

**PARTICIPATING ADDENDUM**  
**WSCA-NASPO COOPERATIVE PURCHASING PROGRAM**  
**Computer Equipment**  
**Administered by the State of Minnesota (hereinafter "Lead State")**

**MASTER AGREEMENT**

Master Agreement No: MNWNC-117

Lenovo (United States), Inc.

(hereinafter "Contractor")

And

State of ND

(hereinafter "STATE", "Participating State", or "Participating Entity")

ND State Contract #022-MNWNC-117-PA

**1. Scope:** This addendum allows for purchase of the following Computer Equipment/Services: "Computer Equipment (Desktops, Laptops, Tablets, Servers, and Storage including related Peripherals & Services)" led by the State of Minnesota along with a multi-state sourcing team for use by the Participating State's entities, governmental boards and commissions, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, nonprofit entities established on behalf of public entities, tribal agencies, and the International Peace Garden. This Addendum is not a purchase order and it does not guarantee any purchases will be made by any Participating State procuring agency. Each Participating State procuring agency is responsible for complying with any laws that regulate its individual purchase authority. The parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions are in conflict with any of the terms and conditions of the Contract, then, notwithstanding any term in the Contract, the following terms and conditions govern and control the rights and obligations of the parties. Any amendments to the Participating Addendum, or any other amendments, must be in writing and executed by each party.

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

- a. Server and Storage category is increased to \$750,000.
- b. The following copiers cannot be sold unless the Participating State and Participating Entity (applies to State Agencies only) has received prior contract exemption approval:
  - i. Convenience Black and White Copiers with Speed in Impressions per Minute (IPM) 90 or greater
  - ii. Convenience Hybrid Copiers with Speed in Impressions per Minute (IPM) 50 or greater
  - iii. Any Production Black and White Copiers
  - iv. Any Wide Format Copiers
  - v. Any Color Production Copiers

To the extent applicable, this Addendum is effective and will replace and supersede the existing Participating Addendum between Contractor and Participating State/Entity under

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the WSCA Master Price Agreement Number B27168, when executed by both parties.

This Addendum will be coterminous with the Master Agreement and any extensions of the Master Agreement, unless terminated pursuant to MASTER AGREEMENT TERMS AND CONDITIONS B. WSCA-NASPO TERMS AND CONDITIONS, Section 6 Cancellation.

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) are authorized pursuant to N.D.C.C. § 54-44.4-13. Issues of interpretation and eligibility for participation shall be determined by the State Procurement Office.

3. **Order of Precedence:**

1. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota WSCA-NASPO Master Agreement
2. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms & Conditions)
3. The Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. **Participating State Modifications or Additions to Master Agreement Award – Exhibit A, Section B WSCA-NASPO Terms and Conditions and where applicable, Section C - Minnesota Terms and Conditions:**

(Other modifications or additions apply only to actions and relationships within the Participating Entity.)

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- a. **Prepayment.** STATE will not make any advance payments before performance by CONTRACTOR under this Participating Addendum (this section modifies Exhibit A, Section B).
- b. **Payment of Taxes by State.** STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by CONTRACTOR (this section modifies Exhibit A, Section B).
- c. **Applicable Law and Venue.** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be brought and solely litigated in the District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens* (this section modifies Exhibit A, Sections B and C).
- d. **Insurance.** CONTRACTOR shall secure and keep in force during the term of this Participating Addendum and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this PARTICIPATING ADDENDUM, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages (this section modifies Exhibit A, Section B):
  - i. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability and \$1,000,000 per occurrence and \$2,000,000 in aggregate.
  - ii. Automobile liability, including, Hired, and Non-Owned automobiles, with combined and \$1,000,000 per occurrence.
  - iii. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Participating Addendum.
  - iv. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general

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liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- v. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.
- vi. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- vii. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- viii. The state of North Dakota and its agencies, officers, and employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured, but only to the extent that its interest in relation to this agreement may appear..
- ix. The insurance required in this agreement, through a policy or endorsement, shall include:
  - 1. Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
  - 2. To the extent of CONTRACTOR'S negligence, a provision that CONTRACTOR's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
  - 3. Cross liability/severability of interest for all policies and endorsements.
  - 4. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
- x. CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All

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endorsements shall be provided as soon as practicable.

