

**Meeting Date:** 6/17/2014

**Report Type:** Consent

**Report ID:** 2014-00345

**Title: Contract: Computer Hardware Upgrades for SCADA System**

**Location:** Citywide

**Recommendation:** Pass a Motion 1) approving the use of the Western States Contract Alliance (WSCA) cooperative purchase agreement with Dell, Incorporated, for the purchase of computer hardware; and 2) authorizing the City Manager or his designee to purchase Dell computer hardware under the WSCA agreement for the Utility Department's supervisory control and data acquisition (SCADA) system in an amount not to exceed \$330,000.

**Contact:** Bill Busath, Engineering & Water Resources, (916) 808-6226; Charley Cunningham, Operations & Maintenance Superintendent, (916) 808-5518, Department of Utilities

**Presenter:** None

**Department:** Department Of Utilities

**Division:** Electrical & Instrumentation

**Dept ID:** 14001361

**Attachments:**

1-Description/Analysis

2-Background

3-Exhibit A - Dell Proposal\_3-7-14

4-Exhibit B - Additional Equipment Quotes 3-7-14

5-Exhibit C - WSCA Master Price Agreement for Computer Equipment, Peripherals, and Related Services

6-Exhibit D - WSCA Addendum for Dell, Incorporated

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**City Attorney Review**

Approved as to Form

Joe Robinson

6/4/2014 5:19:05 PM

**Approvals/Acknowledgements**

Department Director or Designee: Dave Brent - 5/30/2014 11:40:10 AM

## Description/Analysis

**Issue:** The Department of Utilities (DOU), Engineering Services Division, operates and maintains the supervisory control and data acquisition (SCADA) system, which is used to monitor various functions within the City's water, sewer, and drainage facilities and infrastructure. DOU is in the process of upgrading the SCADA software to the Trihedral version as the current software has become obsolete and is no longer supported. This report requests authorization to use a Western States Contract Alliance (WSCA) cooperative purchase agreement with Dell, Incorporated to purchase computer hardware for this project.

**Policy Considerations:** City Council approval is required for purchase contracts in amounts of \$100,000 or more. The recommendations in this report are in accordance with City Code Section 3.56.240 which authorizes the City Manager, where advantageous to the City, to utilize cooperative purchasing agreements of other governmental jurisdictions or public agencies to purchase supplies or nonprofessional services without separate competitive bidding by the City, if approved by the City Council. Staff believes that use of the WSCA cooperative purchase agreement is advantageous to the City because it allows the City to maximize cost savings through volume pricing and increase staff resources by sharing contracting and purchasing efforts with other government agencies.

**Economic Impacts:** Not Applicable

**Environmental Considerations:** The Community Development Department, Environmental Planning Services has reviewed the project and has determined the project is exempt from review under the California Environmental Quality Act (CEQA) under Sections 15301(b) and 15302(c) of the CEQA Guidelines. The activity also is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen certainly that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**Sustainability:** Under Phase 1 of the City of Sacramento's Climate Action Plan, all applicable "Green" technology initiatives are considered prior to the purchase of IT equipment hardware and software.

**Commission/Committee Action:** Not Applicable

**Rationale for Recommendation:** DOU has a need to purchase hardware for the SCADA system as part of the ongoing SCADA system upgrade to ensure continuation of services to its customers. The Department recommends using the WSCA cooperative purchase agreement for Computer Equipment, Peripherals, and Related Services, which the City Council previously approved for use by the Information Technology Department, to purchase computer hardware for the SCADA upgrade from Dell, Incorporated.

**Financial Considerations:** The total amount requested for FY2014/15 will not exceed \$330,000. Sufficient funding is available in the Department of Utilities Trihedral HMI

Hardware Construction Improvement Project (#Z14003605, fund 6005, 6011, and 6320) to purchase the hardware from Dell, Incorporated.

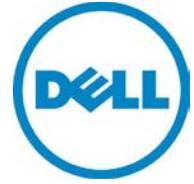
**Local Business Enterprise (LBE):** City of Sacramento LBE program requirements are not incorporated into cooperative purchase agreements that are bid independent of the City.

