

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

Number B27176

This Agreement is made and entered into by Toshiba America Information Systems, Inc., 9740 Irvine Blvd., Irvine, CA 92618 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,
WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating Entities, who have the sole discretion to determine if they will accept services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process, and if the Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. The agreements are located in Exhibit C, Value-Added Services.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage (SANs, etc.) should not exceed \$300,000 each. Desktop per unit/configuration costs should not exceed \$100,000. Printers of all types and monitors per unit/configuration costs should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

“Announced Promotional Price” are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

“Consumables” those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser’s use of the equipment are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

“Configuration” in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

“Contract” means a binding agreement for the procurement of items of tangible personal property or services. Contract and Master Price Agreement are used interchangeably in this document.

“Contractor” means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

“CPV Member” is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota’s Cooperative Purchasing Venture (CPV) program.

“CPV Program.” The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of

Administration to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1.” Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the “State contract price.”

“Cumulative Volume Discount” means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

“Documentation” refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor’s web site.

“E-Rate” is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

“Educational Discount Price” means the price offered in a nationally announced promotion, which is limited to educational customers only.

“Equipment” means workstations, desktop, laptop (includes Tablet PC’s), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

“FCC” means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

“General Price Reduction Price” means the price offered to consumer, business or governmental purchasers at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

“Mandatory” The terms “must” and “shall” identify a mandatory item or factor.

“Manufacturer” means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC’s) computers, handheld (PDA) devices, servers, printers, and storage

solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed unlimited USA OEM warranties on the products. The manufacturer's name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Master Price Agreement” means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor's products and/or services by Purchasing Entities. The “Master Price Agreement” is a permissive price agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

“Materials Management Division” or “MMD” means the procurement official for the State of Minnesota or a designated representative.

“NASPO” means the National Association of State Procurement Officials

“Participating Addendum” or “Participating Addenda” means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

“Participating State” or “Participating Entity” means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

“PDA” means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC's are NOT considered PDA's. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Peripherals” means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to

storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software, as defined in the RFP, is not considered a peripheral. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Permissive Price Agreement” means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

“Per Transaction Multiple Unit Discount” means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

“Political Subdivision” means local public governmental subdivisions of a state, as defined by that state’s statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

“Price Agreement/Master Price Agreement” means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

“Procurement Manager” means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

“Product(s)” means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Products and Services Schedule Prices” or **“PSS”** refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity’s price for each Product or Service. All such Products and services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

“Purchase Order” means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

“Refurbished Products” are products that may have been powered on or used by another customer that have been fully retested, defective parts replaced, and repackaged to meet original factory specifications.

“Services” are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

“Servicing Subcontractor/Subcontractor/Reseller Agent” means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor’s Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor’s providing products and services, as well as warranty service and maintenance for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program.**

“Standard Configurations” or **“Premium Savings Configurations”** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the standard configuration adopted by other Purchasing Entities shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

“State Procurement Official” means the director of the central purchasing authority of a state.

“Storage Solution/Auxiliary Storage” means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

“Takeback Program” means the Contractor’s process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

“Trade In” refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

“Travel” means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

“Universal Resource Locator” or “URL” means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

“WSCA” means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

“WSCA/NASPO Contract Administrator” means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

2. Scope of Work

The Contractor, or its approved subcontractor, shall deliver computing system Products and services to Purchasing Entities in accordance with the terms of this agreement. This Agreement is a “Master Price Agreement”. Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid “Purchase Orders”. Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor’s PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor’s PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take legal responsibility for the warranty and maintenance of all proposed equipment, including peripherals. Taking legal responsibility means the Contractor must provide warranty and maintenance call

numbers, accept, process and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of product by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document; and
- F. Contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor of non-acceptance within 15 days following delivery of a Product or Service; failing which the Product or Service, as the case may be, shall be deemed accepted by the Purchasing Entity.

B. Payment of Invoice

Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. The ordering entity is not required to pay the Contractor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card".

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the line items on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. The Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a

specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCA/NASPO Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within 15-20 days after receipt of a purchase order, by a reliable and insured shipping company.

11. Warranties

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
2. The product will meet mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
3. The Product will be suitable for the ordinary purposes for which such Product is used,
4. The Product has been properly designed and manufactured for its intended use, and
5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
6. The Product is in the legal possession of the Purchasing Entity, as defined in Article 10 Shipment and Risk of Loss, before any warranty period begins.

7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
 - a) Overview of Warranty for Toshiba Products
 - b) Standard Limited Warranty for Notebook
 - c) Standard Limited Warranty for Projector
 - d) Standard Limited Warranty for Accessories
- B. Contractor may modify the warranties described in Exhibit A from time to time with the prior approval of the WSCA/NASPO Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products.
- D. The Contractor will provide the basic warranty listed for each product in its PSS. The warranties range from a one-year to a three-year warranty, with the ability to upgrade warranties at the time of purchase. All products listed will be EPEAT (bronze minimum) and Energy Star compliant, where applicable.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
 1. Give the Contractor prompt written notice of any claim;
 2. Allow the Contractor to control the defense or settlement of the claim; and
 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
 1. Provide a Purchasing Entity the right to continue using the Products

or Services;

2. Replace or modify the Products or Services so that it becomes non-infringing; or
3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.

