

Addendum to Software License and Support Services Agreement

This Addendum ("Addendum") to the Software License and Support Services Agreement dated July 14, 2012 ("Agreement") is made by and between IBM Corporation ("IBM") and the State of Minnesota acting through its Commissioner of Commerce (the "Licensee") in consideration of their mutual promises and subject to its terms and conditions. This Addendum supplements and amends the terms and conditions of the Agreement as follows:

Clause 10 "General" is amended to add the following:

1. **Lack of Appropriation.** Continuation of this Agreement beyond June 30 of any year is contingent upon continued legislative appropriation of funds for the purpose of this Agreement. If these funds are not appropriated, the Licensee will immediately notify IBM in writing and the Agreement will terminate on June 30 of that year. Licensee shall not be assessed any penalty if the Agreement is terminated because of the decision of the legislature not to appropriate funds.

2. **Taxpayer Identification.** IBM is required by Minn. Stat. § 270C.65 to provide its Minnesota Tax Identification Number or Federal Employer I.D. No. if IBM does business with the State of Minnesota. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require IBM to file state tax returns and pay delinquent state tax liabilities. This Agreement will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations.

Minnesota Tax I.D. No. 008812449 2
Federal Employer I.D. No. 13-0871985

3. **Affirmative Action (when applicable).** IBM certifies it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minn. Stat. § 363A.36 or, if appropriate, has certified that it is in compliance with federal affirmative action requirements. The Licensee intends to carry out its responsibility for requiring affirmative action by IBM.

Covered Contracts and Contractors. If the Contract exceeds \$100,000 and IBM employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then IBM must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A Contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires IBM to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

Minn. R. 5000.3400-5000.3600. (A) General. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining IBM's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

Disabled Workers. IBM must comply with the following affirmative action requirements for disabled workers.

(1) IBM must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. IBM agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) IBM agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(3) In the event of IBM's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(4) IBM agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state IBM's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(5) IBM must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that IBM is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

Consequences. The consequences for IBM's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.

Certification. IBM hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for non-compliance.

4. *Employee Status. E Verify Certification* (In accordance with Minn. Stat. § 16C.075). For services valued in excess of \$50,000, IBM certifies that as of the date of services performed on behalf of the Licensee, IBM and all its subcontractors will have implemented or be in the process of implementing the federal E Verify program for all newly hired employees in the United States who will perform work on behalf of the Licensee. IBM is responsible for collecting all subcontractors certifications and may do so utilizing the E Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractors certifications must be kept on file with IBM and made available to the Licensee upon request.

5. Insurance Requirements

IBM, and/or their Subcontractor, shall maintain insurance to cover claims which may arise from operations under this Contract, whether such operations are by the IBM, their Subcontractor, or by anyone directly employed under this Contract. The State will determine whether the IBM or IBM's Subcontractor insurance will be filed with the State.

IBM, or their Subcontractor, shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. IBM, or their Subcontractor, shall maintain such insurance in force and effect throughout the term of the Contract. IBM, or their Subcontractor, under this Contract can provide applicable services to the State of Minnesota, hereinafter referred to as Owner.

All coverages and limits shall remain in force and effect throughout the term of the Contract. Such coverages shall be maintained continuously for a period of 3 years after final payment provided that such coverage remains commercially available and financially viable. In the event such coverage is not practically available, IBM will self insure at the same levels as contained herein.

NOTICE TO THE IBM OR THEIR SUBCONTRACTOR: The failure of the State of Minnesota to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the IBM, or their Subcontractor, to provide such insurance.

The Owner reserves the right to immediately terminate the Contract if IBM, or their Subcontractor, is not in compliance with the insurance requirements and the Owner retains all rights to pursue any legal remedies against the IBM or their Subcontractor.

Insurance policies shall be provided to the State upon a valid court order.

NOTICE TO INSURER: IBM's insurance company(ies), or their Subcontractor's insurance company(ies), waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

REQUIREMENTS FOR THE IBM OR THEIR SUBCONTRACTOR: IBM's policy(ies), or their Subcontractor's policy(ies), shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of IBM's, or their Subcontractor's, performance under this Contract.

If IBM receives a cancellation notice from an insurance carrier affording coverage herein, IBM agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless IBM's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

IBM, or their Subcontractor, is responsible for payment of Contract related insurance premiums and deductibles.

If IBM, or their Subcontractor, is self-insured, a Certificate of Self-Insurance must be attached.

IBM, or their Subcontractor, shall obtain insurance policy(ies) from insurance company(ies) that either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the MN Department of Commerce if they are not rated by AM Best.

IBM's, or their Subcontractor's, Umbrella or Excess Liability insurance policy may be used to supplement IBM's, or their Subcontractor's, policy limits to satisfy the full policy limits required by the Contract.

POLICY REQUIREMENTS:

1. Workers' Compensation Insurance: Except as provided below, IBM, or their Subcontractor, must provide Workers' Compensation insurance for all their employees in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Minimum limits of liability:

Coverage B - Employer's Liability
\$100,000 Bodily Injury by Disease per Employee
\$500,000 Bodily Injury by Disease Aggregate
\$100,000 Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts IBM, or their Subcontractor, from Workers' Compensation insurance or if IBM, or their Subcontractor, has no employees in the State of Minnesota, IBM, or their Subcontractor, must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes IBM, or their Subcontractor, from MN Workers' Compensation requirements.