## Background

The Department of Utilities (DOU), Engineering Services Division, operates and maintains the SCADA system, which is used to monitor various functions within the City's water, sewer, and drainage facilities and infrastructure. The SCADA system is instrumental in providing layers of data used for both daily operations and maintenance and billing of use by other agencies. DOU is in the process of upgrading the SCADA software to the Trihedral version as the current Intellution Fix32 software has become obsolete and is no longer supported. DOU currently has the Trihedral HMI Hardware Construction Improvement Project (CIP) #Z14003605 to upgrade and revise the hardware of the SCADA system to meet the requirements of the new software. Staff anticipates upgrading the highest priority SCADA equipment, to include network equipment and the most frequently used workstation equipment, within the next year as scheduling and budget allow. Any remaining lower priority network and workstation equipment that has been planned for and/or requests for new workstations would be purchased in succeeding years.

For the past several years, the City Council has approved and authorized use of cooperative purchasing agreements to procure a variety of IT related goods and services citywide. The City's Information Technology Department received approval from City Council on June 18, 2013 to utilize the Western States Contract Alliance (WSCA) cooperative purchase agreement B27160 with Dell, Incorporated for hardware purchases in the amount of \$650,000 for FY2013/14. WSCA establishes cooperative multi-State contracts where participating agencies may join together in order to achieve cost-effective and efficient acquisition of quality products and services. Government purchasing benefits from cumulative volume discounts. In an ongoing effort to maximize cost savings and staff resources, DOU recommends using Minnesota's WSCA cooperative purchase agreement to purchase hardware for the SCADA upgrades from Dell, Incorporated. Minnesota's current WSCA cooperative purchase agreement for Computer Equipment, Peripherals, and Related Services expires August 31, 2014, but Minnesota is in the process of awarding a new WSCA cooperative purchase agreement to take effect on September 1, 2014.

DOU received a proposal and several quotes from Dell for the SCADA equipment upgrades in the amount of \$314,862.99. Additional equipment may be needed after installation due to configuration problems, performance issues, and potential system changes. As such, DOU has included an approximate 5% contingency for a total not-to-exceed amount of \$330,000.



# Dell Proposal

Thursday, March 06, 2014





One Dell Way  
Round Rock  
TX 78682, USA

[www.dell.com](http://www.dell.com)

Thursday, March 06, 2014

Tedd Vallence  
CITY OF SACRAMENTO  
915 I ST 3RD FL  
SACRAMENTO CA 95814-2604

Tedd,

Thank you for this opportunity to submit a proposal for CITY OF SACRAMENTO's forthcoming technology project. We have studied the information provided to us about your business requirements and carefully analyzed your technology needs. The solution recommended for Sacramento Utility has been designed to meet your needs in the most cost effective way without compromising on quality, service or ongoing support.

Dell is helping our customers to bring down the Total Cost of Ownership by simplifying IT. We are committed to providing solutions that will allow Sacramento Utility to reclaim time and cost and increase the productivity of your IT. In addition, we have built environmental consideration into every stage of the Dell product lifecycle including power consumption, helping our customers demonstrate environmentally responsible procurement.

Along with award winning products and services, Dell also offers you a dedicated program account team that is committed to working with you and your procurement needs. This team includes:

- An Account Manager to ensure overall account satisfaction
- System Consultants to provide a seamless deployment experience
- Technical Sales Representatives to facilitate order management
- Customer Service Representatives to provide post-sale support

Dell looks forward to working with you on this project. Should you have any questions regarding this response, please contact me at 512-513-9097 or online at [Joe\\_E\\_Rodriguez@DELL.com](mailto:Joe_E_Rodriguez@DELL.com).

Dell's proposal submitted herein is subject to Dell Marketing, L.P. Commercial Terms of Sale found at [www.dell.com/terms](http://www.dell.com/terms), including warranty, returns and services provisions contained therein. If there is an existing framework agreement between you and Dell that is applicable to the products and/or services offered under this proposal, then such framework agreement shall apply. Any other terms on a resulting Purchase Order to Dell shall not be applicable.

Sincerely,

Joe E Rodriguez  
Inside Account Manager

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# 1 Pricing

## 1.1 Summary

Dell's proposed pricing is summarized below.

