

**RESOLUTION No. 14-65**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING, PURSUANT TO SECTION 2-322 OF THE CITY CODE OF ORDINANCES, THE PURCHASE OF COMPUTER EQUIPMENT AND OTHER HARDWARE FROM DELL, INC. UNDER STATE OF FLORIDA CONTRACT NO.: 250-WSCA-10-ACS, WHICH WAS COMPETITIVELY ENTERED INTO IN A MANNER SIMILAR TO THAT SET FORTH IN CHAPTER 2 OF THE CITY CODE OF ORDINANCES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Doral (the "City") has a need to purchase and/or upgrade existing servers, desktops, laptops and other computer hardware throughout the City's departments; and

**WHEREAS**, the State of Florida, pursuant to State Contract No 250-WSC-10 ACS (WSCA/NASPO PC Contracts 2009-2014), has an existing agreement with Dell, Inc. for the purchase of computer equipment, peripherals, and related services, a copy of which is attached hereto as Exhibit "A" (the "State Agreement"), with terms and conditions that were competitively bid in a manner consistent with Chapter 2 of the Code of Ordinances, and

**WHEREAS**, Section 2-322 of the City's Code of Ordinances provides that the City may enter into bids or contracts entered into by other governmental authorities so long as the contracting governmental authority has followed a competitive bidding procedure leading to the award of the subject or contract similar to the competitive bidding outline in Chapter 2 of the Code of Ordinances; and

**WHEREAS**, the administration has evaluated the products and prices in the State Agreement and recommended that the City satisfy its needs by procuring computer hardware under the State Contract; and

**WHEREAS**, the Mayor and City Council find it in the best interest of the City to purchase computer hardware for the City's departments in an efficient and cost effective manner pursuant to the State Contract. .

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

**Section 2. Authorization.** Pursuant to Section 2-322 of the City's Code of Ordinances, the City Manager is hereby authorized to purchase computer hardware equipment for the City from Dell, Inc. pursuant to State of Florida Contract No. #250-WSCA-10-ACS, a copy of which is attached hereto as Exhibit "A", via corresponding purchase orders and/or purchase agreements, which may be contain such non-material changes as may be acceptable to the City Manager and must be approved as to form and legal sufficiency by the City Attorney.

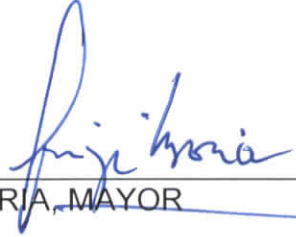
**Section 4. Implementation.** The City Manager is authorized to execute any purchase orders or other documents, to expend budgeted funds on behalf of the City with respect to the purchase approved herein, and to take such other action, as may be necessary to accomplish the objectives of this Resolution.

**Section 5. Effective Date.** This resolution shall take effect immediately upon adoption.

By unanimous consensus of the City Council, the item was approved

Mayor Luigi Boria	Aye
Vice Mayor Christi Fraga	Aye
Councilwoman Ana Maria Rodriguez	Aye
Councilwoman Bettina Rodriguez Aguilera	Aye
Councilwoman Sandra Ruiz	Aye

PASSED and ADOPTED this 14th day of May, 2014.

  
\_\_\_\_\_  
LUIGI BORIA, MAYOR

ATTEST:

  
\_\_\_\_\_  
BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE SOLE USE AND RELIANCE OF THE CITY OF DORAL:

  
\_\_\_\_\_  
WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, PL  
CITY ATTORNEY

# EXHIBIT “A”

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

Number B27160

This Agreement is made and entered into by Dell Marketing L.P., One Dell Way, Mailstop 8708, Round Rock, TX 78682 ("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 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. 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 agreement is located in Exhibit D, Leasing.

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 Contractor retail price reduction offered to consumer, business or governmental purchasers. 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 (Packages)"** 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 Premium Savings Configurations 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 responsibility for the manufacturer’s warranty and maintenance of all proposed equipment, including peripherals. Taking responsibility means the Contractor will provide fulfillment of manufacturer’s warranty and maintenance and will provide warranty and maintenance call numbers, ensure manufacturer accepts, processes and responds to those calls, and Contractor shall take responsibility to fulfill warranty as purchased with product. 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 within fifteen (15) calendar days of non-acceptance of a product or service; otherwise the Products or Services shall be deemed accepted

### **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. Payment shall be made within 30 days following receipt of an invoice. 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" at the time of order placement only.

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 total amount for each configuration 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 as long as the Contractor designates the carrier, until delivery to the identified ship-to address, 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 due to missing, damaged, defective, incorrect order 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 return shipping cost of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products due to missing, damaged, defective and incorrect order, 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 14 to 30 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 responsibility means the Contractor will provide fulfillment of manufacturer's warranty and maintenance and will provide warranty and maintenance call numbers, ensure manufacturer accepts, processes, and responds to those calls. 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, or as listed on Contractor's website.
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 intended,
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 warranty on all Products begins on the date of the title transfer as described in Article 10.
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) **ProSupport for IT**
  - b) **ProSupport for End Users**
  - c) **CompleteCare**

B. Contractor may modify the warranties described in Exhibit A from time to time with the prior notice 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 as provided by the Manufacturers.

D. The basic warranty offered shall be three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule.

## **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 Contractor Branded Product or Contractor Branded 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 Contractor Branded Product or Contractor Branded 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.
6. Non-Contractor Branded Product offerings – with respect to any claim that Non-Contractor Branded product(s) infringes upon another person's or entity's patent, copyright, trade secret or other intellectual property rights in the United States. Contractor agrees to pass through to the appropriate Purchasing Entity any rights to indemnification protection for which Contractor currently or subsequently has an agreement in place with the potentially infringing equipment manufacturer/entity.

### **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 1 – Servers
- Band 2 – Workstations
- Band 3 – Printers
- Band 4 – Storage Solutions
- Band 5 – PDAs
- Band 6 – Instructional Packages (Bundles)
- Band 7 – Monitors
- Operating Systems
- Local Area Networks

Digital 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 deliver Products to Purchasing Entities within 14-30 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

**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 , industry-wide constraints or other catastrophes beyond the reasonable control (each a "Force Majeure event") 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 not performing due to a Force Majeure event under this provision must provide the other party prompt written notice of the Force Majeure event 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, 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 subcontract 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**

- A. The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including reasonable attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the Contractor, its agents, officers, employees or subcontractors. 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 for an aggregate amount in excess of \$2,000,000.
- B. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees. To the maximum extent permitted by applicable state law, Purchasing Entities agree to be responsible for their own acts, errors, or omissions pertaining to this indemnification provision.
- C. Additional representations

For acquisition of Services, the following additional terms shall apply. To the extent permitted by law, a Participating Entity accepts responsibility for and represents and warrants that: (a) the Participating Entity has obtained the appropriate license, intellectual property rights, or any other permissions required to support any Service Description, SOW, or Technical Specification Form signed by the Parties, or Contractor's performance of the Services, including the right to make any copies or Reproductions of any Participating Entity-provided software, (b) the Participating Entity's representations regarding the existence of an export license or the eligibility for export of software without a license are accurate, or (c) that Contractor shall not be held liable for the effect (if any) on the Participating Entity's third-party product warranties caused by having Contractor perform services on such third-party Products. The Contractor's liability under the contract for any cause whatsoever shall be limited to an aggregate amount of \$2,000,000. The foregoing limitation does not apply to Articles 12 and 24 A through 24 C of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. 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.