If during the course of the Contract IBM, or their Subcontractor, becomes eligible for Workers' Compensation, IBM, or their Subcontractor, must comply with the Workers' Compensation Insurance requirements included herein and provide the State of Minnesota with a certificate of insurance.

Evidence of Subcontractor insurance shall be filed with IBM or as directed by the State.

2. Automobile Liability or Garage Liability Insurance:

IBM, or their Subcontractor, shall maintain insurance to cover liability arising out of the ownership, operation, use, or maintenance of all owned, non-owned and hired automobiles.

Auto Liability insurance is required for IBM, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for IBM, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State of Minnesota.

A. Minimum Limits of Liability:

\$2,000,000 - Per Occurrence – Bodily Injury and Property Damage Combined Single Limit

B. Coverages:

X Owned Automobile
X Non-owned Automobile
X Hired Automobile

Evidence of Subcontractor insurance shall be filed with IBM or as directed by the State.

3. General Liability or Garage Liability Insurance:

IBM, or their Subcontractor, shall maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract.

General Liability insurance is required for IBM, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for IBM, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State of Minnesota.

A. Minimum Limits of Liability:
\$2,000,000 - Per Occurrence
\$2,000,000 - Annual Aggregate
\$2,000,000 - Annual Aggregate applying to Products/Completed Operations

B. Coverages
X Premises and Operations Bodily Injury and Property Damage
X Personal & Advertising Injury
X Blanket Contractual
X Products and Completed Operations
X State of Minnesota named as an Additional Insured

4. Network Security and Privacy Liability Insurance (or equivalent)

IBM shall maintain insurance to cover claims which may arise from failure of IBM's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of confidential or private information, transmission of a computer virus or denial of service.

IBM is required to carry the following minimum limits:

\$2,000,000 per occurrence
\$2,000,000 annual aggregate

5. Professional/Technical, Errors and Omissions, including Network Security and Privacy Liability Insurance (or equivalent Network Security and Privacy Liability coverage endorsed on another form of liability coverage or written as a standalone policy):

This policy will provide coverage for all claims the IBM may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to IBM's professional services required under the contract.

IBM is required to carry the following minimum limits:

\$2,000,000 – per claim or event
\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of IBM and may not exceed \$50,000 without the written approval of the State. If the IBM desires authority from the State to have a deductible in a higher amount, IBM shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the IBM to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and IBM shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by IBM to fulfill this requirement. Such coverage shall be maintained for continuously for a period of 3 years after final payment provided that such coverage remains commercially available and financially viable. In the event such coverage is not practically available, IBM will self insure at the same levels as contained herein.

In all other respects the Agreement remains unmodified and in full force and effect.

THIS ADDENDUM, INCLUDING THE AGREEMENT OF WHICH IT IS A PART, IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PRIOR OR CONCURRENT PROPOSALS AND UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS ADDENDUM AND THE AGREEMENT.

Notwithstanding anything to the contrary in the Agreement, in the event of a conflict between the terms and conditions of this Addendum and those contained within the Agreement, the terms and conditions of this Addendum shall prevail. All other terms and conditions remain unchanged and are ratified hereby.

THIS ADDENDUM SHALL NOT BE EFFECTIVE UNTIL EXECUTED BY THE LICENSEE AND ACCEPTED BY AN AUTHORISED REPRESENTATIVE OF IBM.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date of last signature below.

1. STATE ENCUMBRANCE VERIFICATION
Individual certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.15 and 16C.05.

Signature: Jennifer Hovstad
Date: 10/31/12
Contract No. 70# 2468

2. IBM Corporation

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

By: _____
Title: _____
Date: _____

3. STATE AGENCY

By: [Signature]
(with delegated authority)
Title: Agency Commissioner
Date: 10-31-12

4. COMMISSIONER OF ADMINISTRATION
As delegated to Materials Management Division

By: _____
Title: _____
Date: _____

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10-30-12

Notwithstanding anything to the contrary in the Agreement, in the event of a conflict between the terms and conditions of this Addendum and those contained within the Agreement, the terms and conditions of this Addendum shall prevail. All other terms and conditions remain unchanged and are ratified hereby.

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1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.15 and 16C.05.

10-30-12

Signed: Jennifer Horst
Date: 10/31/12
Contract No. PO# 2468

2. IBM Corporation

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

By: Manuel Lind V
Title: VP Smartercities.swa
Date: 10/31/12

3. STATE AGENCY

By: [Signature]
(with delegated authority)
Title: Deputy Commissioner
Date: 10-31-12

4. COMMISSIONER OF ADMINISTRATION
As delegated to Materials Management Division

By: _____
Title: _____
Date: _____

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1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.15 and 16C.05.

By: Terrence Houston
Date: 10/31/12
Contract No. PO# 2468

2. IBM Corporation

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

By: Heeral Dand V
Title: VP Smartex Cities S.W.A
Date: 10/31/12

3. STATE AGENCY

By: [Signature]
(with delegated authority)

Title: Agency Commissioner

Date: 10-31-12

**4. COMMISSIONER OF ADMINISTRATION
As delegated to Materials Management Division**

By: [Signature]

Title: Negotiations Mgr

Date: 10/31/12

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