C. The Contractor has no obligation for any claim of infringement arising from:

1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
3. Product modifications by the Purchasing Entity or a third party;
4. Product use prohibited by Specifications or related application notes; or
5. Product use with products that are not the Contractor branded.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed prices discount levels on file with WSCA/NASPO Contract Administrator for the following Products:

Band 2 – Workstations (Desktops, Laptops, Tablet PCs)

Band 6 – Instructional Packages

Band 7 – Monitors

Operating Systems

Projectors

- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the Contractor during a product warranty period or during a

support agreement.

17. Takeback and Other Environmental Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in the following paragraphs.

A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are list on the web site.

B. Environment: Compliance with the following standards: Blue Angel, EcoLogo, Energy Star, EPEAT (by level), Green Guard, Nordic Swan, and TCO.

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

18. Product Delivery

Contractor agrees to make reasonable efforts to deliver Products to Purchasing Entities within 20 business days or less after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order where the timeframe for required delivery is greater than 20 business days or as otherwise mutually agreed to by the Purchasing Entity and Contractor.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as

expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights and ownership sections of this Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification, Hold Harmless and Limitation of Liability

The Contractor shall indemnify, protect, save and hold harmless the Lead State, Participating Entities, and its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contractor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contractor may have with the State's or Participating Entities' failure to fulfill its obligations pursuant to the Contract.

The State agrees that the Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder in excess of the purchase price paid to the Contractor for the Products or Services that are the subject of the Purchasing Entity's claim and shall not be liable for an aggregate amount in excess of \$3,000,000. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement or copyright claims under paragraph 12 of this Agreement. This indemnification does not include liabilities cause by the State's gross negligence, or intentional wrong doing of the State. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

CRITICAL USE: DISCLAIMER OF LIABILITY. The Products sold hereunder are not designed for any "critical applications". "Critical applications" means life support systems, medical applications, human implantation, commercial aviation, nuclear facilities or systems or any other applications where product failure could lead to injury to persons or loss of life or catastrophic property damage. Accordingly, Contractor disclaims any and all liability arising out of the use of the Products in any critical applications. If WSCA uses the Products in a critical application, WSCA, and not Contractor, assumes full responsibility for such use.

25. Amendments

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reports.
- D. Once the website is approved, the Contractor may not make changes to

the website without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

30. Equal Opportunity Compliance

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Contract.

31. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Data Practices

A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable,

if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

35. Organizational Conflicts of Interest

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
 - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
 - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
 - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the

Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

36. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

37. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

38. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

39. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Contract.

40. WSCA/NASPO Contract Administrator

The State shall appoint an WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

- A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.
- B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.
- C. The WSCA/NASPO Contract Administrator shall promote and support the

use of this Agreement by NASPO members and other Participating Entities.

- D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.
- E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator may require the Contractor to perform web site audits to accomplish this task.
- G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.
- H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

41. Survival

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification, Hold Harmless, and Limitation of Liability; Paragraph 31, Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

- A. If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisitions Supervisor
50 Sherburne Avenue

112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996
Email: bernie.kopischke@state.mn.us

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.
2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the utilization report the environmental information shown in the report format provided; as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed

format. Such request shall not exceed twelve per year.

7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;

3. Impose liquidated damages, as specified in a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.
 5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor.
- D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

46. Audits

A. Website Pricing Audit

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on the requirements described in the Vendor Mandatory meeting presentation. The Contractor will audit the website pricing monthly, four states per month, five product/sku/line items per state.

1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

B. Sales Audit

The Contractor further agrees to provide sales audit reports based on the formulas described in the Vendor Mandatory meeting presentation. These presentations were held the week of March 30-April 3, 2009.

- C. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any

action based on this Contract.

49. Ownership

- A. Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Contract. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Contract without the prior written consent of the State.
- B. Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract, will be the property of the State and are, by the Contract, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Contract shall be considered "works for hire" as defined in the U.S. Copyright Act.

50. Prohibition Against Gratuities

- A.** The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.
- B.** The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

55. Customer Satisfaction/Complaint Resolution

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will survey its customers in each Participating State approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

57. E-Rate Program

E-Rate discount program does not apply to products sold by Toshiba.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

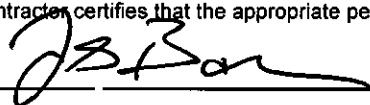
58. Export Control

The State and any Purchasing Entity under this Agreement or Participating Addendum subject to this Agreement ("We") may receive from Contractor certain products, software, and technical data that are governed by the provisions of the U.S. Export Administration Regulations ("EAR") and all other applicable U.S. export control laws and regulations. We shall comply with all U.S. export laws and regulations, as amended from time to time, including, but not limited to, § 736 (General Prohibitions), § 742 (Control Policy), § 744 (End-user and End-use Based), § 746 (Embargoes and Other Special Controls), and § 774 (Commerce Control List) of the EAR, as they pertain to export or re-export. We certify that, unless authorized by U.S. laws and regulations (either by specific regulation or written authorization from the U.S. Government), we shall not knowingly export or reexport, directly or indirectly, any of these products, software, technical data, or the direct product thereof.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