## **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](mailto:bernie.kopischke@state.mn.us)

**To Contractor:**

Dell Marketing L.P.  
Attention: Public Contracts  
Stephanie D. Shipp  
One Dell Way, RR8-8707  
Round Rock, TX 78682  
Email: [stephanie\\_shipp@dell.com](mailto:stephanie_shipp@dell.com)

**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 as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to. Contractor agrees to add EPEAT and/or Energy Start environmental information to utilization reports as the information becomes available as consumable reporting data.
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 within 30days of the written notification, 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 equivalent product or equivalent

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 Audits**

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures, described in **Exhibit E**, Audit Guidelines. The Contractor will review web pricing on a monthly basis to ensure discounts continue to be equal to or better than those required by the Agreement.

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 Audits**

The Contractor further agrees to perform sales audits based on the sample formulas described in **Exhibit E**, Audit Guidelines.

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, 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 remain the property of the Contractor. Where applicable, works of authorship created by the Contractor, specifically for the State shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in the Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

#### **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**

By entering into a Contract, the Contractor agrees to consider, in the Contractor's discretion, all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the State under said Contract. For any cause of action taken herein by Contractor, the State, at the State's discretion, may participate in any such action. In the event that Contractor desires to participate in such action, the Contractor shall not oppose the State's request to join such action so long as the interests/positions of the State are not adverse to the interests/positions of the Contractor.



## **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**

The Contractor's E-Rate identification number is: #143004340.

E-Rate eligibility depends upon who uses the equipment, how it is used and where it is located. In general terms, equipment located on school property and that is necessary for e-mail and Internet access in classrooms is eligible for E-Rate support.

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

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. DELL MARKETING L.P.**

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.

By: Stephanie D. Shipp Stephanie D. Shipp

Title: Contract Strategist

Date: June 11, 2009

By: Jane McKenzie Jane McKenzie

Title: Senior Manager Contracts

Date: June 11, 2009

**2. MATERIALS MANAGEMENT DIVISION**

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

By: Bernadette Kopischke

Title: Acquisitions Supervisor

Date: 6/15/09

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: Brenda Willard

Date:

**Original signed**

**JUN 15 2009**

**By Brenda Willard**

## EXHIBIT A – ADDITIONAL WARRANTIES

### ProSupport for IT

Designed for IT Professionals and customers with their own helpdesk/service desk facilities, ProSupport for IT has stripped out the duplication that can occur with basic support packages and delivers the elements that IT professionals need, including the entitlement for your certified IT staff to receive Dell training and accreditation in order to qualify for Fast Track Dispatch. Also NASPO/WSCA's staff benefit from:

- Entitlement to enroll in Fast Track dispatch for Dell certified Customer Technicians
- Direct Access to Dell Expert Centers
- 24x7 Expert Center Support:

### ProSupport for End Users

Designed for Customers with limited or no internal IT resource, ProSupport for end-users provides support in the areas that end-users typically encounter issues. The service is available 24 x 7. ProSupport for End Users also gives "Getting started" advice such as remote configuration or set up assistance associated with simple networks (including wired and wireless networks) and configuration assistance with common task small business applications such as:

- Symantec Endpoint Protection
- Microsoft Office
- Microsoft SBS
- QuickBooks
- Adobe Photoshop
- Adobe Acrobat

### Service Options

#### 1. Speed of Service Response

##### ***Mission Critical***

The Mission Critical option includes either a 4 hour or 8 hour response, with the option of a 2 hour response service if your site falls within the service coverage area. Dell has 5 Global Command Centres for around the clock coverage around the world.

Dell's Critical Situation Process for severity 1 incidents provides:

- Ongoing, scheduled situation updates to keep you informed every step of the way
- Problem replication in Dell's simulation labs (as needed)
- Prioritized production in the event of a natural disaster

We will also provide emergency dispatch that allows simultaneous phone and on-site troubleshooting. In addition hardware fault monitoring is available on select server and storage platforms.

##### ***Same Day Response Service***

Same day response/4-hour on-site service includes:

- After phone-based troubleshooting, a Dell-trained technician arrives on-site within 4 hours of problem determination, depending on location

- On-site service technicians coordinate incident resolution and troubleshooting directly with Dell's Expert Centers

### ***Specialized On-site Service Options***

With this module of ProSupport NASPO/WSCA can choose from a range of robust options tailored to your unique needs. Options include:

- On-site Service Delivery Manager
- On-site Escalation Manager
- On-site Service Engineer
- Scheduled On-site Service
- On-site Diagnosis Service

## **2. Premium Proactive**

### ***Maintenance***

A study conducted in North America during 2007 showed that a massive 70% of IT budgets and spent on ongoing operations and maintenance. Our ProSupport Proactive Maintenance services have been designed to address this expenditure by reducing the cost and complexity of ongoing maintenance. Proactive maintenance includes:

- Proactively maximize availability
- Help reduce unplanned downtime
- Help reduce recovery time in the event of a technical incident by reducing the number of variables to diagnose and troubleshoot
- Minimize maintenance costs while maximizing uptime

Premium Proactive maintenance is available on select server and storage platforms.

### ***Enterprise Wide Contract***

A ProSupport Enterprise Wide Contract from Dell has been proven to reduce technical incidents by as much as 37%. This ProSupport option includes:

- Designated Service Delivery Manager
- On boarding support assessment & comprehensive planning
- Monthly management reviews
- Incident status and defined reporting
- Dell Fast-Track dispatch (with certification)
- 7x24x365 access to Dell Expert Centers
- Technical training and certification program
- Escalation management
- Global Command Centers
- Collaborative support for hardware and software
- Next-Business-Day on-site service

Your designated Service Delivery Manager service includes:

- On boarding support assessment
- Comprehensive planning
- Monthly management reviews
- Incident status and defined reporting

### ***Remote Advisory Options***

Remote advisory assistance is designed to support your specialized applications and solutions. It is ideal for ongoing support of Dell Infrastructure Consulting Services deployed solutions or for additional configuration and optimization needs. Customers can select remote advisory services that cover the following specialist areas:

- Virtualization
- Exchange
- Systems Management
- Storage Technology
- Backup and Recovery

### ***Fast Track Dispatch Program***

This program is included for customers who choose the ProSupport for IT service model.

