SUBJECT: PIGGYBACK Alternate Contract Source No. 43211500-WSCA-15-ACS

BID #: PSC-0401-20 **OPEN DATE: 01/31/2014**

GENERAL GOVERNMENT AWARDS COMMITTEE

KIND AND BASIS OF CONTRACT: PIGGYBACK CONTRACT – ONE TIME PURCHASE

AGENCY: CLERK OF THE CIRCUIT & COUNTY COURTS

BASIS OF AWARD: PIGGYBACK CLAY COUNTY RFP #18/19-2 VARIOUS EQUIPMENT AND AMENITIES FOR PARKS AND PLAYGROUNDS FOR BAKER SKINNER PARK

NUMBER OF BIDS INVITED: ( ) NUMBER RECEIVED: ( ) OTHER ( )

SUMMARY OF BIDS AND RECOMMENDED ACTIONS:
Recommend approval to Piggyback Alternate Contract Source No. 43211500-WSCA-15-ACS, with Dell Marketing, L.P. for Dell's proprietary VXRail hardware/software storage solution for the Clerk environment. This is a one-time purchase. The total amount expenditure not-to-exceed $624,492.18.

Funding for this award to be encumbered by account of Internal State Funding Code 13100–5466200-00 to be executed by purchase order(s)

ATTACHMENTS: Recommendation Memo; Risk Approval; State Contract; Vendor Quote

ANALYST: _____ **RESPECTFULLY SUBMITTED** _____
RUBEN OLA GREGORY PEASE, CHIEF PROCUREMENT DIVISION

CONCURRENCE BY: Allison Luker, Chief Financial Officer, Clerk of the Circuit & County Courts

---

(ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS)
ACTION OF GGAC COMMITTEE ON RECOMMENDATIONS ABOVE

MEMBERS APPROVING ____ MEMBERS DISAPPROVING ____ DATE: _____

_____ _____ OTHER: _____

_____ _____

_____ _____

ACTION OF AWARDING AUTHORITY DATE _____

APPROVED _____ DISAPPROVED _____

OTHER _____

SIGNATURE OF AUTHENTICATION _____

Clerk of the Circuit & County Courts

DUVAL COUNTY
JACKSONVILLE, FLORIDA 32202

RONNIE FUSSELL
CLERK OF THE CIRCUIT AND COUNTY COURT

January 16, 2019

To: Gregory Pease, Chief of Procurement

Thru: Allison Luker, Chief Financial Officer

From: Austin Eler, Senior Specialist - Purchasing

Subject: Piggyback Request to State of Florida and Dell Marketing, L.P. Contract

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The Clerk of the Circuit and County Courts is requesting to piggyback Alternate Contract Source No. 43211500-WSCA-15-ACS between the State of Florida and Dell Marketing L.P., to provide discounted pricing through authorized resellers to implement Dell's proprietary VXRail hardware/software storage solution for the Clerk environment. The total expenditure is not expected to exceed $624,492.18 and will be broken up into five, equal annual payments, to be encumbered using state funding as defined in FS 28.37(5). The account to be used is reported in the city's CAFR, and as a part of our consolidated structure the Clerk's office requests this piggyback.

Attached: Minnesota WSCA-NASO Master Agreement Award with Dell Marketing, L.P.
Participating Addendum Alternate Contract Source No. 43211500-WSCA-15-ACS
CDW Quote LCWK241
Copy of DuvalClerk's BOM spreadsheet

501 West Adams Street, Suite 2350
Jacksonville, Florida 32202
Telephone: 904-255-2097 Facsimile: 904-255-2157

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 01/17/2020

APPROVED
By WVerdejo at 4:07 pm, Jan 24, 2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MARSH RISK & INSURANCE SERVICES
345 CALIFORNIA STREET, SUITE 1300
CALIFORNIA LICENSE NO. 0437153
SAN FRANCISCO, CA 94104
Attn: SanFrancisco.Certs@marsh.com / FAX 212-948-0398