Item No.	System Quantity	Description	Quantity	Unit Price (USD)	Net (USD)
<b>Quote No: 677225567</b>					
1	6	PowerEdge R420, Intel Xeon E-24XX v2 Processors		3,138.08	18,828.48
<b>Quote No: 677225709</b>					
2	3	PowerEdge R620, Intel Xeon E-26XX v2 Processors		5,663.90	16,991.70
<b>Quote No: 677225781</b>					
3	2	PCT7048, 48 port Managed Switch, 1 GbE with 10Gb and Stacking capabilities		2,311.05	4,622.10
<b>Quote No: 677287233</b>					
4	32	Dell Precision T3610 CTO Base		1,203.67	38,517.44
5	6	Dell Precision M6800 CTO Base		2,737.62	16,425.72
<b>Quote No: 677226070</b>					
6	57	Dell 22 Monitor - P2214H, 3YR Limited Warranty		146.92	8,374.44
<b>Quote No: 677191247</b>					
7	1	Compellent SC8000 Controller (1st controller, new array)		70,845.05	70,845.05
8	1	Compellent SC8000 Controller (2nd controller)		10,607.56	10,607.56
9	1	Compellent SC200 Enclosure (1st enclosure of new array)		14,345.78	14,345.78
10	1	Compellent SC200 Enclosure (add-on enclosure)		11,734.30	11,734.30
11	1	Compellent SC220 Enclosure (1st enclosure of new array)		15,988.49	15,988.49
12	2	Compellent SC220 Enclosure (add-on enclosure)		15,988.49	31,976.98
13	1	6Gb Mini-SAS to Mini-SAS Cable, 0.6M, Qty 2, Customer Kit		136.94	136.94
14	1	Dell Education Services- Compellent 4-day Administration and Advanced Management Training, PRICE PER USER ILT		4,995.00	4,995.00



Price Summary (\$)	
Total Net	264,389.98
Additional Charges (State Env Fees)	252.00
<b>Sub-Total, ex. TAX</b>	<b>264,641.98</b>
Est. Tax	13,202.69
<b>Total, incl. TAX</b>	<b>277,844.67</b>



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## 2 Terms and Conditions

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This proposal is valid for 30 days unless otherwise stated.

Please review this proposal (including quote and pricing) carefully. If complete and accurate, you may place your order online at [www.dell.com/qto](http://www.dell.com/qto) (use quote number above). Purchase orders and payments should be made to Dell Marketing L.P.

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If this purchase is for your internal use and you do not have a separate agreement between you and Dell that specifically applies to this order, your order will be subject to and governed by Dell's *Commercial Terms of Sale*, which can be found at [www.dell.com/CTS](http://www.dell.com/CTS), and which incorporate Dell's U.S. Return Policy at [www.dell.com/returnpolicy](http://www.dell.com/returnpolicy) and the Dell Warranty at [www.dell.com/WarrantyTerms](http://www.dell.com/WarrantyTerms). If this purchase is intended for resale and you do not have a separate agreement between you and Dell that specifically applies to this order, your order will be subject to and governed by Dell's Reseller Terms of Sale, which can be found at [www.dell.com/resellerterms](http://www.dell.com/resellerterms).

### Supplemental Terms & Conditions

Additional terms and conditions may apply to your purchase, such as limited hardware warranties, service contracts and software license agreements. When applicable, supplemental terms are available at [www.dell.com/terms](http://www.dell.com/terms). If your order includes services, then such services are subject to and governed by supplemental terms and conditions, such as service descriptions, specification sheets and service level agreements. Customers located in the United States may access their service terms at [www.dell.com/servicecontracts/US](http://www.dell.com/servicecontracts/US) while international customers may access their service terms at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global). The use of any software provided by Dell is subject to the license terms that come with the software, and in the absence of such terms, then use of Dell-branded application software is subject to the Dell End User License Agreement – Type A located at [www.Dell.com/AEULA](http://www.Dell.com/AEULA) and use of Dell-branded system software is subject to the End User License Agreement – Type S located at [www.Dell.com/SEULA](http://www.Dell.com/SEULA). The foregoing applicable online terms are hereby incorporated by reference and available in hardcopy from Dell. You acknowledge having read and agree to be bound by such online terms.