Fast Track Dispatch provides the ability for certified IT staff to dispatch parts and/or labor without having to go through scripted phone troubleshooting. The necessary online technical training and certification for major Dell product families is included in the program. IT professionals have access to technical support tips and in-depth hardware and software information. Also, they have direct phone access to expert technicians who can assist with more complex issues when needed.

## **3. Protection**

### ***CompleteCare***

Protect assets from inevitable mishaps with CompleteCare Accidental Damage cover to ensure an easy and flexible repair and replacement service for most accidental damage. CompleteCare helps to save time, money and resources in the event of unplanned events such as:

- Spills
- Drops
- Breakages
- Electrical surges

For notebooks and mobile workstations CompleteCare Theft protection is available.

CompleteCare Multi-cover provides both Accidental Damage and Theft Protection under in one easy package.

CompleteCare is essential investment protection for systems that are exposed to high-risk multi-use, high mobility, multiple users and harsh environments.

## **EXHIBIT B – COMPLAINT RESOLUTION**

A dedicated member of your Account Team, your Sales Representative is the owner for any procurement, pricing, or supply issues that may arise. Your Sales Representative has a clearly defined escalation path for issues which includes routing them through an Inside Sales Manager, up through to the appropriate Regional Director. Your Sales Representative is directly accountable to NASPO/WSCA and will keep you apprised of issue resolution and progress.

In the rare case an issue cannot be resolved through standard channels; the escalation process would be directed to the level of Sales Vice President.

The Dell Account Teams provide Executive Business Reviews on a quarterly basis. This tool is like a bank statement that provides purchase history information, tracks our performance against Service Level Agreements and develops specific action plans where needed to meet your objectives. The goal is to use the benefits of our direct relationship to provide you with unprecedented accountability on the products, services and support you want and give you as proactive analysis of what's working and what's not.

### **Invoicing Resolution**

Purchase order management helps Dell maintain our commitment to excellence by allowing us to process orders accurately and efficiently. In support of these goals, Dell assigns a Finance/Accounting Associate to each account. This individual is responsible for resolution of disputed invoices. The Associate will work with NASPO/WSCA's Accounts Payable, Procurement or other necessary departments to resolve disputes.

Your Dell Customer Care representative will help with errors such as duplicate invoices, wrong product shipped, etc. If needed, the dedicated Finance/Accounting Associate for NASPO/WSCA will resolve billing issue.

If NASPO/WSCA is set up for monthly consolidated invoicing, Dell requires that you pay undisputed item(s) and follow the above procedures for error correction.

Dell provides the following solutions to customers in resolving their most common invoicing issues:

If a customer didn't receive original copy in the mail, or it is delayed or lost in the customer's mailroom, Dell makes available round-the-clock access to online copies for all Dell invoices – paid and unpaid – for 24 months. The online invoices look just like the original hard-copy invoices and include service tag numbers for simplified comparisons. Dell can also provide email notification of invoices.

If a customer wants one invoice per purchase order, Dell's collections team can set the customer up for consolidated invoicing. Or, if the request is just for one PO, Dell's customer care or collections team can request a manual consolidated invoice.

If a customer wants their invoice to match their purchase order, Dell's customer care or collections team can request manual invoice.

## **EXHIBIT C – VALUE-ADDED SERVICES**

Contact Dell for further details on these programs:

Custom Factory Integration

Parts Replacement Program

Asset Management Services

Image Management Services

Asset Recovery Services

Managed Deployment Services

Modular Services

Automated Deployment

Training Services

Dell Virtualization Services

Assessment, Design & Implementation Services



## **EXHIBIT D - 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 were not reviewed or evaluated as part of the RFP evaluation process. A sample agreement can be found at: [www.dell.com/naspowsca](http://www.dell.com/naspowsca)

## **EXHIBIT E – AUDIT GUIDELINES**

### **Website Audits:**

1. Websites need to be accurate with both pricing and part numbers
2. Manufacturers **MUST** have a mechanism in place for periodic and random internal auditing of pricing on the website
3. WSCA will randomly audit websites for accurate pricing
4. Upon request, Contractor will provide documentation of pricing and discounts accuracy

### **Sales Audits**

#### **Sample Guidelines**

**Frequency:** Quarterly

**Scope:** one tenth of one percent (.001) of purchase orders – at least one if any sales, no more than 100 audits

- Up to 1,000 sales = 1 audit
- 10,000 sales = 10 audits
- Up to 100,000 sales = 100 audits
  - Random sample of purchase orders-invoices
- Can offer several different statistical methods for such small samples

### **Documentation:**

- Contractor to test and keep documentation internally. Noting any actions to correct findings, as necessary.
- Periodic summary report to WSCA/NASPO containing audit findings as summary numbers **ONLY**

Addendum to Master Price Agreement

Between

Dell Marketing, L.P.

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 #: B27160

Executed on: June 15, 2009

August 12, 2009

Page 1 of 2

This Master Price Agreement Addendum governs Dell Marketing, L.P. (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 and/or as otherwise approved for posting on the CONTRACTOR's approved NASPO/WSCA website. 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 authorized sub-contractors, authorized resellers, and/or authorized 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 authorized sub-contractors, authorized re-sellers, and/or authorized agents immediately cease all use.
7. CONTRACTOR shall not make, or permit its authorized subcontractors, authorized resellers, or authorized 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 authorized sub-contractors, authorized re-sellers, and authorized 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.

**Signatures to follow on Separate Page**

Addendum to Master Price Agreement

Between

Dell Marketing, L.P.

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 #: B27160

Executed on: June 15, 2009

August 12, 2009

Page 2 of 2

Acknowledged:

**DELL MARKETING L.P.:**

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:

Stephanie D. Shipp Signature Stephanie D. Shipp

\_\_\_\_\_  
Title Contract Strategist

\_\_\_\_\_  
Title

12 August 2009 Date

102

**LEAD STATE:**

In accordance with state statutes or rules.

Bernadette Kopischke Signature

Acq. Supvr. Title

\_\_\_\_\_  
Title

8/17/09 Date

\_\_\_\_\_  
Date



**WSCA/NASPO Contract Administration**  
112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155  
Fax: 651.297.3996  
TTY: MN Relay Service 1.800.627.3529  
<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: ONE (1)  
TO CONTRACT NUMBER: B27160**

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration, and on behalf of the WSCA/NASPO ("Lead State") and Dell Marketing L.P., One Dell Way, Mailstop 8708, Round Rock, TX 78682 (Contractor).

