

**EMC Corporation**  
**Western States Contracting Alliance (WSCA)**  
**Indirect Value Added Reseller Agreement**  
**Pursuant to**  
**EMC WSCA Master Price Agreement Number B27161**

This WSCA Indirect Value Added Reseller Agreement ("Agreement") is made between EMC Corporation ("EMC") and Kovarus ("VAR") and is entered into on Sept. 18, 2009 ("Effective Date"). This WSCA-VAR Agreement is for fulfillment of orders under the EMC WSCA Master Price Agreement Number B27161 and all Participating Addenda as listed in Exhibit A ("WSCA Contract"). In the event of a conflict between this Agreement and the Corporate Agreement, the Corporate Agreement shall govern.

**1. Scope**

This Agreement sets out the terms and conditions under which VAR will resell EMC products or services and fulfill orders under the WSCA Contract, and is the basis of authorization for VAR to sell to the Participating States or other participating entities.

**2. EMC WSCA Authorization**

- 2.1. VAR agrees that this Agreement is required as a condition for EMC authorization of VAR to sell EMC products or services to eligible purchasing entities under the EMC WSCA Contract.
- 2.2. VAR agrees that EMC may cancel its authorization of VAR use of the EMC WSCA under the termination provisions of this agreement.
- 2.3. VAR is authorized to resell EMC products that Dealer acquires from an EMC authorized distributor. VAR's terms of purchase are governed by Dealer's distribution agreement with Dealer's distributor
- 2.4. Nothing in this Agreement shall establish a direct reseller relationship between EMC and VAR.

**3. WSCA Contract Binding on VAR; Indemnity for Breach**

- 3.1. VAR acknowledges receipt of a complete copy of EMC-WSCA Master Price Agreement Number B27161, signed by WSCA on May 26, 2009 and all Participating Addenda as listed in Exhibit A.
- 3.2. VAR agrees to be bound by the terms and conditions of EMC-WSCA Master Price Agreement Number B27161 and all Participating Addenda as listed in Exhibit A and shall be liable to WSCA, entities associated with all Participating Addenda listed in Exhibit A and EMC for any breach by VAR.
- 3.3. VAR shall defend, indemnify and hold EMC harmless from any and all liability, claims, and expenses of whatever kind and nature for failure by VAR to comply the terms and conditions of EMC-WSCA Master Price Agreement Number B27161 and all Participating Addenda as listed in Exhibit A.

**4. Term and Termination**

- 4.1. This Agreement begins on the Effective Date and shall co-terminate with the WSCA Contract, unless terminated earlier as follows.
- 4.2. This Agreement begins on the Effective Date and shall co-terminate with the Corporate Agreement.

- 4.3. Either party may terminate this Agreement without cause with thirty (30) days written notice to the other party.
  - 4.4. Either party (individually "Terminating Party") may, by written notice, terminate the whole or any part of this Agreement for cause if the non-terminating party fails materially or repeatedly to perform an obligation of such party hereunder, and has not cured such failure within ten (10) Business Days of receipt of notification by the Terminating Party of such failure to perform, or within any extension granted in writing by the Terminating Party.
  - 4.5. Notwithstanding anything herein to the contrary, no termination of this Agreement shall release either party from its obligation to pay the other party any amounts which accrued prior to such termination, or relieve either party from an obligation to remedy a breach of the Agreement.
  - 4.6. Termination of this Agreement shall cancel VAR's authority to use the EMC WSCA Contract.
- 5. Placement and Fulfillment of Orders**
- 5.1. Orders under the WSCA Contract are subject to the terms and conditions of the WSCA Contract.
  - 5.2. Orders under the WSCA Contract shall be placed by eligible entities directly with VAR.
  - 5.3. VAR will fulfill orders and submit its invoice as indicated in the order.
- 6. WSCA Contract Prices**
- 6.1. Prices charged by VAR shall not exceed the prices set forth in the WSCA Contract.
  - 6.2. EMC agrees to provide WSCA Contract pricing updates to VAR as frequently as updates are provided to the WSCA.
- 7. Transaction Reporting, Purchase Order Copies, Quarterly Business Reviews**
- 7.1. VAR shall provide EMC with copies of all customer purchase orders (POs) received under the WSCA Contract within five days of receipt from the customer. Copies of the POs may be either faxed to EMC at (888) 580-6069 or emailed to EMC at email address EMCWSCA@emc.com.
  - 7.2. VAR shall also provide a monthly transaction report, in a form specified by EMC, by the 5th business day following each month end. Partner shall not make a separate report to WSCA or to the individual State.
  - 7.3. EMC is responsible for filing the consolidated WSCA Contract report (and any required State reports) and paying any and all transaction fees associated with the WSCA Contract.
  - 7.4. VAR agrees to provide Quarterly Business Reviews (QBRs) with their counterpart EMC Sales teams outlining expected and forecast opportunities and revenue, pipeline review, sales activity projections, etc., in a form specified by EMC, by the 15th business day following each calendar quarter end. Partner is responsible for scheduling the QBRs.
- 8. Incorporation by Reference**
- 8.1. EMC-WSCA Master Price Agreement Number B27161, signed by WSCA on May 26, 2009 and all Participating Addenda as listed in Exhibit A is incorporated by reference as if set forth in full text. All orders issued to VAR pursuant to this Agreement are subject to the terms and conditions of the WSCA State Term Schedule Contract.