1. TOSHIBA AMERICA INFORMATION SYSTEMS, INC.

The Contractor certifies that the appropriate person(s)

By: 

Title: Vice President and General Manager

Date: 6/18/09

2. MATERIALS MANAGEMENT DIVISION

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

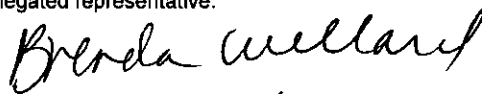
By: 

Title: Acquisitions Supervisor

Date: 6/19/09

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: 

Date: 6/19/09

EXHIBIT A – ADDITIONAL WARRANTIES

Overview of Warranty for Toshiba Products

Toshiba provides a Standard Limited Warranty for its Notebook Computers, Projectors and Accessories (including Monitors). The duration of the warranty is dependent upon the product family and specific model purchased. Warranty duration can be as follows:

1. Notebooks: 90 Day, 1 year, 2 year, 3 year and 4 year
2. Projectors: 90 Day, 1 year, 2 year and 3 year
3. Accessories: 1 year and 3 year

Within each product category the warranty terms are identical and only vary in duration.

This Standard Limited Warranty commences on the date of purchase and expires after the applicable time from the date of purchase (“Limited Warranty Period”), and covers the Product for warranty service required. Toshiba warrants that the Product (1) is free from defects in materials and workmanship and (2) conforms to the factory specifications in effect at the time the Product was manufactured. Toshiba will, in its sole discretion, restore the Product to working order in accordance with factory specifications in effect at the time the Product was manufactured or replace the Product with a product that is at least equivalent to the original Product.

For Notebooks, the Limited Warranty Period for the rechargeable battery included with the Product is one (1) year from the Purchase Date.

For Projectors, the Limited Warranty Period for the projector lamp and any original factory accessories included with the Product are one (1) year from the Purchase Date or 500 hours, whichever comes first.

Items Not Covered by Warranty

Service made necessary by accident, misuse, abuse, neglect, improper installation, or improper maintenance. If Toshiba determines that the Product failure is not covered under this Limited Warranty, Toshiba will notify Customer and provide service alternatives that are available to Customer on a fee basis.

Refer to the warranty terms and conditions to see a complete list of inclusions, exclusions and disclaimers. Toshiba’s Standard Limited Warranties can be found on the Toshiba WSCA-approved website.

EXHIBIT B – COMPLAINT RESOLUTION

Equipment and Service

Under Toshiba's standard limited warranty, WSCA/NASPO can reach a live technician at Toshiba's Global Call Center, providing Level 1 support, 7x24x365 in the United States. As a Premier Access customer, WSCA/NASPO can also reach our Level 2 support through the Global Call Center (PIN code would be provided), which are escalated to the Toshiba Customer Relationship Center in Salt Lake City. WSCA/NASPO's IT staff can also contact Level 3 (Advanced Technical Support, or ATS) technicians in Irvine, CA directly between 8am-8pm EST to assist with technical issues, imaging questions etc. ATS provides support for the following:

- Direct relationship: customer/ASP and Engineering Support
- Customer-specific Issue Resolution & Reporting
- ASP support for difficult-to-reproduce problems!
- ASP support for difficult-to-repair systems
- Pre-Release product evaluation and support

In addition, through your Systems Engineer, WSCA/NASPO will receive dedicated Toshiba System Engineering resources. To allow for the quickest possible resolution of technical issues, your Systems Engineer offers a single-step escalation to the appropriate engineering group. Escalations are tracked directly with visibility to issue, status and resolution detail.

Escalation of other issues (such as Sales, delivery, etc.) can be initiated by your Business Development Manager or the Customer Care Representative into the appropriate areas for resolution. Toshiba's subcontractors are backed by Toshiba's full technical support and engineering resources. If a service subcontractor is unable to fix a problem, they will contact the Advanced Technical Support Team at Toshiba, who will ensure that the problem is resolved.

We will have escalation points of Toshiba contacts within each region to support any issues or product delays that may arise for a subcontractor. Specific Toshiba regional personnel will be assigned to back up the Reseller community. Toshiba does, however, take full accountability in meeting customer SLA requirements, regardless of which channel is utilized by the WSCA entity. Toshiba has contractual relationships with our reseller, distributor and service partners, and as such, Toshiba partners must conform to Toshiba requirements, standards, and escalation policies.