**WHEREAS**, the Lead State has a Contract with the Contractor identified as No. B27160, effective September 1, 2009, through August 31, 2012, to provide direct-from-manufacturer personal computer equipment, peripherals and related services; and

**WHEREAS**, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

**WHEREAS**, the terms of the Contract specifically state that the Contractor shall provide the basic warranty, three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule. (Bands 1. Servers; 2. Workstations; 3. Printers; 4. Storage Solutions; 5. PDA's; 6. Instructional and Public Safety Bundles; and 7. Monitors.

**NOW, THEREFORE**, it is agreed by the parties to amend the Contract as follows:

1. The Contractor may offer one-year and/or two-year warranties for each Band of equipment provided under the Contract. The Contractor shall show these as options when configuring a system/obtaining a quote, as a reduction in the cost of the equipment.

This Amendment is effective beginning on the date that the final required signatures are obtained, and shall remain in effect until August 31, 2012, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

Intentionally Left Blank



WSCA/NASPO Contract Administration  
112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155  
Fax: 651.297.3996  
TTY: MN Relay Service 1.800.627.3529  
<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

**1. DELL MARKETING L.P.**

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

By: Stephanie Miller  
Title: Contracts Sr. Consultant  
Date: September 28, 2010

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**2. LEAD STATE  
MATERIALS MANAGEMENT DIVISION**  
In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopiwinkle  
Title: Acquisitions Supervisor  
Date: 9/29/10

**3. LEAD STATE  
COMMISSIONER OF ADMINISTRATION**  
Or delegated representative.

By: Brenda Weller  
Date: 9/29/10

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA|NASPO PC Contracts 2009-2014**

**COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES**

**MASTER PRICE AGREEMENT NUMBER B27160**

Between

Dell Marketing, L.P.

[hereinafter "Contractor"]

and

State of Florida

[hereinafter "Participating State" or "Participating Entity"]

(Participating State/Entity Contract Number 250-WSCA-10-ACS)

Page 1 of 7

**1. Scope**

This Addendum covers the WSCA|NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts.

**2. Participation**

Use of specific WSCA|NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

**3. Changes**

**A. Convenience Contract:**

This is a convenience contract. Political subdivisions (cities, counties, school boards, etc.) are allowed to purchase all offerings available under the Dell WSCA Master Price Agreement. In accordance with s. 287.056 Florida Statutes, it is mandatory for state agencies to use State Term Contracts for products that are on existing State Term Contracts. Exceptions to mandatory usage are set forth in Rule 60A-1.044, Florida Administrative Code.

b. In order to complete any transaction between the Approved Buyer and the Contract vendor, the vendor must be registered in MyFloridaMarketPlace. Rule 60A-1.031, F.A.C., is hereby incorporated by reference. Unless exempt as provided in rule 60A-1.032, all transactions are subject to a transaction fee of 1.0% pursuant to the rule.

c. The provisions of section 287.058(1)(a), (c), and (f), F.S. are hereby incorporated by reference. If the transaction involves contractual services, the provisions of 287.058(1)(b), (d), and (e), F.S. are also incorporated by reference.

d. The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. The vendor shall comply with section 11.062,

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

**For**

**WSCA|NASPO PC Contracts 2009-2014**

**COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES**

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(Participating State/Entity Contract Number 250-WSCA-10-ACS)

Page 2 of 7

F.S. and 216.347, F.S., prohibiting use of funds to lobby the Legislature, Judiciary, or state agencies.

e. The vendor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the vendor shall comply with section 247 of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, disability, marital status, or veteran's status.

f. Interest penalties for late payment are available subject to the provisions of section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency may be contacted at 850-488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.

g. The exclusive venue of any legal or equitable action that arises out of or relates to this Agreement or the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply, and the Contractor waives any right to jury trial that it may have.

h. In the event of any conflict between the terms of this Agreement and the Contract, the terms contained in this Agreement shall supersede.

**B. Transaction Fee:**

The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.



**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA|NASPO PC Contracts 2009-2014  
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES  
MASTER PRICE AGREEMENT NUMBER B27160**

Between

Dell Marketing, L.P.

[hereinafter "Contractor"]

and

State of Florida

[hereinafter "Participating State" or "Participating Entity"]

(Participating State/Entity Contract Number 250-WSCA-10-ACS)

Page 3 of 7

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

**4. Lease Agreements**

Agencies may lease equipment through alternative financing arrangements other than CEFP. This option is governed by § 287.063 and 287.064, Florida Statutes; Rule 691-3, Florida Administrative Code; and Comptroller Memorandums 10 (1992-93), 13 (1985-86), 04 (1995-96), and 07 (1995-96). The Department of Financial Services (DFS) Finance and leasing Section will review proposed leases to determine compliance with all requirements and to ensure leases are economical and cost effective. The Contractor and Customer (working together) will be required to complete and submit to DFS the "Application to Lease Equipment (DFS-A1-411)" for any lease valued at \$250,000 or more. A copy of the form may be found at the DFS website:

[http://www.myfloridacfo.com/aadir/statewide\\_financial\\_reporting/financing.htm](http://www.myfloridacfo.com/aadir/statewide_financial_reporting/financing.htm)

Each piece of equipment or service offered on this WSCA Participating Addendum shall be available for lease. The customer is authorized to enter into a lease agreement for equipment by issuance of a purchase order referencing this contract number and that incorporates the manufacturer's lease terms and conditions as approved by DFS.

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA/NASPO PC Contracts 2009-2014**

**COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES**

**MASTER PRICE AGREEMENT NUMBER B27160**

Between

Dell Marketing, L.P.

[hereinafter "Contractor"]

and

State of Florida

[hereinafter "Participating State" or "Participating Entity"]

(Participating State/Entity Contract Number 250-WSCA-10-ACS)

Page 4 of 7

**5. Primary Contacts**

The primary contact individuals for this Addendum are as follows (or their named successors):

Master Agreement Contacts:

Lead State:

Name: Bernadette Kopischke  
Address: 112 Admin Bldg, St Paul, MN 55155  
Telephone: (651) 201-2450  
Fax: (651) 297-3996  
E-mail: [bernie.kopischke@state.mn.us](mailto:bernie.kopischke@state.mn.us)

Contractor Lead:

Name: Stephanie D. Shipp  
Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682  
Telephone: (512) 728-7894  
Fax: (512) 283-9092  
E-mail: [Stephanie\\_Shipp@dell.com](mailto:Stephanie_Shipp@dell.com)

Participating Addendum Contacts:

Participating Entity:

Name: Mark Foss  
Address: 4050 Esplanade Way, Suite 360, Tallahassee FL, 32399  
Telephone: 850.488.1086  
Fax: 850.414.6122  
E-mail: [mark.foss@dms.myflorida.com](mailto:mark.foss@dms.myflorida.com)

Contractor State Contract Manager:

Name: Lauren McCosham  
Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682  
Telephone: (512) 723-1325  
Fax: (512) 283-9092  
E-mail: [Lauren\\_McCosham@dell.com](mailto:Lauren_McCosham@dell.com)

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA|NASPO PC Contracts 2009-2014  
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES  
MASTER PRICE AGREEMENT NUMBER B27160**

Between

Dell Marketing, L.P.

