



# Commonwealth of Kentucky

## MASTER AGREEMENT

**IMPORTANT**

Show Doc ID number on all packages, invoices and correspondence.

<b>Doc Description:</b> IBM Mainframe Servers, MLC and Related Services		
<b>Doc ID No:</b> MA 758 1500000223 5	<b>Proc Folder:</b> 3523901	
<b>Procurement Type:</b> Special Authority Goods		
<b>Effective Date:</b> 2014-07-01	<b>Expiration Date:</b> 2016-06-30	<b>Not To Exceed Amount</b>
<b>Administered By:</b> Susan Noland		<b>Cited Authority:</b> FAP111-10-00-08-G
<b>Telephone:</b> 502-564-5951		<b>Issued By:</b> Susan Noland

**Reason For Modification:** July 1, 2015

Updating the catalog to commodity line 2 removing supplier part numbers 5655-O01, 5655-O03,5655-Y44, 5655-Y45, 5655-Y46, 5655-O08 5655- O12, 5655-TF4, 5655-TF5 5655-TF6 which were inadvertently added to the catalog in 2014. SNoland

<b>V E N D O R</b>	IBM CORPORATION		
	2912 RICHLAND AVE.		
	LOUISVILLE	KY	40220
	US		

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	IBM Mainframe Hardware.		0.00		0.00000	0.00	0.00

**Extended Description**

IBM Mainframe Hardware - All models and configurations of System Z Enterprise Class Servers

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	IBM Mainframe Software		0.00		0.00000	0.00	0.00

**Extended Description**

IBM Mainframe Software - Monthly License Charge (MLC) Software. Comprised of the operating system and related software products that are used to manage mainframe functions..

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	IBM Mainframe Services		0.00		0.00000	0.00	0.00

**Extended Description**

IBM Mainframe Services - Services performed on Mainframe.

<b>Total Order Amount:</b>	<b>0.00</b>
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1500000223	<b>Document Phase</b> Final	<b>Document Description</b> IBM Mainframe Servers, MLC and Related Services	<b>Page 2</b> <b>of 8</b>
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**MASTER AGREEMENT**  
**MA-758-1500000223**  
(previously MA 758 C-05261307)

**IBM MAINFRAME SERVERS, MLC AND RELATED SERVICES**

**BETWEEN**

**THE COMMONWEALTH OF KENTUCKY**  
**FINANCE AND ADMINISTRATION CABINET**  
**COMMONWEALTH OFFICE OF TECHNOLOGY (COT)**

**AND**

**INTERNATIONAL BUSINESS MACHINES CORPORATION (IBM)**  
**745 WEST NEW CIRCLE ROAD, BUILDING 200**  
**LEXINGTON KY 40511-1846**  
**CONTACT: EDWARD J. MERKLER**  
**PHONE: (614) 213-1863**  
**FAX: (614) 213-5449**  
[EJMERKLE@US.IBM.COM](mailto:EJMERKLE@US.IBM.COM)

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**Scope of Work**

This Sole Source Master Agreement (“Contract”) is entered into, by and between the Commonwealth of Kentucky, Finance and Administration Cabinet, Commonwealth Office of Technology (COT) (“Commonwealth”) and International Business Machines Corporation (IBM) as the Prime “Contractor” to establish a Contract for the following items **ONLY**:

- Mainframe** – all models and configurations of System z Enterprise Class Servers
- Monthly License Charge (MLC) software** which is comprised of the operating system and related software products that are used to manage Mainframe functions.
- Mainframe Services** performed on the Commonwealth’s Mainframes

**Section I**  
**Agencies to Be Served**

1500000223	<b>Document Phase</b> Final	<b>Document Description</b> IBM Mainframe Servers, MLC and Related Services	<b>Page 3 of 8</b>
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This Contract shall be for use by the following agencies of the Commonwealth of Kentucky:

**Commonwealth Office of Technology (COT)**

**Section II**

**Type of Contract**

**This Contract shall be on the basis of a firm fixed unit price.**

**Section III**

**Term of Contract and Renewal Options**

This Contract will be for the period of **one (1) year** from the effective date of award. Annual renewals are optional and upon mutual agreement of the parties. The Sole Source status of the products and services must be valid at the time of any renewal period. A Sole Source Letter from IBM as well as justification from COT must be approved by OPS prior to exercising any renewal. Any renewal shall take the form of an addendum to this Contract, with both Parties executing applicable renewal forms.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the Contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

The Commonwealth reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The Contractor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the Contract in an extended period.

**Section IV**

**Changes and Modifications to the Contract**

Pursuant to KRS 45A.210 (1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and

1500000223	<b>Document Phase</b> Final	<b>Document Description</b> IBM Mainframe Servers, MLC and Related Services	<b>Page 4 of 8</b>
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decision.

**Section V**

**Final Agreement**

This Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

**Section VI**

**Contract Provisions**

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth 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.

**Section VII**

**Commonwealth Office of Technology Requirements**

The Contractor and any subcontractors shall be required to adhere to and sign all applicable Commonwealth policies and standards related to technology use and security.

Commonwealth Office of Technology Standards provides guidelines, policies, directional statements and sets of standards for information technology. It defines, for the Commonwealth, functional and information needs so that technology choices can be made based on business objectives and service delivery. The Contractor shall stay knowledgeable and shall abide by these standards for all related work resulting from this Contract.