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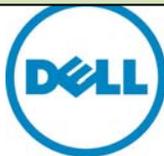
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By placing your order, you confirm that (1) you are a contracting officer or other authorized representative of Public Customer with authority to bind the Public Customer for purposes of accepting the proposal with the terms and conditions set forth herein, and (2) you have read and agree to be bound by the terms and conditions of any applicable EULA incorporated herein.



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**QUOTATION**

**Quote #:** 677277258  
**Customer #:** 754752  
**Contract #:** WN99ABZ  
**Customer Agreement #:** WSCA B27160  
**Quote Date:** 03/07/2014  
**Customer Name:** CITY OF SACRAMENTO

**Date:** 3/7/2014

Thanks for choosing Dell! Your quote is detailed below; please review the quote for product and informational accuracy. If you find errors or desire certain changes please contact your sales professional as soon as possible.

**Sales Professional Information**

**SALES REP:** JOE E RODRIGUEZ **PHONE:** 1800 - 4563355  
**Email Address:** [Joe\\_E\\_Rodriguez@DELL.com](mailto:Joe_E_Rodriguez@DELL.com) **Phone Ext:** 5133804

**GROUP: 1 QUANTITY: 1 SYSTEM PRICE: \$1,843.21 GROUP TOTAL: \$1,843.21**

Description	Quantity
PE4820 48U Deep Rack with Doors and Side Panels, Ground Ship, NOT for AK/HI (225-0012)	1
Dell Hardware Limited Warranty Initial Year (925-9197)	1
Basic Hardware Services: Business Hours (5X10) Next Business Day On Site Hardware Warranty Repair 2 Year Exten (931-8972)	1
Dell Hardware Limited Warranty Extended Year(s) (932-1998)	1
Basic Hardware Services: Business Hours (5X10) Next Business Day On Site Hardware Warranty Repair Initial Year (936-9090)	1
On-Site Installation Declined (900-9997)	1
Rack Interconnect Kit, PS to PS (330-3601)	1
Grounding Kit for Dell racks (332-1328)	1
Vertical Cable Manager with cover (332-1329)	1
2U Horizontal Crossover Panel (332-1331)	1
Metal Cable Rings, Quantity 10 (332-1327)	1
PDU Power Cord 5-15P to C13, 15A, 125V, 3.7m (330-6394)	10

**SOFTWARE & ACCESSORIES****GROUP TOTAL: \$1,330.84**

Product	Quantity	Unit Price	Total
APC 24-Outlet Metered Rack Power Distribution Unit (A7472485)	2	\$415.27	\$830.54
NETBOTZ RACK MONITOR 200 WITH 120/240V POWER SUPPLY (A2646001)	1	\$500.30	\$500.30

**\*Total Purchase Price:** **\$3,432.20**  
**Product Subtotal:** \$3,174.05  
**Tax:** \$258.15  
**Shipping & Handling:** \$0.00  
**State Environmental Fee:** \$0.00

**Shipping Method:**

LTL 5 DAY OR LESS

(\* Amount denoted in \$)

**Statement of Conditions**

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## QUOTATION

**Quote #:** 677277263  
**Customer #:** 754752  
**Contract #:** WN99ABZ  
**Customer Agreement #:** WSCA B27160  
**Quote Date:** 03/07/2014  
**Customer Name:** CITY OF SACRAMENTO

**Date:** 3/7/2014

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### Sales Professional Information

**SALES REP:** JOE E RODRIGUEZ      **PHONE:** 1800 - 4563355  
**Email Address:** [Joe\\_E\\_Rodriguez@DELL.com](mailto:Joe_E_Rodriguez@DELL.com)      **Phone Ext:** 5133804

**GROUP: 1    QUANTITY: 1    SYSTEM PRICE: \$4,133.68    GROUP TOTAL: \$4,133.68**

Description	Quantity
PowerEdge KVM 2162DS - 16 Port Keyboard/Video/Mouse Digital Switch (225-1858)	1
1U KMM (Touchpad, English Keyboard and Widescreen 18.5" LED) with ReadyRails (331-9433)	1
Dell Hardware Warranty, Initial Year (925-2717)	1
DECLINED CRITICAL BUSINESS SERVER OR STORAGE SOFTWARE SUPPORT PACKAGE-CALL YOUR DELL SALES REP IF UPGRADE NEEDED (928-5169)	1
Basic Hardware Services: Business Hours (5X10) Next Business Day Parts Delivery 2 Year Extended (929-8262)	1
Dell Hardware Limited Warranty Extended Year(s) (931-7258)	1
Basic Hardware Services: Business Hours (5X10) Next Business Day Parts Delivery Initial Year (935-4080)	1
On-Site Installation Declined (900-9997)	1
USB Server Interface Pod, includes CAT 5 cables, TAA (430-4339)	16