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : National Union Fire Ins Co Pittsburgh PA	19445
INSURER B : (See Attached)	
INSURER C : Lloyd's of London-Syndicate 2623/623 at Lloyd's	15792
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Dell Technologies Inc.
and all Subsidiaries
One Dell Way - RR1-50
Round Rock, TX 78682

COVERAGES **CERTIFICATE NUMBER:** SEA-003646449-01 **REVISION NUMBER:** 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X	X	GL5425904	03/01/2019	03/01/2020	EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE [X] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 2,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 10,000,000
	X POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 10,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY	X	X	CA4993096 (AOS)	03/01/2019	03/01/2020	COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
A	X ANY AUTO			CA4993097 (MA)	03/01/2019	03/01/2020	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB / X OCCUR		X	28295092	03/01/2019	03/01/2020	EACH OCCURRENCE	$ 25,000,000
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$ 25,000,000
	DED / RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		X	SEE FOLLOWING PAGE	03/01/2019	03/01/2020	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N]	N / A		Workers Compensation excluded in ND, OH & WA			E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
C	Professional/E&O/ Technology Errors & Omissions			FINPT1900023	06/01/2019	06/01/2020	Each Claim/Aggregate (Claims Made)	20,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Contract Source No. 43211500-WCA-15-ACS for Clerk of Courts
The City of Jacksonville, its members, officials, officers, employees and agents are included as additional insured where required by written contract with respect to General Liability and Auto Liability. Any such coverage extended to the additional insured will apply as primary and non-contributory, to the extent of liability assumed under contract. Waiver of subrogation applies where required by written contract and permitted by law.

CERTIFICATE HOLDER
City of Jacksonville
117 W. Duval St. Ste 335
Jacksonville, FL 32202

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh Risk & Insurance Services
Stephanie Guaiumi

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AGENCY CUSTOMER ID: CN101640193
LOC #: San Francisco

ADDITIONAL REMARKS SCHEDULE

AGENCY		NAMED INSURED
MARSH RISK & INSURANCE SERVICES		Dell Technologies Inc. and all Subsidiaries One Dell Way - RR1-50 Round Rock, TX 78682
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

DELL INC. - WORKERS COMPENSATION/EMPLOYERS LIABILITY; EFFECTIVE 3/1/2019 - EXPIRATION 3/1/2020

Insurer: New Hampshire Insurance Co. NAIC# 23841

WC012717139 - All Other States
WC012717141 - FL
WC012717142 - MA,WI, WY and Stop Gap EL: ND,OH,WA
WC012717138 - AK, AZ, IL, KY NC, NH, NJ, PA, UT, VA, VT

Insurer: American Home Assurance Company NAIC# 19380

WC012717140 - CA

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

© Insurance Services Office, Inc., 2012

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

© Insurance Services Office, Inc., 2012

QUOTE CONFIRMATION

CDW•G PEOPLE WHO GET IT

DEAR GERALD CATES,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. Click here to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
LCWK241	12/19/2019	DELL VXRAIL 5YR LEASE	6346761	$624,492.18

QUOTE DETAILS

ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
DELL CTO VXRAIL P570F 2X6254 PSP PDP Mfg. Part#: 3000045006971 **** 43211500-WSCA-15-ACS and Contract Code MNWNC-109	5	5781107	$99,708.95	$498,544.75
DELL CTO VXRAIL P570F 6248 PSP PDP Mfg. Part#: 3000045007109 **** 43211500-WSCA-15-ACS and Contract Code MNWNC-109	3	5781101	$32,587.69	$97,763.07
DELL CTO S4128F-ON 28X10GBE SFP+ PS Mfg. Part#: 3000045007036 **** 43211500-WSCA-15-ACS and Contract Code MNWNC-109	4	5761402	$7,046.09	$28,184.36