<http://technology.ky.gov/governance/Pages/architecture.aspx>

The software deployment and all Contractor services shall abide by security standards as outlined in the Commonwealth's Enterprise Information Technology Policies.

**Enterprise Policies**

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

Commonwealth Office of Technology and Commonwealth Office of Technology Enterprise IT Policies (KRS 42.726)

<http://finance.ky.gov/services/policies/Pages/default.aspx>

1500000223	<b>Document Phase</b> Final	<b>Document Description</b> IBM Mainframe Servers, MLC and Related Services	<b>Page 5 of 8</b>
------------	--------------------------------	--	--------------------

CIO-091 Enterprise Information Security Program - The Commonwealth applies the moderate controls in NIST SP 800-53 to systems that will be in our environment.

<http://finance.ky.gov/services/policies/Documents/CIO-091.pdf>

## Section VIII

### Identity Theft Prevention and Reporting Requirements

In accordance with KRS 42.722 and KRS 61.931 to 61.934, Contractors shall ensure the delivery and/or provision of Information Technology hardware, software, systems, and/or services through this Contract, the Contractor shall prevent unauthorized access to “Identity Information” (Identity Theft) of Commonwealth citizens, clients, constituents and employees. “Identity Information” includes, but is not limited to, an individual’s first

name or initial and last name or any two items listed in combination as to singularly identify an individual or entity associated with the data or other information as defined in KRS 61.931.

**The Contractor shall also immediately notify as soon as it is known, but not to exceed twenty-four (24) hours, the Contracting agency, the Office of Procurement Services, the Commonwealth Office of Technology and the NG-KIH Program Office within twenty- four (24) hours of breach or knowledge of breach in addition to breach under investigation or breach not yet confirmed of Commonwealth data containing “Identity Information.”**

**The Contractor agrees that the Commonwealth may terminate the Contract(s) and/or may withhold payment(s) owed to the Contractor for any violation of the Identity Theft Prevention Reporting Requirements.**

## Section IX

### Basis of Price Revisions

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by this Contract shall remain firm for the Contract period subject to the following:

A: Price Increases: A price increase shall not occur during the first twelve (12) months of the Contract . A Contractor may request a price increase after twelve (12) months of the Contract, which may be granted or denied by the Commonwealth. Any such price increase shall be based on industry wide price changes. The Contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the price increase is denied, the Contract holder may withdraw from the Contract without prejudice upon written notice and approval by the Office of Procurement Services. Provided, however, that the Contractor must

1500000223	<b>Document Phase</b> Final	<b>Document Description</b> IBM Mainframe Servers, MLC and Related Services	<b>Page 6 of 8</b>
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continue service, at the Contract prices, until a new Contract can be established (usually within sixty (60) days).

B: Price Decreases: The Contract price shall be reduced to reflect any industry wide price decreases. The Contract holder is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

C: Extended Contract Periods: If the Contract provides for an optional renewal period, a price adjustment may be granted at the time the Contract is renewed, subject to price increase justification as required in Paragraph A "Price Increases" as stated above.

**Section X**  
**Post Contract Agreements**

This Contract shall constitute the entire agreement between the State and awarded Contractor. Unless contractually provided, State agencies utilizing this Contract will not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of this Contract. Any such documents so obtained will not be binding on the State and agents of the State and will be cause for breach of Contract.

**Section XI**  
**Quantity Basis of Contract**  
**No Guaranteed Quantities**

This Master Agreement has no guarantee of any specific quantity. Orders will be issued on an 'as needed' basis for the quantity desired. The State is obligated only to buy that quantity which is needed by its agencies.

**Section XII**  
**Provisions for Termination of the Contract**

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

**Section XIII**  
**Contract Claims**

The parties acknowledge that KRS 45A.225 to 45A.290 governs Contract claims.

**Section XIV**  
**Payments**

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work,

1500000223	<b>Document Phase</b> Final	<b>Document Description</b> IBM Mainframe Servers, MLC and Related Services	<b>Page 7 of 8</b>
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services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative.

**Section XV**

**Conformance with Commonwealth & Federal Laws/Regulations**

**This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in Franklin County, Kentucky.**

**Section XVI**

**Access to Records**

The Contractor, as defined in KRS 45A.030 (9) agrees that the Contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this Contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the Contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the Contractor and the Contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.

**Section XVII**

**EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act.

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>.

**Section XVIII**

**Approvals**

This Contract is subject to the terms and conditions as stated. By executing this Contract, the parties verify that they are authorized to bind this agreement and that they accept the terms of this agreement.

1500000223	<b>Document Phase</b> Final	<b>Document Description</b> IBM Mainframe Servers, MLC and Related Services	<b>Page 8 of 8</b>
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This Contract may be executed electronically in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Contract.

**1st Party: International Business Machines Corporation (IBM), as “Contractor”**

\_\_\_\_\_  
Printed name                      Title

\_\_\_\_\_  
Signature                      Date

**2nd Party: Commonwealth Office of Technology (COT), as “Commonwealth”**

\_\_\_\_\_  
Printed name                      Title

\_\_\_\_\_  
Signature                      Date