The Toshiba MSE (Market Support Engineer) is the initial investigator of hardware quality issues, documenting and reproducing customer concerns. The MSE works with Advanced Technical Support and Engineering to isolate and resolve the problem. The issue is escalated rapidly to highest engineering, design and manufacturing entities within Toshiba, as applicable, to resolution.

Issues escalated from Toshiba Systems Engineers working in the field with individual customers are referred to the local TEAMS (Technical Escalation And Management) organization. TEAMS generally handles issues such as configuration issues, driver refreshes, and operational questions.

Toshiba's Authorized Service Partners are backed by Toshiba's full technical support and engineering resources. If an ASP is unable to fix a problem, they will contact the Advanced Technical Support Team at Toshiba and they will ensure that the problem is resolved.

Billing

WSCA/NASPO would simply contact your dedicated Toshiba Enterprise Customer Care representative. The CCR would notify and, if necessary, escalate to the appropriate EDI/credit team for any payment dispute resolution.

EXHIBIT C – VALUE-ADDED SERVICES

Self-Maintainer Programs

Toshiba has two self-maintenance programs that we can offer WSCA/NASPO.

The first, DirectCare, essentially makes your organization an Authorized Service Provider for your own Toshiba products with all of the benefits of an ASP, including on-line ordering of spare parts for next business day delivery, full access to Toshiba's technical staff for support and labor reimbursement. With the benefits, however, come certain responsibilities including a set-up fee and online training to certify repair technicians. Under the DirectCare Program, Toshiba will train WSCA/NASPO technicians to handle complex repairs as well as the more routine ones.

Eligibility for Toshiba's DirectCare Program includes: 1) an installed base of 1000 Toshiba laptops, 2) all technicians must receive certification training, 3) a Service credit line of \$25K and 4) Internet/e-mail access for parts orders and filing warranty claims. At least one Toshiba Continuous Service Trained (CST) Technician is required at each customer repair site. Each CST Technician receives initial online training and a yearly subscription for ongoing online training. DirectCare self-maintainers receive reimbursement for their labor for repairs made under warranty.

The second self-maintainer offering is Toshiba's Easy Care Program. There is no set-up fee and technicians are trained on-line at no charge. The minimum installed base is 200 units, WSCA/NASPO will have on-line ordering capabilities, full access to Toshiba's technical staff, and there is no charge for parts used in warranty repairs as long as the defective part is returned within 15 days. Easy Care, however, is designed for users that wish to perform the more routine, less complex repairs and leave the highly technical repairs to fully trained, professional Toshiba service providers. There is also no labor reimbursement under the Easy Care Program.

As either type of self-maintainer above, there is no charge for service parts for laptops under warranty as long as the defective part is returned to Toshiba within 15 days of receipt of the replacement warranty part. WSCA/NASPO will access Toshiba's online system, Eclaim, to verify a PC's warranty status (in- or out-of-warranty, selected warranty options, previous claims etc.). Eclaim is used to place parts orders. Eclaim is also used to process labor reimbursements for labor used in DirectCare warranty repairs. WSCA/NASPO desk-side support personnel will also have direct access to Toshiba's Advanced Technical Support and the ATLAS web portal for schematics and parts ordering information.

Imaging and Asset Tagging

Toshiba is able to provide asset-tagging services for an additional charge. These tags can include bar coding and BIOS asset tag burn-in. An Excel file matching the tagged asset numbers with serial numbers can be provided for uploading into customer asset management systems.

Toshiba offers "Configure to Order" (CTO) services for custom development, testing, and certification of a customer's standard software image as described below. Toshiba's system provides the capability to dynamically build custom images from package components based upon predefined scripts. Additionally we can install a customer's software image on every mobile computer that we ship. This is done within our manufacturing facilities to help when customers migrate software images to new hardware models. Toshiba offers several levels of imaging services, depending on whether we simply load an image that a customer has developed and certified or Toshiba develops the image. These services are described below.

Toshiba's imaging services are fee based and available on various levels as described below.

Level 0 – Receive, review, and verify customer image. Archive and release to the Custom Configuration Center (C3) for production loading.

Level 1 – Receive customer image, review, verify, perform compatibility testing plus QA review and identify anomalies for correction by customer. Retest and verify as required, archive and release to C3 for production loading.

Note: This level includes transition development activities to convert an existing customer image from an older Toshiba model computer to a newer model within the same model family.

Level 2 – Develop custom image based upon customer specifications with choice of OS, Toshiba system and peripherals, and third party software applications. Perform compatibility testing, QA review and revise as necessary. Obtain customer approval, signoff, archive and release to C3 for production loading.

Once the image is created, we can prepare to load the image on systems being shipped. Toshiba Operations has direct server link to Engineering via fiber optics. Images are stored online and indexed by custom Part Number specifically customized to a specific customer. As part of a production image release, CDs/DVDs media are produced and archived in Toshiba Engineering Document Control managed by databases with Engineering Notice (EN) Number of its release. Image Version information and Part Number as well as BIOS numbers are spelled out on EN through Toshiba proprietary Engineering Release System software. These servers are replicated daily from Engineering and maintained daily backups to tapes in addition to each individual image backup on CDs/DVDs backup by projects.