PURCHASER BILLING INFO

Billing Address:
CLERK OF CIRCUIT AND COUNTY COURTS
ACCOUNTS PAYABLE
501 W. ADAMS ST.
JACKSONVILLE, FL 32202-2928
Phone: (904) 630-2082
Payment Terms: Net 30 Days-Govt State/Local

DELIVER TO

Shipping Address:
DUVAL COUNTY CLERK OF COURT
AUSTIN ELER
501 W ADAMS ST RM 2338
JACKSONVILLE, FL 32202-4628
Phone: (904) 255-2086
Shipping Method: DROP SHIP-GROUND

SUBTOTAL	$624,492.18
SHIPPING	$0.00
SALES TAX	$0.00
GRAND TOTAL	**$624,492.18**

Please remit payments to:

CDW Government
75 Remittance Drive
Suite 1515
Chicago, IL 60675-1515

Need Assistance? CDW•G SALES CONTACT INFORMATION

John Vrablik | (877) 466-6333 | johnvra@cdwg.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at http://www.cdwg.com/content/terms-conditions/product-sales.aspx

For more information, contact a CDW account manager

© 2019 CDW•G LLC, 200 N. Milwaukee Avenue, Vernon Hills, IL 60061 | 800.808.4239

STATE OF MINNESOTA
Materials Management Division
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Voice: 651.296.2600
Fax: 651.297.3996

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

WITH

DELL MARKETING, L.P.

FOR

COMPUTER EQUIPMENT: (Desktops, Laptops, Tablets, Servers and Storage including Related Peripherals & Services)

To:	Dell Marketing L. P. One Dell Way Mailstop ~~8707~~ RR1-33 Legal 8M 2/26/15 Round Rock, TX 78682 2/9/15	CONTRACT NO:	MNWNC-108
	Contract Vendor Administrator: Diane Wigington Email: Diane_Wigington@dell.com Phone: (512) 728-4805	CONTRACT PERIOD:	April 1, 2015, or upon final executed signatures, whichever is later
		THROUGH	March 31, 2017
		EXTENSION OPTION:	UP TO 36 MONTHS

You are hereby notified that your response to our solicitation, which opened January 31, 2014, is accepted. The following documents, in order of precedence, are incorporated herein by reference and constitute the entire Contract between you and the State: 1. A Participating Entity's Participating Addendum ("PA") A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota WSCA-NASPO Master Agreement.; 2. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms and Conditions); 3. The Solicitation; and 4. the Contract Vendor's response to the Solicitation. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

IN WITNESS WHEREOF, the parties have caused this Agreement 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 Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Stephanie G. Miller
Signature
Stephanie G. Miller
Printed Name
Title: Contract Manager / Senior Manager 8M
Date: 16 February 2015

By: _____
Signature
_____
Printed Name
Title: _____
Date: _____

2. MINNESOTA MATERIALS MANAGEMENT DIVISION
In accordance with Minn. Stat. § 16C.03, subd. 3.

By: Sue Kahle
Title: Master Agreement Administrator
Date: 2/18/15

3. MINNESOTA COMMISSIONER OF ADMINISTRATION
Or delegated representative.

By: _____
Date: Original signed

MAR 03 2015

By Lucas J. Jannett

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

TABLE OF CONTENTS

TABLE OF CONTENTS 2
SUMMARY 3
EXHIBIT A - TERMS & CONDITIONS 5
EXHIBIT B - PRICING 24
EXHIBIT B - PRICING SCHEDULE 26
EXHIBIT C - PRODUCT AND SERVICE SCHEDULE (PSS) 27
EXHIBIT D - WEBSITE 28
EXHIBIT E - ACTION REQUEST UPDATE FORM (ARF) 29
EXHIBIT F - REPORTING 31
EXHIBIT G - DEFINITIONS 32

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD SUMMARY

1. **BACKGROUND.** The State of Minnesota, Department of Administration, Materials Management Division publicly posted a Request for Proposal on behalf of the State of Minnesota and WSCA-NASPO Cooperative Procurement Program ("WSCA-NASPO") resulting in a Master Agreement Award. After evaluation by a multi–state sourcing team the solicitation resulted in this Minnesota WSCA-NASPO Master Agreements with qualified manufacturers for:

   Computer Equipment (Desktops, Laptops, Tablets, Servers, and Storage including related Peripherals & Services.