[hereinafter "Contractor"]

and

State of Florida

[hereinafter "Participating State" or "Participating Entity"]

(Participating State/Entity Contract Number 250-WSCA-10-ACS)

Page 5 of 7

**6. Servicing Subcontractors**

Contractor may engage third party service providers to perform various services and has several authorized Dell Service Providers (DSPs). DSPs will not accept orders or payments.

Contractor wishes to identify Servicing Subcontractor(s) ("WSCA Agent") to market Contractor's Products and Services, as identified on Contractor's Products & Services Schedule ("PSS"), on behalf of Contractor. The Participating Entity may utilize WSCA Agents pursuant to the Contractor defined WSCA Agent program as defined in a separate written Agreement between Contractor and WSCA Agent.

WSCA Agents authorized within the State will have their names identified on the State's respective [www.Dell.com/naspowsca](http://www.Dell.com/naspowsca) Contractor state store page.

Placement of Orders and Shipment of Orders directly from Contractor will remain unchanged in the Addendum.

All orders and payments are to be issued directly to: **Dell Marketing L.P.**

**All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating Entity contract number: [250-WSCA-10-ACS]; and the Master Price Agreement Number B27160.**

**7. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"):** If Contractor is notified by ordering entity that a specific purchase order is being made with ARRA funds, Contractor agrees to assist the ordering entity with their requirement to comply with the data element and reporting as currently defined in Federal Register Vol. 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing Contractor at the time of purchase order placement that ARRA funds are being used. Contractor will include the tracking data, if provided by ordering entity, as an element within the utilization report, as per Article 44 of the MPA. Contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA|NASPO PC Contracts 2009-2014  
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES  
MASTER PRICE AGREEMENT NUMBER B27160**

Between

Dell Marketing, L.P.

[hereinafter "Contractor"]

and

State of Florida

[hereinafter "Participating State" or "Participating Entity"]

(Participating State/Entity Contract Number 250-WSCA-10-ACS)

Page 6 of 7

**8. Services**

The terms of the Master Purchase Agreement shall apply each time Customer engages Contractor to provide services. All services provided will be described in one or more of the following:

- (i) "Service Descriptions" used to describe any services purchased by an entity;
- (ii) any mutually agreed upon "Statement of Work" ("SOW") executed by the parties; or
- (iii) any "Technical Specification Form" approved by the parties.

**9. Evaluation Equipment**

Contractor, by mutual agreement with the Participating Entity, wishes to allow the use of equipment for the purposes of evaluation prior to purchase. Purchases of the equipment shall comply with the terms of the Master Purchase Agreement and participating addendum.

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

**Signature Page Follows**

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA|NASPO PC Contracts 2009-2014  
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES  
MASTER PRICE AGREEMENT NUMBER B27160**

Between

Dell Marketing, L.P.

[hereinafter "Contractor"]

and

State of Florida

[hereinafter "Participating State" or "Participating Entity"]

(Participating State/Entity Contract Number 250-WSCA-10-ACS)

Page 7 of 7

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

**Participating State: State of Florida**

Charles W. Covington

Name: Charles W. Covington  
Title: Director of State Purchasing  
Date: 10/12/09

**Contractor: Dell Marketing, L.P.**

Lesley Braun

Name: Lesley Braun  
Title: Sr. Contracts Consultant  
Date: 10/07/09

Approved as to form and legality by the  
Department of Management Services'  
General Counsel's Office:

By: Karen Armstrong

Date: 10 7 -09

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

**Amendment #2**

**For**

**WSCA/NASPO PC Contracts 2009-2014**

**COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES**

**MASTER PRICE AGREEMENT NUMBER B27164**

**Between**

**Deil Marketing, L.P.**

[hereinafter "Contractor"]

**and**

**State of Florida**

[hereinafter "Participating State"]

(Participating State Contract No. 250-WSCA-10-ACS)

WHEREAS, The State of Florida (the "State") Department of Management Services (the "Department") is authorized by Section 287.042(16) Florida Statutes (F.S.), to evaluate contracts let by the Federal Government, another state, or a political subdivision and, when determined in writing to be cost-effective and in the best interest of the State, to enter into agreements authorizing agencies (as defined by s. 287.012(1), F.S.) to make purchases under such contracts, and;

WHEREAS, agencies and Eligible Users (as that phrase is defined in Rule 60A-1.005, F.A.C.) may purchase commodities and contractual services from contracts established by the Department, and;

WHEREAS, the Department has evaluated the Western States Contracting Alliance Contract No. B27164, Computer Equipment, Peripherals, and Related Services, together with any amendments and exhibits thereto, (hereinafter the "Master Price Agreement"), and hereby acknowledges in writing that authorizing use of the Master Price Agreement and this Addendum is cost-effective and in the best interest of the State, and;

WHEREAS, the parties, entered into the Participating Addendum to the Master Price Agreement on October 12, 2009, and;

WHEREAS, pursuant to Section 25 of the Master Price Agreement, the parties, upon mutual agreement, may Amend the Contract, in whole or in part, and;

NOW THEREFORE, the Department enters this Amendment that replaces and supersedes the previous Participating Addendum for the purpose of authorizing and regulating the use of the Master Price Agreement by state agencies and other Eligible Users.

**A. Scope**

This Addendum covers the WSCA/NASPO PC Contract 2009-2014 (Computer Equipment, Peripherals and Related Services) led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts.

**B. Participation**

Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

**C. Changes:**

1. This Participating Addendum shall become effective on the last date signed below and shall have a term that is coterminous with the Master Price Agreement, unless terminated earlier

pursuant to the Master Price Agreement, this Participating Addendum, or Florida law. In addition to the rights contained in the Master Price Agreement, the Department reserves the right to terminate this Participating Addendum, effective upon notice, if Contractor fails to cure the breach within thirty (30) days after receipt of a written notice describing the breach, for Contractor's failure to comply with the provisions of this Participating Addendum, including, but not limited to, the MyFloridaMarketPlace Transaction Fee provisions of Paragraph C.4., and the provisions of Section 287.058(1)(a) through (f), F.S., as required by Paragraph C.6.