SystemGuard Accidental Damage Service

In supporting a mobile work force, organizations know that they will get a certain number of laptops that have been damaged accidentally. Toshiba offers a cost-effective solution for these types of incidents. SystemGuard's accidental system damage service provides parts and labor coverage for computers that have sustained accidental damage.

Included is coverage for drops, collisions, falls, liquid spills onto or into the unit and a damaged or broken LCD. This extended service plan covers damage-related repairs up to the initial cost of the laptop and can be used as often as necessary within the coverage period until the initial cost of the laptop limit is reached. SystemGuard Accidental Damage Service is always bundled with another service, such as on-site service or an Extended Service Plan.

Other Value Added Service

Through Toshiba's reseller network, WSCA participating states can also have access to a variety of additional value added services. Examples of such services include hosting services, (e.g., storage services), managed services (e.g., network), consulting, help desk, training and education.

Toshiba Leasing

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements attached were not reviewed or evaluated as part of the RFP evaluation process.



LEASE AGREEMENT #

Dated

CUSTOMER NAME	PURCHASE OPTION	MONTHLY PAYMENT* \$	TOTAL ADVANCE (MO. PAY.)*
DBA NAME (IF ANY)	EQUIPMENT DESCRIPTION	LEASE TERM	# OF ADVANCE (MO. PAY.)
ADDRESS	EQUIPMENT LOCATION	DOCUMENTATION FEE \$	SECURITY DEPOSIT (IF ANY)

DEAR CUSTOMER: This Lease Agreement (the "Lease") contains the terms of your agreement with us. Please read it carefully and ask us any questions you may have. The words **You, Your** and **Lessee** mean you, our customer. The words **We, Us, Our** and the **Lessor**, mean CIT Technology Financing Services, Inc.

- EQUIPMENT LEASED; TERM, RENT AND FEES:** We agree to lease to you and you agree to lease from us the equipment ("Equipment") identified above. You certify that the Equipment will be used for a business purpose, and not for personal, family or household purposes. You agree to pay the Documentation Fee, the Total Advance and the Security Deposit (if any) when you sign this Lease. This Lease shall commence on the date that any of the Equipment is delivered to you ("Commencement Date"). The lease payments shall be payable in arrears. Your first monthly payment shown above ("Monthly Payments") is due 30 days from the Commencement Date ("First Payment Date"), and your remaining Monthly Payments shall be due on the same day of each subsequent month until you have paid all the Monthly Payments due under this Lease. Each day between the Commencement Date and the First Payment Date is an "Interim Rent Day". You shall pay us interim rent for each Interim Rent Day at 1/30th of the Monthly Payment. You will execute a Delivery and Acceptance Certificate upon receipt of the Equipment, if we provide one to you, and if not, you expressly agree that you accepted the Equipment no later than 14 days after it was shipped to you. **YOU AGREE THAT THIS LEASE IS A NET LEASE WHICH MAY NOT BE TERMINATED OR CANCELLED; THAT YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS DUE UNDER THE LEASE ACCORDING TO THE TERMS SET FORTH IN THE SCHEDULE, AND THAT YOU CAN NOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON.** You authorize us to adjust the lease payment by not more than 20% if the actual total cash price for the Equipment differs from the estimated total cash price. You agree to pay us the documentation fee shown above upon execution of this Lease.
- SUPPLY CONTRACT:** If you have entered into any purchase or supply contract ("Supply Contract") with any supplier, you assign to us your rights under such Supply Contract, but none of your obligations (other than the obligation to pay for the Equipment if it is accepted by you). If you have not entered into a Supply Contract, you authorize us to enter into a Supply Contract on your behalf. You will arrange for the delivery of the Equipment to you. Neither the supplier nor any salesperson are our agent. Their statements will not affect your rights or obligations under this Lease.
- ASSIGNMENT:** YOU MAY NOT SELL, PLEDGE, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS LEASE. We may sell, assign or transfer all or any part of this Lease and/or the Equipment without notifying you. The new owner will have the same rights that we have, but not our obligations. You agree you will not assert against the new owner any claims, defenses or set-offs that you may have against us and/or the supplier.
- NO WARRANTIES:** We are leasing the Equipment to you "AS-IS". YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT, WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER, AND YOU HAVE SELECTED THE EQUIPMENT AND SUPPLIER BASED UPON YOUR OWN JUDGMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. We transfer to you for the term of this Lease any warranties made by the manufacturer or supplier under a Supply Contract. You agree that you will not assert against us any claim or defense that you have against the supplier.
- EQUIPMENT LOCATION; USE AND REPAIR; RETURN:** We are the owner of the Equipment. You agree to keep the Equipment free from liens and encumbrances. You will keep and use the Equipment only at the address set fourth above. You may not move the Equipment without our prior written consent. At your own cost, you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All permitted alterations, additions and replacements will become our property at no cost to us. We may inspect the Equipment during normal business hours. Unless you purchase the Equipment at the end of this Lease, you will immediately deliver the Equipment to the party and location directed by us in as good condition as when you received it, except for ordinary wear and tear. You will pay all shipping and other expenses, and you will insure the Equipment for its full replacement value during shipping.

