

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

For

WSCA/NASPO PC Contracts 2009-2014

COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

MASTER PRICE AGREEMENT NUMBER B27160

Between

Dell Marketing L.P.

[hereinafter "Contractor"]

and

(State of Oklahoma)

[hereinafter "Participating State"]

(State of Oklahoma - Contract Number B27160)

Page 1 of 11

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.

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 Purchasing Director. Issues of interpretation and eligibility for participation are solely within the authority of the State Purchasing Director.

A. The State of Oklahoma will participate in only the following product bands:

- Band 1 – Servers
- Band 2 – Workstations
- Band 3 - Printers
- Band 4 – Storage Solutions
- Band 7 - Monitors
- Operating Systems

The above specifically eliminates Band 5 – PDA's, Band 6 – Instructional Packages, and Local Area Networks.

B. The State of Oklahoma imposes the following configurations limits:

- Individual units (standalone) \$100,000 each and configurations for servers and storage (SANS, etc.) should not exceed \$300,000 each.
- Desktop per unit/configuration costs should not exceed \$10,000.
- Printers per unit/configuration costs should not exceed \$10,000.
- Limits for Non-State agencies will defer to those limits specified in the Master Price Agreement.

PARTICIPATING ADDENDUM

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(State of Oklahoma - Contract Number B27160)

Page 2 of 11

3. Changes:

- a) Modification to Term #6.B paragraph one of the MPA: Delete and replace with the following:

"The Purchasing Entity shall make a good faith effort to tender payment to the Contractor within thirty (30) days of the date of receipt of proper invoice. After the forty-fifth (45) day from proper invoice receipt, the Contractor is eligible to receive interest on the unpaid balance due per State of Oklahoma Statutes. The interest rate due is set by the Oklahoma State Treasurer's office each year. The Contractor is responsible for claiming the interest rate. Payments may be made via a Purchasing Entity's "Purchasing Card" if allowable by their purchasing procedures."

- b) Modification to Term #11.B. Warranties: Add the following as the second sentence:

"Approved modified warranties will pertain only to those products and/or services purchased after the modification. Warranties of products purchased prior to the approved warranty modification will not change."

- c) Modification to Term #19 Force Majeure: Replace with the following language:

Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force Majeure shall include acts of God, war, riots, strikes, fire, floods, or other similar occurrences.

Force Majeure shall not include, or be related to, the following occurrences:

- Late delivery or equipment, supplies or materials or an oversold condition of the market.
- Inability of either the Contractor or approved subcontractor to acquire or maintain any required insurance, bond, license, or permit.

Notification: If either party is delayed by Force Majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of it shall be provided. The time of completion for the suppliers' performance may be extended by contract modification for a period of time as determined by the State Purchasing director equal to the time that the results or effects

PARTICIPATING ADDENDUM

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MASTER PRICE AGREEMENT NUMBER B27160**

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and

(State of Oklahoma)

[hereinafter "Participating State"]

(State of Oklahoma - Contract Number B27160)

Page 3 of 11

of such delay prevented the supplier from performing in accordance with this contract.

Rights Reserved: The state reserves the right to cancel the contract and/or purchase materials, equipment, or services from the best available source during the time of Force Majeure, and Contractor shall have no recourse against the state.

- d) Modification to Term #20 Records and Audit: Add the following sentence at the end of the paragraph

"If audit, litigation, or other action involving such records are started before the end of the applicable period, the records will be maintained until all issues arising out of the action, including appeals, are resolved or until the end of the three year retention period, whichever is later."

- e) Addition to Term #22 Use of Servicing Subcontractors: Add the following paragraph B to this term as follows:

"Dell will not use subcontractors as Reseller or Agents in the scope of the agreement for the State Agencies within Oklahoma, unless agreed in writing by DCS."

- f) Addition to Term #22 Use of Servicing Subcontractors: Add the following paragraph C to this term:

"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 to customers that are not State Agencies. Non-State Agencies 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 Dell state store page. WSCA Agents will not accept orders or payments.

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.