2. **Purpose and Strategy.** The Department's intent is that the Contractor will act with the State to furnish quality Computer Equipment, Peripherals and Related Services as outlined in the Master Price Agreement at the lowest price available in a timely and efficient manner for Eligible Users.

The Department has developed a list of "Market Basket" products to include but not be limited to the categories of Standard Desktop Configurations, Standard Laptop Configurations, Monitors, Other Desktops, Other Laptops, Ruggedized and Semi-Rugged, Tablets and Ultra Mobile, Warranty, Services, Desktop and Laptop Peripherals, Processors, Memory, Storage, and Other. For items in these categories the Department will obtain "firm pricing" for each item that the Contractor offers on the Master Price Agreement.

On a periodic basis, not to exceed six months, a request may be issued to the Contractor to provide updated firm pricing for the "Market Basket" products. These requests will contain spreadsheets that may contain updated Standard Configurations for Desktops and Laptops, and new products and/or new product categories to adjust to technology changes and emerging needs. The purpose of these updated price requests is for the Department to continue to obtain the most favorable pricing offered by the Contractor while also maintaining a flexible "Market Basket" of products. The Department may accept the submissions by the Contractor or request negotiation sessions to discuss the submissions further. The requests may also include tiered discounts for quantity and bulk purchases. All pricing submitted by the Contractor and accepted by the Department shall be in effect for the duration of the pricing cycle.

**State Agency Purchase of Standard Desktops and Laptops.** For the period covered by this Agreement only, updates to Florida Standard Configurations for Desktops, Laptops and Monitors contained in this Agreement are limited to the identification and inclusion of the current (3<sup>rd</sup>) generation Intel Pentium Processor in all Standard and Performance Desktops and Laptops. The updated Standard Configurations for Desktops, Laptops and Monitors are attached, incorporated into this Agreement by reference, and available on the WSCA/Florida website. Pursuant to Section 282.318(j) F.S., Florida State Agencies are required to make purchases based on the Standard Configurations for Laptops, Desktops and Monitors covered in this Agreement.

3. **Purchasing Requirements.** In order to procure Products or Services hereunder, Eligible Users shall issue purchase orders referencing "Alternate Contract Source No. 250-WSCA-12-ACS (WSCA No. B27164 – Dell Marketing, L.P.)". Eligible Users are responsible for reviewing the terms and conditions of this Participating Addendum and the Master Price Agreement. Eligible Users must follow their applicable statutes, laws, rules, ordinances, codes, policies, and procedures in the purchase of goods or services under this Participating Addendum. Unless otherwise provided by Florida law, statute, rule, or this Participating Addendum, the Department will not implement any additional restrictions on any Eligible User to purchase off of this Participating Addendum. Neither the Department nor the Western States Contracting Alliance is a party to any purchase order authorized by or issued under this Participating Addendum. Any purchases made between September 1, 2012, and the last signed date below are covered under this Participating Agreement.

4. **MyFloridaMarketPlace Registration and Transaction Fee.** In order to complete any transaction between the Eligible User and the Contractor, the Contractor must be registered in MyFloridaMarketPlace. Rule 60A-1.031, F.A.C., is hereby incorporated by reference.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), F.S., all payments shall be assessed a Transaction Fee of one percent (1.0%), which the vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the vendor. If automatic deduction is not possible, the vendor shall pay the Transaction Fee pursuant to subsection 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

The vendor shall receive a credit for any Transaction Fee paid by the vendor for the purchase of any item(s) if such item(s) are returned to the vendor through no fault, act, or omission of the vendor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the vendor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the vendor in default. CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

5. **Contract Reporting Requirements.** The Contractor shall be responsible to submit a Monthly Transaction Fee Report, Quarterly Sales Reports, and an Annual Product Replacement Cycle Matrix will be provided under a Non-Disclosure Agreement ("NDA") during the quarterly business review. These reports will be submitted as follows:

**Monthly Transaction Fee Report.** The Contractor is required to submit monthly Transaction Fee Reports in electronic format. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendors on the MyFloridaMarketPlace website (located at <http://dms.myflorida.com/mfmp>). Assistance is also available with the Transaction Fee Reporting System from the MyFloridaMarketPlace Customer Service Desk at [feeprocessing@myfloridamarketplace.com](mailto:feeprocessing@myfloridamarketplace.com) or 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 5:30 PM Eastern Time.

**Quarterly Sales Report.** The following data must be reported electronically to the Department on a quarterly basis using a Contract Sales Summary form supplied to the contractor by the Department's Primary Contact shown in Paragraph F below. The electronic report shall include:

- Contractor's Company Name,
- Contractor's Company Address,
- Reporting Period,
- Contractor's Company Contact Person with email address and phone number
- Excel report itemizing each purchase for the period that includes columns for the following information: Part Number/SKU, Item Description/Service Name, Item Category, Item Family Product Description, Customer Name, Commodity Code (if available), Unit of Measure, Unit of Measure Description, Volume/Quantity, Order Date, Date Delivered, List Price, Contract Price, and Additional Fields (if needed and if available through Contractor's automated reporting, as mutually agreed).

The reporting periods coincide with the State of Florida's fiscal year which is July 1<sup>st</sup> through June 30<sup>th</sup> of each year. The quarters are divided as follows:



- 1<sup>st</sup> Quarter – July 1<sup>st</sup> through September 30<sup>th</sup>
- 2<sup>nd</sup> Quarter – October 1<sup>st</sup> through December 31<sup>st</sup>
- 3<sup>rd</sup> Quarter – January 1<sup>st</sup> through March 31<sup>st</sup>
- 4<sup>th</sup> Quarter – April 1<sup>st</sup> through June 30<sup>th</sup>

Failure to provide quarterly reports, including no sales, within thirty (30) calendar days following the end of each quarter, or annual EXCEL™ line item reports within thirty (30) calendar days, may result in the default proceeding and/or termination of this contract.

Initiation and submission of the Contract Sales Summaries are to be the responsibility of the Contractor, and supplied without prompting or notification by the Primary Contact. The Contractor will submit the completed Contract Sales Summary forms by email to the Primary Contact as stipulated. The Primary Contact shall distribute at the time of contract formation, in electronic format, the Contract Sales Summary form to be used by the Contractor.

The Contractor shall report to the Department the amount of spend with certified and other minority business enterprises. Reports must include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this contract.