(CONTINUED ON REVERSE SIDE)

(10/06)

ACCEPTANCE THIS LEASE MAY NOT BE CANCELED

____ (LESSEE)

By: **X** _____
 Authorized Signer Title
 Print Name _____

Street Address _____ City _____ State _____ Zip _____

CIT Technology Financing Services, Inc.
 By: _____
 Title: _____ Date: _____

PERSONAL GUARANTY

When we use the words **you** and **your** in this Guaranty, we mean the Guarantor(s) indicated below. When we use the words **we, us** and **our** in this Guaranty, we mean CIT Technology Financing Services, Inc.. All other terms shall have the same meanings as used in the Lease. You guaranty that the Lessee will make all payments and perform all other obligations under the Lease until completed. Your obligations shall be continuing, direct and unconditional. You waive notice of Lessee's default, acceptance, demand and protest and you consent to any modifications to the Lease. You shall not assign this Guaranty. This Guaranty shall be binding upon your permitted successors and assigns and inure to the benefit of our successors and assigns. If there is more than one Guarantor, your obligations are joint and several. You authorize us or any of our affiliates to obtain credit bureau reports regarding your credit and make other credit inquiries that we determine are necessary. **THIS GUARANTY IS GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY. YOU CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN NEW JERSEY. YOU EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY.**