**\*Total Purchase Price:** **\$4,479.52**  
**Product Subtotal:** \$4,133.68  
**Tax:** \$345.84  
**Shipping & Handling:** \$0.00  
**State Environmental Fee:** \$0.00  
**Shipping Method:** LTL 5 DAY OR LESS  
 (\* Amount denoted in \$)

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This proposal is not intended to create a contractual relationship. Unless expressly agreed otherwise in a writing signed by the parties, all orders by CITY OF SACRAMENTO for Dell products and services shall be subject to Dell's Terms and Conditions of Sale-Direct, which can be found at [www.dell.com/terms](http://www.dell.com/terms), and which incorporate Dell's U.S. Return Policy, at [www.dell.com/returnpolicy#total](http://www.dell.com/returnpolicy#total). Please read those terms carefully and in their entirety, and note in particular that Dell EqualLogic and EqualLogic-branded products, Dell|EMC and EMC-branded products, PowerVault ML6000 tape libraries, non-Dell-branded enterprise products, enterprise software, and customized hardware or software products may not be returned at any time. Orders also shall be subject to the terms of any applicable service contract (s), which can be found at [www.dell.com/servicecontracts](http://www.dell.com/servicecontracts).

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## QUOTATION

**Quote #:** 677621639  
**Customer #:** 000754752  
**Contract #:** WN99ABZ  
**Customer Agreement #:** WSCA B27160  
**Quote Date:** 03/12/2014  
**Customer Name:** CITY OF SACRAMENTO

**Date:** 03/12/2014

Thanks for choosing Dell! Your quote is detailed below; please review the quote for product and informational accuracy. If you find errors or desire certain changes please contact your sales professional as soon as possible.

### Sales Professional Information

**SALES REP:** CALVIN KOCH **PHONE:** 1800 - 4563355  
**Email Address:** [CALVIN.KOCH@DELL.COM](mailto:CALVIN.KOCH@DELL.COM) **Phone Ext:** 4824

**GROUP: 1 QUANTITY: 1 SYSTEM PRICE: \$27,860.98 GROUP TOTAL: \$27,860.98**

Base Unit	DL4000 Backup and Recovery Appliance, powered by AppAssure (210-ABGF)	1
Base Unit	DL4000 TPM Motherboard (329-BBSL)	1
Base Unit	DL4000 Shipping material (340-AEUZ)	1
Base Unit	64GB RDIMM, 1600MT/s, Low Volt, Single Rank, x4 Data Width (370-AAZS)	1
Base Unit	DL4000 Base Components Standard Version (384-BBBV)	1
Base Unit	8 x 1TB Near Line SAS 6Gbps 7.2k 2.5" HD Hot Plug (400-ABMF)	1
Base Unit	2 x 300GB SAS 6Gbps 10k 2.5" HD Hot Plug (400-ABMG)	1
Base Unit	Dual, Hot-plug, Redundant Power Supply (1+1), 750W (450-AAGR)	1
Base Unit	Dell Hardware Limited Warranty Initial Year (971-1992)	1
Base Unit	Dell Hardware Limited Warranty Extended Year(s) (971-1993)	1
Base Unit	ProSupport: Next Business Day Onsite Service After Problem Diagnosis, Initial Year (971-2026)	1
Base Unit	ProSupport: Next Business Day Onsite Service After Problem Diagnosis, 4 Year Extended (971-2030)	1
Base Unit	ProSupport: 7x24 HW / SW Tech Support and Assistance, 5 Year (971-2042)	1
Base Unit	Dell ProSupport. For tech support, visit <a href="http://support.dell.com/ProSupport">http://support.dell.com/ProSupport</a> or call 1-800-945-3355 (989-3439)	1
Base Unit	Remote Implementation of a Dell PowerVault DL Backup to Disk Appliance (953-5529)	1
Base Unit	Declined Remote Consulting Service (973-2426)	1
Base Unit	iDRAC7 Enterprise (421-5339)	1
Base Unit	ReadyRails Sliding Rack Rails with Cable Management Arm (770-BBBL)	1
Base Unit	C13 to C14, PDU Style, 10 AMP, 6.5 Feet Power Cord (450-AADY)	1
Base Unit	Deskside Power Cord, 15A, 3M, C13 (Guam, Philippines, Vietnam, Thailand) (450-AALV)	1
Base Unit	Windows Server 2012, Standard Edition, Media Kit (617-BBBH)	1
Base Unit	Windows Server 2012 Standard Edition, Factory Installed, No Media, 2 Socket, 2 VMs (618-BBBK)	1
Base Unit	AppAssure Backup and Replication Appliance Software: 5 TB Capacity (634-0132)	1
Base Unit	Support for AppAssure Backup and Replication Appliance Software (24X7) 5TB Protection, 5 Years (973-5553)	1