6. The provisions of Section 287.058(1)(a), (c), and (f), F.S., are hereby incorporated by reference. If the transaction involves contractual services, the provisions of Section 287.058(1)(b), (d), and (e), F.S., are also incorporated by reference.
7. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. The Contractor shall comply with Sections 11.062, F.S. and 216.347, F.S., prohibiting use of funds to lobby the Legislature, Judiciary, or state agencies.
8. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the Contractor shall comply with Section 247 of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, disability, marital status, or veteran's status.
9. Payment shall be made in accordance with Section 215.422, F.S. Interest penalties for late payment are available subject to the provisions in Section 215.422, F.S. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency may be contacted at 850-488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.
10. The exclusive venue of any legal or equitable action that arises out of or relates to this Participating Addendum shall be the appropriate State court in Leon County, Florida; in any such action Florida law shall apply and both parties waive any rights to a jury trial that either party may have.
11. The Department, at its sole discretion, may unilaterally amend the Primary Contact name and their contact information in Paragraph F of this Participating Addendum during the term of this Participating Addendum. Any amendment shall be contained in a separate document affixed to this Participating Addendum.
12. If an additional ordinance, rule, or other local governmental authority requires additional contract language before an Eligible User can make a purchase from this Participating Addendum, in lieu of this Participating Addendum the Eligible User is responsible for signing

a separate Participating Addendum with the Contractor.

13. **Intellectual Property:** The parties do not anticipate that any Intellectual Property ("IP") will be developed as a result of this Participating Addendum. It is understood that the State shall own all right, title and interest to the Deliverables and Dell agrees to grant to the State a perpetual, non-exclusive, non-transferable, royalty-free license to use Dell's Background IP (defined below), Utilities, and Residual IP solely for the State to use the Deliverables, subject to the following:
- Dell has received full payment for the Deliverables and applicable Services,
  - Each party will retain all Intellectual Property Rights that it owned or controlled prior to the effective date of this Agreement or that it develops or acquires from activities independent of the Services performed under this Agreement ("Background IP"),
  - Dell will retain all right, title and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates or output which are developed, created or otherwise used by or on behalf of Dell in the course of performing the Services or creating the Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or data of the State (collectively, the "Residual IP"), even if embedded in the Deliverable, and
  - The State use of software, online services, or software-enabled services in connection with the Services is pursuant to the terms of the Dell Services Acceptable Use Policy, which is available for review at [www.dell.com/aup](http://www.dell.com/aup).

This provision will survive the termination or expiration of the contract.

14. **Price Guarantees:** Section 13 (Price Guarantees) of the Master Price Agreement shall apply to this Participating Addendum.
15. **Termination for Convenience:** The State may terminate the Contract in whole or in part, by providing thirty (30) days written notice to the Contractor, when the State determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
16. **Employment Eligibility Verification:** Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the contract term.
17. **Electronic Invoicing.** The Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MFMP, after an account has been established, with an agency. Contractor agrees, upon DMS' request, to establish electronic invoicing within ninety (90) days of written request. Electronic invoices shall be submitted to the agency through the Ariba Supplier Network (ASN) in one of three mechanisms as listed below. Suppliers can select the method that best meets their capabilities from the following list:

- **cXML (commerce eXtensible Markup Language)**  
This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog goods and services. *The cXML format is the Ariba preferred method for eInvoicing.*
- **EDI (Electronic Data Interchange)**  
This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog goods and services.
- **PO Flip via ASN**  
The online process allows suppliers to submit invoices via the ASN for catalog and non-catalog goods and services. Suppliers have the ability to create an invoice directly from their Inbox in their ASN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor represents that it is authorized and empowered to and hereby grants the State and the third party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor represents that it is authorized and empowered to and hereby grants the State and the third party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

18. **Scrutinized Companies Lists.** In executing this agreement, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to section 287.135(5), F.S., Contractor agrees the Department may immediately terminate this contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the contract.
19. **Punch-out Catalog Request.** The Contractor hereby agrees to cooperate with the Department and MyFloridaMarketPlace (and any authorized agent or successor entity to MyFloridaMarketPlace) in the event the Department selects this statewide contract to be exhibited on the MyFloridaMarketPlace. At a minimum, the Contractor agrees to the following:
- a. Contractor agrees, upon the Department's request, to deliver a punch-out catalog within ninety (90) days of the date that the Participating Addendum is signed by the Department. The punchout catalog content must be limited to the Contractor's Master Agreement and this Participating Addendum offering.  
  
Punch-out Catalog. By providing a punch-out catalog, Contractor is providing its own online catalog, which must be capable of communication between the MyFloridaMarketPlace eProcurement System (MFMP) and a supplier's ERP system via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor ensures its online catalog marketplace is up-to-date by periodically updating the offered products/services and pricing listed on its online catalog.
  - b. In addition to the Contractor's punchout catalog in MFMP, the Contractor shall provide a specific online ordering portal and product catalog (referred to as the online catalog) to the State of Florida containing only State of Florida items and prices. The Contractor will, within ninety (90) days of contract award, make available the online catalog that

contains only items that are in the scope of the awarded contract. For each item, the following information shall be provided at a minimum: item description, manufacturer name, manufacturer part number, unit of measure, list price and contract price, and item image.

- c. The Contractor agrees to meet the following requirements:
- Catalog must contain the most current pricing, including all applicable administrative fees and or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the statewide contract; and
  - The accuracy of the catalog must be maintained by Contractor throughout the duration of the statewide contract; and
  - The catalog must include a State-specific contract identification number; and
  - The catalog must include detailed product line item descriptions; and
  - The catalog must include pictures when possible; and
  - The catalog must include any additional content required by the Department.
- d. Contractor agrees that the Department controls which statewide contracts appear in MFMP and that the Department may elect at any time to remove any Contractor's offering from MFMP.
- e. Contractor must be able to accept Purchase Orders via fax, e-mail, cXML or EDI INT AS 12.

20. The configuration limit of servers and storage has been increased up to \$500,000.

#### **D. Lease Agreements**

Agencies may lease equipment through alternative financing arrangements other than CEFP. This option is governed by § 287.063 and 287.064, Florida States; Rule 69I-3, Florida Administrative Code; and Comptroller Memorandums 10 (1992-93), 13 (1985-86), 04 (1995-96), and 07 (1995-96). The Department of Financial Services (DFS) Finance and Leasing Section will review proposed leases to determine compliance with all requirements and to ensure leases are economical and cost effective. The Contractor and customer (working together) will be required to complete and submit to DFS the "Checklist for Requesting Department of Financial Services Approval to Lease Equipment" for any lease valued at \$25,000 or more. A copy of the form may be found on the DFS website under the heading of "Equipment Leases":

[http://www.myfloridacfo.com/aadir/statewide\\_financial\\_reporting/](http://www.myfloridacfo.com/aadir/statewide_financial_reporting/)

Each piece of equipment or service offered on this WSCA Participating Addendum shall be available for lease. The customer is authorized to enter into a lease agreement for equipment by issuance of a purchase order referencing this contract number and that incorporates the manufacturer's lease terms and conditions as approved by DFS.