**9. Order of Precedence**

9.1. As between the VAR and WSCA, in the event of a conflict between the terms of this Agreement and the terms of the WSCA Contract, the terms of the WSCA Contract shall prevail.

**10. Notices**

10.1. All notices, orders, directives, request or other written communications required or permitted to be given or sent by this Agreement, shall be deemed given if mailed first class, postage paid or sent by facsimile, and if addressed as follows:

In the case of EMC:  
EMC Corporation  
ATTN: Legal Department  
176 South Street  
Hopkinton, MA 01748

In the case of VAR:  
Korvus, Inc.  
4000 GSKR Point Blvd., Ste 423  
S. San Francisco, CA 94080

10.2. Either party may, by a notice given in accordance with the foregoing, change its address or designated recipient for notices. Any notice given as aforesaid shall be deemed to have been received on the date of the overnight mail receipt, on the date imprinted by the facsimile machine, or five Business Days after deposit in the mail (first class, postage paid), whichever is applicable, unless the addressee party is able to establish conclusively that such notice was not received by it.

**11. General**

11.1. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the matters herein, and, except for those agreements that are incorporated by reference, supersedes all prior or contemporaneous representations or agreements, written or oral, with respect to the matters covered herein.

11.2. Neither party may assign this Agreement or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party or entity, and this Agreement may not be involuntarily assigned or assigned by operation of law, without the prior written consent of the non-assigning party, which consent may be given or withheld by such non-assigning party in the sole exercise of its discretion, except that either party may assign this Agreement as part of an assignment to any successor corporation in the event of a merger or acquisition.

11.3. Nothing in this Agreement is intended to create, or shall be construed as creating, a joint venture, partnership, or agency, or taxable entity between the parties, or any right to pledge the other's credit, it being understood that EMC and VAR are independent contractors.

11.4. This Agreement may not be altered, modified, amended or waived, in whole or in part, in any way, except by an instrument in writing signed by a duly authorized official of EMC and VAR.

11.5. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized official of the party for whose benefit such obligation was to be performed. Any waiver shall in no way be construed as a waiver of any subsequent breach of this Agreement by the other party.

11.6. If any provision of this Agreement is found void, invalid or unenforceable, it shall not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms.

11.7. Neither party shall be deemed in default if its performance or obligations hereunder are delayed or become impossible or impractical by reason of any act of God, war, fire, earthquake, labor dispute, act of government or government agency or officers, or any other cause beyond such party's reasonable control.

11.8. The parties shall comply with provisions of all applicable federal, state, county and local laws, ordinances, regulations and codes (including procurement of required permits or certificates) in its performance in connection with this Agreement.

11.9. The headings of the sections are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

**12. No Grant Of License/No Public Communications**

12.1. Nothing contained in this Agreement shall give either party any interest, license or right in any trademark, name, logo, or other trade designation of the other party (or any affiliated company) and each party agrees that it will not assert or claim any interest in, or do anything that may adversely affect the validity or enforceability of, any trade name, trademark/service mark or logo belonging to or licensed to any affiliated company of the other party.

12.2. Neither party shall issue any public communications including but not limited to press releases or other marketing material related to this Agreement or any order issued thereunder without prior written consent of the other party.

12.3. Use of the NASPO/WSCA name and logo and public communications is subject to the addendum WSCA Contract that is attached hereto.

IN WITNESS THEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

EMC CORPORATION

BY: 

NAME: Joseph F. Spaniol III

TITLE: Sr. Director, Contracts

DATE: 9/21/09

Kovarus

BY: 

NAME: Peter Castaldi

TITLE: Principal

DATE: 9-18-09

Addendum to Master Price Agreement  
Between  
EMC<sup>2</sup>  
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 #: B27161                      Executed on: May 26, 2009

This Master Price Agreement Addendum governs EMC<sup>2</sup>'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, re-sellers, 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, re-sellers, 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.