Guarantor (Signature) _____
 Print Name: _____ Date: _____

Guarantor (Signature) _____
 Print Name: _____ Date: _____

6. **TAXES:** You agree to pay when due or reimburse us for all taxes, fines, and penalties relating to the use or ownership of the Equipment or to this Lease, now or hereafter imposed, or assessed by any state, federal or local government or agency. We will file all sales, use and unless your purchase option is \$1.00 personal property tax returns (unless we notify you otherwise in writing) and you agree to pay us a fee for making such filings. We do not have to contest any taxes, fines or penalties. If we file such personal proper tax reports, you will pay estimated property taxes with each monthly payment or as invoiced by us. You will not take (or fail to take) any action which we determine will result in the loss or disallowance of all or any portion of the maximum accelerated cost recovery deductions permitted to us by the Internal Revenue Code of 1986, as amended. You will indemnify us for any loss in our after tax economic yields caused by your acts or failure to act.
7. **LOSS OR DAMAGE; INSURANCE:** You are responsible for installing and keeping the Equipment in good working order. Except for ordinary wear and tear, you are responsible for protecting the Equipment from damage and loss of any kind. If the Equipment is damaged or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense. During the term of this Agreement, you agree that you will (1) insure the equipment against all loss or damage naming us as loss payee; (2) obtain liability and third party property damage insurance naming us as an additional insured; and (3) delivery satisfactory evidence of such coverage with carriers, policy forms and amounts acceptable to us. All policies must provide that we be given thirty (30) days written notice of any material change or cancellation. If you do not provide evidence of acceptable insurance, we have the right, but no obligation, to obtain insurance covering our interest in the Equipment for the lease term, and renewals. In that event you will be required to pay us an additional amount each month for the insurance premium and an administrative fee. The cost may be more than the cost of obtaining your own insurance. You agree that we, or one of our affiliates, may make a profit in connection with the insurance we obtain. The insurance we obtain (1) will not name you as an insured, additional insured or loss payee; (2) will not provide you with liability insurance; (3) may not pay any claim that you make; (4) will not pay any claim made against you; and (5) may be cancelled by us at any time. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims. If you later provide evidence that you have obtained acceptable insurance, we will cancel the insurance we obtained.
8. **LATE CHARGES; SECURITY DEPOSIT; SECURITY INTEREST:** If any payment is not made when due, you agree to pay a late charge at the rate of seven percent (7%) of such late payment, but in no event greater than the maximum rate allowable under applicable law. Any Security Deposit under this Lease will either be returned to you or used to offset any unpaid charges at the end of the Lease provided that you have met all obligations under the Lease. In the event this transaction is deemed to create a security interest, you grant us a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). You will deliver to us signed financing statements or other documents we request to protect our interest in the Equipment. You appoint us or our agent as attorney in fact to execute, deliver and record financing statements on your behalf to perfect our interest in the Equipment.
9. **DEFAULT; REMEDIES:** Each of the following is a "Default" under this Lease: (a) you fail to pay any lease payment or any other payment when due, (b) you fail to perform any of your other obligations under this Lease or in any other agreement with us or with any of our affiliates, and this failure continues for 10 days after we have notified you of it, (c) you become insolvent, you dissolve or are dissolved, you fail to pay your debts as they mature, you assign your assets for the benefit of your creditors, or you enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding, or (d) any guarantor of this Lease dies, does not perform its obligations under the guaranty, or becomes subject to one of the events listed above. If a Default occurs, we may do one or more of the following: (a) cancel or terminate this Lease or any or all other agreements that we have entered into with you; (b) require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) all amounts then due under this Lease plus, (ii) all unpaid lease payments for the remainder of the term plus our anticipated residual interest in the Equipment each discounted to present value at the rate of 6% per annum; (c) deliver the Equipment to us as set forth in Section 6; (d) peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; and (e) exercise any other right or remedy available at law or in equity. **You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees and costs.** If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days notice shall constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds. All our remedies are cumulative, are in addition to any other remedies provided for by law and may be exercised either concurrently or separately. Any failure or delay by us to exercise any right shall not operate as a waiver of any right, other or future rights or to modify the terms of this Lease.
10. **FINANCE LEASE STATUS:** You agree that if Article 2A - Leases of the Uniform Commercial Code applies to this Lease, this Lease will be considered a "finance lease" as that term is defined in Article 2A. By signing this Lease, you agree that either (a) you have reviewed, approved and received, a copy of the Supply Contract or (b) that we have informed you of the identity of the supplier, that you may have rights under the Supply Contract, and that you may contact the supplier for a description of those rights. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A.**
11. **PURCHASE OPTION; AUTOMATIC RENEWAL:** If no Default exists under this Lease, you may have the option at the end of the original or any renewal term to purchase all (but not less than all) of the Equipment at the purchase option price above, plus any applicable taxes. Unless the purchase option price is \$1.00, you must give us at least 60 days written notice before the end of the original term that you will purchase the Equipment or that you will return the Equipment to us. If you do not give us such written notice or if you do not purchase or deliver the Equipment to us in accordance with the terms of this Lease, this Lease will automatically renew for successive one month terms until you deliver the Equipment to us. During such renewal term(s) the lease payment will remain the same. We may cancel an automatic renewal term by sending you written notice 10 days prior to such renewal term. If the Fair Market Value Purchase Option has been selected, we will use our reasonable judgment to determine the Equipment's fair market value. If you do not agree with our determination of the Equipment's fair market value, the fair market value will be determined at your expense by an independent appraiser selected by us. Upon payment of the purchase option price, we shall transfer our interest in the Equipment to you "AS IS, WHERE IS" without any representation or warranty whatsoever, and this Lease will terminate.
12. **INDEMNIFICATION:** You are responsible for and agree to indemnify and hold us harmless from any (a) losses, damages, penalties, claims, suits and actions (collectively "Claims") caused by or related to the manufacture, installation, ownership, use, lease, possession, or delivery of the Equipment or any defects in the Equipment and (b) all costs and attorneys' fees incurred by us relating to any Claim. You agree to reimburse us for and if we request, to defend us, at your own cost and expense, against any Claims. You agree that your obligations under this Section 12 shall survive the termination of this Lease.
13. **SOFTWARE:** The Equipment may include certain software ("Software") which we do not own. Where required by the Software owner, you agree to execute a separate license agreement with the owner for the use of the Software ("License Agreement"). The License Agreement shall be separate and distinct from this Lease, and we are not a party to such agreement and do not have any obligations under the License Agreement. Except as expressly modified by this Section 13, all the terms and conditions of this Lease shall apply to the Software including, without limitation, Section 4. Upon expiration or earlier termination of this Lease, you have no obligation to return the Software and/or any data stored therein to us. **You specifically and expressly acknowledge and agree that all of your obligations under this Lease, including but not limited to, your unconditional obligation to make all Lease payments to us without withholding, set-off or reduction for any reason, will in no manner be affected by any other agreement you may have with any other party and the Equipment, and its usefulness and value to you under this Lease, is in no manner dependent on performance under any other such agreement.**
14. **FAX EXECUTION:** A fax version of this Lease when received by us shall be binding on you for all purposes as if originally signed. **However, this Lease shall only become effective and binding against us when originally signed by us in our corporate office.** You agree that the only version of the Lease that is the original for all purposes is the version containing your fax signature and our original signature. If you elect to sign and transmit a Lease by fax, you waive notice of our acceptance of this Lease and receipt of a copy of the originally signed Lease.
15. **MISCELLANEOUS:** (a) **Choice of Law.** This Lease shall be governed by the laws of the State of New Jersey (without regard to the conflict of laws principles of such state). (b) **Jurisdiction.** You consent to the jurisdiction of any local, state or federal court located within the State of New Jersey. (c) **Jury Trial.** **YOU EXPRESSLY WAIVE TRIAL BY JURY AS TO ALL ISSUES ARISING OUT OF OR RELATED TO THIS LEASE.** (d) **Entire Agreement.** The Lease constitutes the entire agreement between you and us and supercedes all prior agreements. (e) **Enforceability.** If any provision of this Lease is unenforceable, illegal or invalid, the remaining provisions shall continue to be effective. (f) **Amendment.** This Lease may not be modified or amended except by a writing signed by you and us. **You agree however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in the Lease.** (g) **Notice.** All notices shall be in writing and shall be delivered to the appropriate party personally, by private courier, by facsimile transmission or by mail, postage prepaid, at its address shown herein or to such other address as directed in writing by such party. (h) **Usury.** it is the express intent of both of us not to violate any applicable usury laws or to exceed the maximum amount of interest permitted to be charged or collected by applicable law, and any excess payment will be applied to the lease payments in inverse order of maturity, and any remaining excess will be refunded to you. (i) **Prepayment.** In the event this transaction is intended or deemed to create a security interest, rather than a true lease, prepayment or early termination is not permitted except at such time and on such terms and conditions as Lessor may agree.

