasing Entity Content and Purchasing Entity Applications may be maintained in one of Contractor's Data Center Regions. The location of such Purchasing Entity Content and Purchasing Entity Applications may be indicated on an Ordering Document. Pursuant to the Master Agreement, Purchasing Entity must select a location within the U.S. for its Data Center Region.

1.1 BUSINESS REGISTRATION – Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The Contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

1.2 ANTI-DISCRIMINATION - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

1.3 ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS -

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- a) The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- b) The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- c) The Contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:

1. The Contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. The Contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
3. The Contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
4. In conforming with the targeted employment goals, the Contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

- 1.4 **PREVAILING WAGE ACT** - Pursuant to the New Jersey Prevailing Wage Act (N.J.S.A. 34: 11-56.26 et seq.), Contractor guarantees that it has not been suspended or debarred by the Commissioner, New Jersey Department of Labor and Workforce Development, for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; Contractor also guarantees that it will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required and to the extent applicable to this contract.
- 1.5 **AMERICANS WITH DISABILITIES ACT** - The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.
- 1.6 **MACBRIDE PRINCIPLES** – The Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- 1.7 **PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:
 - a. make or solicit a contribution in violation of the statute;
 - b. knowingly conceal or misrepresent a contribution given or received;
 - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
 - d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
 - e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
 - f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
 - g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
 - h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.
- 1.8 **POLITICAL CONTRIBUTION DISCLOSURE** – The Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the Contractor receives one or more contracts valued at \$50,000.00 or more. It is the Contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.

1.9 STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on Contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

1.10 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE - Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 *et seq.*), to the taxpayer shall be stayed.

1.11 COMPLIANCE - STATE LAWS; JURISDICTION - It is agreed and understood that any contracts and/or orders shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY, without giving effect to its conflict of laws. Any action brought regarding the contract or products or services purchased thereunder shall be filed in the appropriate Division of the State of New Jersey Superior Court. Notwithstanding the preceding sentence, the Parties agree that venue and jurisdiction for any action involving prospective injunctive relief may be brought in any federal or state court located in New Jersey. For the avoidance of doubt, no actions for monetary damages may be brought in a federal court.

- 1.12 **OWNERSHIP DISCLOSURE** – In accordance with N.J.S.A. 52:25-24.2, Contractor shall disclose the names and addresses of all of its owners holding 10% or more of the corporation's stock or interest during the term of the contract, by submitting an Ownership Disclosure Form at time of contract award. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.
- 1.13 **PROHIBITED INVESTMENT IN IRAN** - Pursuant to N.J.S.A. 52:32-55 et seq., the Contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the contractor, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the contractor, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the contractor shall provide a detailed and precise description of such activities as directed on the form.
2. **LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**
- 2.1 **COMPLIANCE - CODES** – The Contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The Contractor shall be responsible for securing and paying all necessary permits, where applicable.
- 2.2 **PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.
- 2.3 **COMPLIANCE WITH ACCESSIBILITY STANDARDS** – The Contractor acknowledges that the State is required to comply with the accessibility standards of Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. §794. The extent to which a Contractor product is, prior to any customizations, capable of providing comparable access to individuals with disabilities, consistent with the applicable provisions of Section 508, is indicated by the dependencies, comments and exceptions (some of which may be significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT) available at <https://www.ibm.com/accessibility/us/en/> for each product, when such products are used in accordance with Contractor's associated documents and other written information, and provided that any assistive technologies and any other products used with them properly interoperate with the product. For purposes of the preceding sentence, Section 508 means Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as 'Section 508'), effective as of June, 2001, or the Revised version in Appendix A (known as 'Revised Section 508') effective as of January, 2018 and the Web Content Accessibility Guidelines rMCAG) version 2.0 level AA.
- The Contractor agrees that any information that it provides to the State or to an Authorized Purchaser in the form of a VPAT about the accessibility of its Services is accurate to a commercially reasonable standard and the Contractor agrees to provide the State or Authorized Purchaser with the Service Specifications in the event that the State or an Authorized Purchaser relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794.
- 2.4 **BUILDING SERVICE** – Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the Contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.
- 2.5 **THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the Contractor in compliance with the provisions of the statute.
- 2.6 **BUY AMERICAN** – Pursuant to N.J.S.A. 52:32-1, if applicable to the contract, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the Contractor shall be required to so certify.

EXHIBIT B
IBM MASTER AGREEMENT

EXHIBIT C
RIDER FOR PURCHASES FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS

RIDER FOR PURCHASES FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Rider apply to all purchases funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

I. PROCUREMENT OF RECOVERED MATERIALS

To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
1. Paper and paper products listed in 40 C.F.R. 247.10;
 2. Certain vehicular products as listed in 40 CFR 247.11;
 3. Certain construction products listed in 40 C.F.R. 247.12;
 4. Certain transportation products listed in 40 C.F.R. 247.13;
 5. Certain park and recreation products, 40 C.F.R. 247.14;
 6. Certain landscaping products listed in 40 C.F.R. 247.15;
 7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
 8. Other miscellaneous products listed in 40 C.F.R. 247.17.

- B. As defined in 40 CFR 247.3, "recovered material" means:

1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
 - a. Postconsumer materials such as -
 - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
 - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
 - b. Manufacturing, forest residues, and other wastes such as -
 - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
 - iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
 - iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
 - v. Fibers recovered from waste water which otherwise would enter the waste stream.

- C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

II. EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said

rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

III. DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the

Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

IV. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

V. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

VI. CLEAN AIR ACT, 42 U.S.C. 7401-7671q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Contracts and subgrants of amounts in excess of \$ 150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

VII. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

VIII. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

ATTACHMENT 1 – SCOPE ADDENDUM

STATE OF NEW JERSEY

PARTICIPATING ADDENDUM AND STANDARD TERMS AND CONDITIONS

Under

**NASPO ValuePoint Contract for Cloud Solutions
[State of Utah Master Contract Number AR3107]**

Scope Addendum

As set forth in Section 2.0, Scope of Participating Addendum, the scope of Products and Services that may be procured by Authorized Purchasers defined in Section 6.0(1) of this Participating Addendum (State Agencies) shall be those Products and Services established below. Contractor may only offer State Agencies the Products and Services from the following cloud service providers:

- IBM

Contractor may also provide State Agencies cloud related Services within the scope of its Master Agreement.

For all other Authorized Purchasers, the full suite of Product and Service offerings available under the Master Agreement may be procured under this Participating Addendum.