- g) Addition to Term #24 Indemnification, Hold Harmless and Limitation of Liability: Add Terms #24 D and add the following:

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

For

WSCA/NASPO PC Contracts 2009-2014

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MASTER PRICE AGREEMENT NUMBER B27160

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and

(State of Oklahoma)

[hereinafter "Participating State"]

(State of Oklahoma - Contract Number B27160)

Page 4 of 11

"To the extent any limitation of liability contained herein is construed by a court of competent jurisdiction to be a limitation of liability in violation of Oklahoma law, such limitation of liability shall be void."

- h) Addition to Term #25 Amendments: Add the following paragraph to this section:

"No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Participating Addendum. The State of Oklahoma has the right to refuse any modifications to the Master Price Agreement and will notify Contractor's contacts in this Addendum in such case. All modifications to the agreement must be made in writing and signed by both parties, of which the authorized representative for the State of Oklahoma is the Central Purchasing Contracting Officer as indentified as Primary Contact in Section 6 of this addendum."

- i) Addition to Term #44. B. Reporting and Fees: Add paragraph 4 to this section as follows:

"The contractor agrees to provide periodic utilization reports to the State of Oklahoma encompassing all sales within the parameters of this participating addendum. Reports format will use current format or a format(s) mutually agreed upon and due dates are as scheduled in Master Agreement 44.A.2. The contractor shall submit a check payable to DCS Central Purchasing for an amount equal to one-half of one percent (0.005) of the net sales for the period. Fee remittance will follow the same period and due dates as the reports."

- j) Addition to Term #56 Value Added Services: Add the following paragraph to this term as follows:

Furthermore, all purchasing entities obtaining value added services must follow the purchasing guidelines as established for their jurisdiction and/or addressed in the State of Oklahoma Contract Award notice for the contract resulting from this addendum."

4. Lease Agreements

Leasing provisions have not been approved by the State of Oklahoma by procuring agencies within this jurisdiction. The State of Oklahoma reserves the right to open the possibility of adding the leasing provision later. Leasing is allowed for all other authorized purchases (non-state agencies) under this Addendum.

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

For

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MASTER PRICE AGREEMENT NUMBER B27160**

Between

Dell Marketing L.P.

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(State of Oklahoma)

[hereinafter "Participating State"]

(State of Oklahoma - Contract Number B27160)

Page 5 of 11

5. Primary Contacts

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

MASTER AGREEMENT CONTACTS:

Lead State

Name: Bernadette Kopischke
Address: 50 Sherburne Ave., 112 Admin Bldg, St Paul, MN 55155
Telephone: (651) 201-2450
Fax: (651) 297-3996
E-mail: bernie.kopischke@state.mn.us

Contractor

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

PARTICIPATING ADDENDUM CONTACTS:

Participating State

Name: Gary Rowland
Address: 2401 N. Lincoln, Suite 116, Oklahoma City, OK 73105
Telephone: (405) 521-2131
Fax: (405) 522-1078
E-mail: gary_rowland@dcs.state.ok.us

Contractor State Contract Manager

Name: Kevin Bromley
Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682
Telephone: (512) 723-3236
Fax: (512) 283-9092
E-mail: Kevin_Bromley@Dell.com

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

For

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

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[hereinafter "Contractor"]

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(State of Oklahoma)

[hereinafter "Participating State"]

(State of Oklahoma - Contract Number B27160)

Page 6 of 11

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

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

7. 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

8. 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.

PARTICIPATING ADDENDUM

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For

**WSCA/NASPO PC Contracts 2009-2014
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MASTER PRICE AGREEMENT NUMBER B27160**

Between

Dell Marketing L.P.

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(State of Oklahoma)

[hereinafter "Participating State"]

(State of Oklahoma - Contract Number B27160)

Page 7 of 11

9. Electronic and Information Technology Accessibility

Pursuant to Title 74, Section 85.7d and OAC 580:15-6-22 electronic and information technology procurements, solicitations, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of State Finance.

EIT Standards may be found at www.ok.gov/DCS/Central_Purchasing/index.html or http://www.ok.gov/OSF/documents/isd_itas.doc.