**\*Total Purchase Price: \$29,106.60**

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<b>Product Subtotal:</b>	\$27,860.98
<b>Tax:</b>	\$1,236.62
<b>Shipping &amp; Handling:</b>	\$9.00
<b>State Environmental Fee:</b>	\$0.00
<b>Shipping Method:</b>	UNAUTHORIZED

(\* Amount denoted in \$)

#### Statement of Conditions

The information in this document is believed to be accurate. However, Dell assumes no responsibility for inaccuracies, errors, or omissions, and shall not be liable for direct, indirect, special, incidental, or consequential damages resulting from any such error or omission. Dell is not responsible for pricing or other errors, and reserves the right to cancel orders arising from such errors.

Dell may make changes to this proposal including changes or updates to the products and services described, including pricing, without notice or obligation.

This proposal is not intended to create a contractual relationship. Unless expressly agreed otherwise in a writing signed by the parties, all orders by CITY OF SACRAMENTO for Dell products and services shall be subject to Dell's Terms and Conditions of Sale-Direct, which can be found at [www.dell.com/terms](http://www.dell.com/terms), and which incorporate Dell's U.S. Return Policy, at [www.dell.com/returnpolicy#total](http://www.dell.com/returnpolicy#total). Please read those terms carefully and in their entirety, and note in particular that Dell EqualLogic and EqualLogic-branded products, Dell|EMC and EMC-branded products, PowerVault ML6000 tape libraries, non-Dell-branded enterprise products, enterprise software, and customized hardware or software products may not be returned at any time. Orders also shall be subject to the terms of any applicable service contract(s), which can be found at [www.dell.com/servicecontracts](http://www.dell.com/servicecontracts).

All information supplied to CITY OF SACRAMENTO for the purpose of this proposal is to be considered confidential information belonging to Dell.

#### About Dell

Dell Inc. (NASDAQ: DELL) listens to customers and delivers innovative technology and services they trust and value. Uniquely enabled by its direct business model, Dell is a leading global systems and services company and No. 34 on the Fortune 500. For more information, visit [www.dell.com](http://www.dell.com).

#### Privacy Policy

Dell respects your privacy. Across our business, around the world, Dell will collect, store, and use customer information only to support and enhance our relationship with your organization, for example, to process your purchase, provide service and support, and share product, service, and company news and offerings with you. Dell does not sell your personal information. For a complete statement of our Global Privacy Policy, please visit [dell.com/privacy](http://dell.com/privacy).

**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 Star 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: Steph 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 NASPOWSCA 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**





**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

**2. LEAD STATE**

**MATERIALS MANAGEMENT DIVISION**

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

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

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

**3. LEAD STATE**

**COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: Brenda Wullar  
Date: 9/29/10



**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>

**WSCA/NASPO PC Contracts 2009-2014  
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES  
MASTER PRICE AGREEMENT NUMBER B27160  
AMENDMENT NUMBER 2**

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Dell Marketing, L.P. (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 and related devices, software and 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 contract may be amended per agreement by both parties.