#### **E. Primary Contacts**

The primary government contact individuals for this Addendum are as follows (or their named successors):

##### Lead State

Name: Susan Kahle  
 Address: 112 Admin Bldg, St Paul, MN 55155  
 Telephone: (651) 201-2434  
 Fax: (651) 297-3996  
 E-mail: [susan.kahle@state.mn.us](mailto:susan.kahle@state.mn.us)

##### Contractor State Contract Manager

Name: Ashleigh Lane  
 Address: One Dell Way, RR8-07, Round Rock, TX 78682

Telephone: (512) 723-1033  
Fax: (512) 283 9092  
E-mail: [Ashleigh\\_Lane@Dell.com](mailto:Ashleigh_Lane@Dell.com)

**Contractor WSCA Program Manager**

Name: Ashleigh Lane  
Address: One Dell Way, RR8-07, Round Rock, TX 78682  
Telephone: (512) 723-1033  
Fax: (512) 283-9092  
E-mail: [Ashleigh\\_Lane@Dell.com](mailto:Ashleigh_Lane@Dell.com)

**Participating State**

Name: Colin Barton  
Address: 4050 Esplanade Way, Suite 360A, Tallahassee, FL 32399  
Telephone: (850) 921-9231  
Fax: (850) 414-6122  
E-mail: [Colin.Barton@dms.MyFlorida.com](mailto:Colin.Barton@dms.MyFlorida.com)

**F. Servicing Subcontractors:**

Dell may engage third party service providers to perform various services and has several authorized Dell Service Providers (DSPs). DSPs will not accept orders or payments.

Dell wishes to identify Servicing Subcontractor(s) ("WSCA Authorized Agent or WSCA Authorized Reseller") to market Dell's Products and Services, as identified on Dell's Products and Services Schedule ("PSS"), on behalf of Dell. The Participating Entity may utilize WSCA Authorized Agents or WSCA Authorized Resellers pursuant to the Dell defined WSCA Agent and Reseller program as defined in a separate written Agreement between Dell and WSCA Authorized Agent or Authorized Reseller.

WSCA Agents and/or Resellers authorized within the State will have their names identified on the State's respective [www.Dell.com/naspowsca](http://www.Dell.com/naspowsca) Dell state store page at [http://content.dell.com/us/en/slgov/d/slg/contract\\_selection\\_florida.aspx](http://content.dell.com/us/en/slgov/d/slg/contract_selection_florida.aspx).

For WSCA Authorized Agents, placement of Orders and shipment of Order directly from Dell will remain unchanged in the PA.

For WSCA Authorized Resellers, Placement of Orders will occur with the WSCA Authorized Reseller and shipment of Order will continue to come from Dell.

For WSCA Authorized Agents, all orders and payments are to be issued directly to: Dell Marketing L.P.

For WSCA Authorized Resellers, all orders and payment are to be issued directly to: the WSCA Authorized Reseller.

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: [250-WSCA-10-ACS] and the Master Price Agreement Number B27160.

**Dell Responsibilities for Authorized Resellers and Agents**

Dell will be responsible for the actions of their authorized resellers and agents and Dell will continue to be the one to report contract sales and pay the 1% transaction fee to MFMP.

WSCA Agents and/or Resellers authorized within the State will have their names identified on the State's respective [www.Dell.com/naspowsca](http://www.Dell.com/naspowsca) Dell state store page at [http://content.dell.com/us/en/slgov/d/slg/contract\\_selection\\_florida.aspx](http://content.dell.com/us/en/slgov/d/slg/contract_selection_florida.aspx).

Dell must ensure that all authorized agents and resellers are legally established to do business in the State of Florida ([www.sunbiz.org](http://www.sunbiz.org)), registered in the MyFloridaMarketPlace system ([www.MyFloridaMarketPlace.com](http://www.MyFloridaMarketPlace.com)), not be on the Convicted / Suspended / Discriminatory / Complaints Vendor Lists ([http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)) or have an outstanding balance on their MyFloridaMarketPlace account.

**G. Compliance with reporting requirements of the “American Recovery and Reinvestment Act of 2009” (“ARRA”):** If Dell is notified by ordering entity that a specific purchase order is being made with ARRA funds, Dell agrees to assist the ordering entity with their requirement to comply with the data element and reporting as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing Dell at the time of purchase order placement that ARRA funds are being used. Dell will include the tracking data, if provided by ordering entity, as an element within the utilization report, as per Article 44 of the MPA. Dell, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

**H. Services:**

The terms of the Agreement shall apply each time Customer engages Dell to provide services. All services provided will be described in one or more of the following:

- (i) “Service Descriptions” used to describe any services purchased by an entity;
- (ii) any mutually agreed upon “Statement of Work” (“SOW”) executed by the parties; or
- (iii) any “Technical Specification Form” approved by the parties

**I. Evaluation Equipment:**

Dell, by mutual agreement with the Participating Entity, wishes to allow the use of equipment for the purposes of evaluation prior to purchase. Purchases of the equipment shall comply with the terms of the Master Purchase Agreement and participating addendum.

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Addendum, which is effective as of the date of the last signature below.

State of Florida

Contractor: Dell Marketing, L.P.

Department of Management Services

*Kelly Loll*

*Ashleigh Lane*

Kelly Loll, C.P.M.

Signature

Chief Procurement Officer and

Ashleigh Lane

Director of State Purchasing

*11/8/12*

Name

Program and Contract Manager

Date

Title

11/1/2012

Date

Approved as to form and legality

By: *Butterfield*  
Office of the General Counsel

*11/7/12*  
Date

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

**2009-2014 (WSCA/NASPO III)  
Dell Marketing L.P.  
Number B27160**

This Agreement is made and entered into by **Dell Marketing L.P., One Dell Way Mailstop 8708, Round Rock, TX, 78682 ("Contractor")** and the 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 Participating States and Participating Entities.

**CONTRACTOR CONTACT**

Dell Marketing L.P.  
One Dell Way Mail Stop 8708  
Round Rock, TX 78682  
Attn: Ashleigh Lane, WSCA Program Manager  
Email: [Ashleigh\\_Lane@dell.com](mailto:Ashleigh_Lane@dell.com)  
Phone: 512-723-4355  
Fax: 512-283-9092

Dell Marketing L.P.

Attn: Cyndi Radel, Post Sales Contract Manager  
Email: [Cyndi\\_Radel@Dell.com](mailto:Cyndi_Radel@Dell.com)  
Phone: 231-747-9294  
Fax:

**CURRENT CONTRACT TERM**

**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 or on **9/1/2009 through 8/31/2014**.

**Dell Website:** [www.dell.com/naspowsca](http://www.dell.com/naspowsca)

**B27160 Master Price Agreement (with all amendments)**

**B27160 - D**