1) For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development and/or customized by the Contractor from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

2) For Information Technology or Communications Products, Systems or Applications requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance will be necessary on the Contractor's part. Such requirements will be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the Contractor, from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards. However, the Contractor shall no longer have an obligation to indemnify the State for liability resulting from products, systems or applications developed and/or customized that are not in compliance with applicable Oklahoma Information Technology Accessibility Standards ("Standards") after the State has tested and confirmed that the product, system or application meets the accessibility requirements in the Standards.

PARTICIPATING ADDENDUM

[hereinafter "Addendum"]

For

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[hereinafter "Participating State"]

(State of Oklahoma - Contract Number B27160)

Page 8 of 11

10. Voluntary Product Accessibility Product (VPAT) Requirements

a) The contractor will provide a website accessible by participating agencies to request a Dell-branded product VPAT by entering the product description obtained from the State of Oklahoma contractor's website. The website is: <http://www.buyaccessible.gov/> and the email contact is: ask@buyaccessible.org.

b) The parties agree that as no development or customization services will be performed under this agreement and therefore both paragraphs of subsection 9.2 are not applicable to this agreement.

c) Notwithstanding the forgoing, the State of Oklahoma acknowledges that Contractor may not have a VPAT for a requested product. In that instance, Contractor will work with the purchasing entity to locate an alternative solution for which there is a VPAT.

d) Notwithstanding anything to the contrary in this Addendum, the parties agree that Contractor prepares VPATS for Dell-branded products and can only provide an indemnity for Dell-branded products. Upon request, Dell will assist the State or Oklahoma in requesting VPATs from third party products sold under this agreement from the applicable third party product OEMs and publishers.

11. Authorized Users

During the term of this contract, any state department, board, commission, agency, or institution may utilize this contract. The Oklahoma statutes state that counties, school districts, and municipalities of Oklahoma may avail themselves of the contract subject to the approval of the contractor. For purposes of the operation of this contract, counties, school districts, and municipalities shall have the same benefits and responsibilities as a state agency. Under this contract, the State of Oklahoma bears no liability for the actions of counties, school districts and municipalities and the privity of contract exists solely between the contractor and the county, school board or municipality.

12. Ordering

Any services to be furnished under this contract shall be ordered by the issuance of written purchase orders by the state agencies and authorized entities. There is no limit on the number of orders that may be issued. Delivery to multiple destinations may be required. All orders are

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WSCA/NASPO PC Contracts 2009-2014

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(State of Oklahoma - Contract Number B27160)

Page 9 of 11

subject to the terms and conditions of this contract. Any purchase order dated prior to expiration of this contract shall be performed. In the event of conflict between a purchase order and this contract, the contract shall have precedence.

13. Orders and Payment

All orders and payment 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 and the Master Price Agreement Number B27160.

14. State of Oklahoma WSCA Website

The contractor will maintain a specific State of Oklahoma website. The website must contain a least the following:

- a) Presents only the products and services allowed in this agreement.
- b) Contract name and number
- c) A listing of the contact personnel of the awarded vendor and the pertinent contact numbers
- d) "How to Use" instructions for using the website
- e) Online process to allow agency personnel to configure, and print hardware/software configurations
- f) Online process for placing agency hardware configuration orders
- g) Defined manual process via phone calls for placing agency hardware configuration orders
- h) A general category grouping of products available for ease in researching systems.
 - This general category grouping should have an expanding tree of information for the selected configuration. Once selected the configuration should expand to provide all available configuration options and accessories to allow for complete hardware/software configuration. Once the configuration is complete, the web page should calculate the price based upon approved contract pricing.
- i) Except for any circumstance beyond the reasonable control of the Contractor, website availability should at least ninety-nine (99%) percent of the time during the hours of 7:00am through 7:00pm Central Time, Monday through Saturday.

PARTICIPATING ADDENDUM

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(State of Oklahoma - Contract Number B27160)

Page 10 of 11

The Master Price Agreement Number B27160 MUST be shown on all Purchase Orders against this Agreement.

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.