I have received and reviewed this page and I certify that each of the provisions set forth is clear and legible. Customer Initials _____



ADDENDUM TO LEASE AGREEMENT NO. _____

This Addendum is made a part of the Lease Agreement ("Lease") above by and between _____ ("Lessee") and CIT Technology Financing Services, Inc. ("Lessor") and adds the below equipment thereto. Capitalized terms used but not defined will have the same meaning given them in the Lease.

Qty	New/Used	Asset Description/Equipment Address

This Addendum supplements and amends the Lease only to the extent and in the manner set forth, and in all other respects the Lease will remain in full force and effect.

LESSEE:

LESSOR:



DELIVERY AND ACCEPTANCE RECEIPT

Lease No.: _____

Lessee: _____

Lessee certifies that all of the EQUIPMENT covered by the above referenced lease number has been delivered, inspected, installed, in is good working condition, and is, therefore, unconditionally and irrevocably accepted for purposes of the Lease.

We request that Lessor pay the vendor the EQUIPMENT and we understand that rental payments will now commence.

X _____
(Authorized Lessee Signature)

(Signer's Printed Name)

(Signer's Title)

(Date Signed)



NON APPROPRIATION RIDER

This Non-Appropriation Rider to the Lease Agreement No. _____ dated _____, 2008 (the "Lease"), is by and between CIT Technology Financing Services, Inc. (Lessor) and _____ (Lessee). Capitalized terms used herein without definition shall be defined as provided in the Lease.

Notwithstanding anything contained in the Lease to the contrary,

1. Lessee presently intends to continue the Lease for its entire term and to pay all rentals or other payments relating thereto and shall do all things lawfully within its power to obtain and maintain funds from which the rentals and all other payments owing thereunder may be made. To the extent permitted by law, the person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year during the term of the Lease the rentals to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all rentals coming due therein. The parties acknowledge that appropriation for rentals is a governmental function which Lessee cannot contractually commit itself in advance to perform and the Lease does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make all rentals can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the term of the Lease.

2. If Lessee's governing body fails to appropriate sufficient moneys in any fiscal year for rentals or other payments due under the Lease and if other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Lessee shall give Lessor immediate notice of such Non-Appropriation and provide written evidence of such failure by Lessee's governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by that date, immediately upon such Non-Appropriation; (ii) no later than the last day of the fiscal year for which appropriations were made for the rentals due under the Lease (the "Return Date"), Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the Lease, at Lessee's sole expense, in accordance with the terms hereof; and (iii) the Lease shall terminate on the Return Date without penalty or expense to Lessee and Lessee shall not be obligated to pay the rentals beyond such fiscal year, provided, that Lessee shall pay all rentals and other payments due under the Lease for which moneys shall have been appropriated or are otherwise available, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the Lease for each month or part thereof that Lessee fails to return the Equipment as required herein.

3. The Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by the Lessee beyond the amount of such monies. The Lease is not a general obligation of the Lessee. Neither the full faith and credit nor the taxing power of the Lessee are pledged to the payment of any amount due or to become due under the Lease. It is understood that neither the Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Lease.

4. The Lessee and Lessor agree that they intend the Lease to be an operating lease and that by the execution thereof, Lessee acquires no ownership interest in the Equipment whether vested or contingent. The Lessee's interest in the Equipment is limited to that of a lessee and Lessor retains all the rights of owner therein. Any provisions indicating to the contrary in this Rider are for precautionary purposes only.

IN WITNESS WHEREOF, each of the parties hereto has caused this Rider to be executed as of the _____ day of _____ 2008.

CIT Technology Financing Services, Inc.
(Lessor)

(Lessee)

By _____
(Date)

By _____
(Date)

Name/Title _____

Name/Title _____

Addendum to Master Price Agreement
Between
Toshiba America Information Systems, Inc.
And

State of Minnesota, Materials Management Division
Representing the Western States Contracting Alliance (WSCA) and
the National Association of State Procurement Officials (NASPO)
Lead State Contract #: B27176 Executed on: June 19, 2009

July 17, 2009

Page 1 of 1

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

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

Acknowledged:
CONTRACTOR:

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

Signature

Jeff S. Barney, Vice President and General Manger

Date

7/20/09

LEAD STATE:

In accordance with state statutes or rules.

Signature

Date

Date

Bernadette Kojack

Acq. Supvr.
7/21/09