- xi. In the event Contractor receives notice of cancellation or material change of any insurance, CONTRACTOR shall endeavor to forward such notice to State of North Dakota within thirty (30) days of receipt.
- e. **Indemnification.** In addition to any indemnity obligations found within the Master Agreement, CONTRACTOR agrees that any attorney appointed to represent the STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08 (this section modifies Exhibit A, Sections B and C).
- f. **Limitation of Liability.** Except for direct damages that cannot be limited under N.D.C.C. § 32-12.2-15, CONTRACTOR's limitation of liability shall be that specified in Section 17C of Exhibit C to the Master Agreement (this section modifies Exhibit A, Section C).
- g. **Confidentiality.** CONTRACTOR shall not use or disclose any information it receives from STATE under this Participating Addendum that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Participating Addendum (this section modifies Exhibit A, Section B).
- h. **Compliance with Public Record Law.** CONTRACTOR understands that, except for disclosures prohibited in this Participating Addendum, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Participating Addendum, except for records that are confidential under this Participating Addendum, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE

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immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request (this section modifies Exhibit A, Section B).

- i. **Severability.** If any term of the Master Agreement, including this Participating Addendum, is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Master Agreement or Participating Addendum did not contain that term (this section modifies Exhibit A, Sections B and C).
- j. **Spoilation – Notice of Potential Claims.** CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Participating Addendum. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident (this section modifies Exhibit A, Section B).
- k. **Alternative Dispute Resolution – Jury Trial.** STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial (this section modifies Exhibit A, Section B).
- l. **Attorney Fees and Costs.** In the event a lawsuit is instituted by STATE to obtain performance under this Participating Addendum, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. §28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit (this section modifies Exhibit A, Section B).
- m. **State Audit.** All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Participating Addendum are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Participating Addendum and be able to provide them at any reasonable time.

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STATE, State Auditor, or Auditor's designee shall provide reasonable notice (this section modifies Exhibit A, Sections B and C). Nothing herein shall be construed to require CONTRACTOR to provide to any auditor, designated as described above, any information or data which is the property of a third party to which access is restricted under an obligation of confidentiality owed by CONTRACTOR to a third party.

- n. **Takeback and Other Environmental Programs.** Takeback and/or recycling of products by agencies covered by this Addendum are subject to approval of OMB State Surplus Property pursuant to N.D.C.C. § 54-44.4-05.5 (this section modifies Exhibit A, Section B).

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

Contractor

Name	Melissa Autrey-Freeman
Address	1009 Think Place B1 3A5, Morrisville, NC 27560
Telephone	919-294-0609
Fax	
E-mail	mautrey@lenovo.com

Participating Entity

Name	Tricia Opp
Address	North Dakota State Procurement Office, 600 East Boulevard Avenue, Dept 012, Bismarck, ND 58505-0310
Telephone	701-328-1721
Fax	701-328-1615

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E-mail	topp@nd.gov
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**6. Partner Utilization:** Each state represented by WSCA-NASPO participating in this Master Agreement independently have the option of utilizing partners. Only partners approved by this Participating State may be deployed. The participating State will define the process to add and remove partners and may define the partner's role in their participating addendum. The Contractors partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Approved partners are: All Lenovo partners are allowed.

Lenovo will use "WSCA Agent" program to assist with marketing of Lenovo products to the WSCA/NASPO end users and may utilize "WSCA Reseller" program to order and fulfill product based on an individual state's request in their Participating Addendum. "WSCA Agents" and "WSCA Resellers" must be approved by the State.

**All WSCA Agents and WSCA Resellers will be listed on the state's individual WSCA/NASPO page on this website [www.lenovo.com/wsca](http://www.lenovo.com/wsca).**

"WSCA Agent" orders are to be issued directly to:  
Lenovo (United States) Inc.  
1009 ThinkPlace, B1, Floor 3  
Morrisville, NC 27560  
Fax: (919) 257-4988

"WSCA Agent" payments are to be issued to:  
Lenovo (United States), Inc.  
PO Box 643055  
Pittsburg, PA 15264-3068

- OR -

"WSCA Reseller" orders and payments are issued to the approved "WSCA Reseller"

**All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number and the Master Price Agreement Number: MNWNC-117.**

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

8. **Orders:** Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement.

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

Participating State:	Contractor: Lenovo (United States), Inc.
By: <i>Tricia Opp</i>	By: <i>Robin Howdershelt</i>
Name: <i>Tricia Opp</i>	Name: Robin Howdershelt
Title: <i>Procurement Officer II</i>	Title: Inside Sale Director, Public Sector
Date: <i>9/21/15</i>	Date: 9/21/15

For questions on executing a participating addendum, please contact:  
WSCA-NASPO

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

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