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

1. Contract is extended through August 31, 2014.
2. The configuration limit of servers and storage may be increased up to \$500,000 if this limit is approved by the State in their Participating Addendum.
3. The Premium Saving Package "Intent to Participate" document may be eliminated IF participation in the Premium Savings Package is approved by the State in their Participating Addendum.

This Amendment is effective beginning on September 1, 2012, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect until August 31, 2014 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.



**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. CONTRACTOR**

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 M. K.  
Title: Contract Manager  
Date: June 26, 2012

**2. LEAD STATE**

**MATERIALS MANAGEMENT DIVISION**

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

By: Joe Kahle  
Title: Acquisition Management Specialist  
Date: 7/9/12

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

**3. LEAD STATE**

**COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: Laura J. Jammet  
Date: 7/9/2012

**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

(Participating Entity Name)

[hereinafter "Participating State" or "Participating Entity" (if not a state)]

(Participating State/Entity Contract Number)

Page 1 of 5

**1. Scope**

This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) lead 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.

**or**

This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) lead by the State of Minnesota for use by (briefly describe the jurisdiction of the governmental entity). This entity has been authorized by the State Chief Procurement Official of the state within which it is located to use the WSCA/NASPO PC Contracts 2009-2014.

**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:**

(Insert specific changes or a statement that "No Changes Are Required")

**4. Continuation of Participation from WSCA/NASPO PC Contracts 2004-2009:**

To the extent permitted by the laws and rules of the state in which an individual participating entity is located, valid participating addenda for the WSCA/NASPO PC Contracts 2004-2009 are hereby extended to include participation in the WSCA/NASPO PC Contracts 2009-2014 under the same terms and conditions in the current participating addendum.

If re-execution of a participating addendum or amendment to an existing participating addendum is required by a participating entity, the authorization to participate in the WSCA/NASPO PC Contracts 2004-2009 is sufficient to permit participation in the

**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

(Participating Entity Name)

[hereinafter "Participating State" or "Participating Entity" (if not a state)]

(Participating State/Entity Contract Number)

**Page 2 of 5**

WSCA/NASPO PC Contracts 2009-2014, unless specifically denied by the appropriate chief state procurements official.

**5. Lease Agreements**

(Insert a statement about whether or not equipment lease agreement terms and conditions included in the Master Price Agreement have been approved for use by the Participating State and any restrictions or requirements for the use of the lease agreement language in the Master Price Agreement. Some statement is required, it may be as simple as "No Leasing Is Authorized Under this Addendum.")

**6. Primary Contacts**

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

**MASTER AGREEMENT CONTACTS:**

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

Contractor

Name: Ashleigh Lane, WSCA Program Manager  
Address: One Dell Way Mail Stop 8708, Round Rock, TX 78682  
Telephone: 512-723-4355  
Fax: 512-283-9092  
E-mail: **Ashleigh\_Lane@dell.com**

**PARTICIPATING ADDENDUM CONTACTS:**

Participating State

Name:

**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

(Participating Entity Name)

[hereinafter "Participating State" or "Participating Entity" (if not a state)]

(Participating State/Entity Contract Number)

Page 3 of 5

Address:  
Telephone:  
Fax:  
E-mail:

Contractor State Contract Manager

Name:  
Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682  
Telephone:  
Fax:  
E-mail:

**7. 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 Agent")** to market Dell's Products and Services, as identified on Dell's Products & Services Schedule ("PSS"), on behalf of Dell. The Participating Entity may utilize WSCA Agents pursuant to the Dell defined WSCA Agent program as defined in a separate written Agreement between Dell 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) Dell state store page.

Placement of Orders and shipment of Order directly from Dell will remain unchanged in the PA. 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 State contract number: [insert appropriate number]; and the Master Price Agreement Number B27160**

**8. 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

**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

(Participating Entity Name)

[hereinafter "Participating State" or "Participating Entity" (if not a state)]

(Participating State/Entity Contract Number)

**Page 4 of 5**

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.

**9. 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

**10. 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.

**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

(Participating Entity Name)

[hereinafter "Participating State" or "Participating Entity" (if not a state)]

(Participating State/Entity Contract Number)

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

**Signatures as required by State Statutes, Rules or Policies**