   The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The configuration limits and restrictions for this Master Agreement are provided below. Participating Entities may revise these in their Participating Addendum. **Bands awarded are identified below:**

Band 1: Desktop	Band 3: Tablet	Band 5: Storage
Band 2: Laptop	Band 4: Server	

   The original solicitation included Band 6: Ruggedized. This band has been removed and ruggedized equipment will be allowed in Bands 1-5. The original solicitation and responses may be found on the WSCA-NASPO Website.

2. **EFFECTIVE DATE:** The Master Agreement contract term will begin on April 1, 2015, or upon final executed signatures, whichever is later, through March 31, 2017 with the option to extend up to 36 months, upon agreement by both parties. Contract Sales may not begin until the Website, Product and Service Schedule and third party products have been approved by the Master Agreement Administrator.

3. **PARTICIPATION.** All authorized governmental entities in any State are welcome to use the resulting Master Agreements through WSCA-NASPO with the approval of the State Chief Procurement Official. Contract Vendors are able to sign Participating Addendums (PA) at the option of Participating States. Participating States reserve the right to add State specific terms and conditions and modify the scope of the contract in their Participating Addendum as allowed by the Master Agreement.

4. **CONFIGURATION DOLLAR LIMITS.** The following configuration limits apply to the Master Agreement. Participating States may define their configuration limits in their participating addendum. The Participating State's Chief Procurement Official may increase or decrease the configuration limits, as defined in their Participating Addendum. The Participating State will determine with the Contract Vendor how to approve these modifications to the State's Product and Service Schedule.

   The dollar limits identified below are based on a **SINGLE** computer configuration. This is **NOT** a restriction on the purchase of multiple configurations (e.g. an entity could purchase 10 laptops @ $10,000 for a total purchase price of $100,000).

ITEM	CONFIGURATION*
Server	$500,000
Storage	$500,000
Desktops	$ 10,000
Laptops	$ 10,000
Tablets	$ 5,000
Peripherals	$ 5,000
Services	Addressed by each State in participating addendum

   * Configuration is defined as the combination of hardware and software components that make up the total functioning system. Software purchases are considered a part of the configuration limit of the equipment.

5. **RESTRICTIONS.** The following restrictions apply to the Master Agreement. A Participating State may set further restrictions of products in their Participating Addendum. The Participating State will determine with the Contract Vendor how to approve these modifications to the State's Product and Service Schedule.

a. Software

1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.
2. Software is an option which must be related to the procurement of equipment.
3. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment.
4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (Band 4&5) purchased, is allowed and may be procured after the initial purchase of equipment.

b. Services

1. Services must be related to the procurement of equipment.
2. Service limits will be addressed by each State.
3. Wireless phone and internet service is not allowed.
4. Cloud Services including acquisitions structured as managed on-site services are not allowed.
5. Managed Print Services are not allowed.

c. Third Party Products.

1. Contract Vendors can only offer Third Party Products in the bands they have been awarded.
2. Contract Vendor cannot offer products manufactured by another Contract Vendor holding a Minnesota WSCA-NASPO Master Agreement unless approved by the Lead State.

d. Additional Product/Services

1. Hardware and software required to solely support wide area network (WAN) operation and management are not allowed.
2. Lease/Rentals of equipment may be allowed and will be addressed by each State.
3. Cellular Phone Equipment is not allowed.
4. EPEAT Bronze requirement may be waived, on a State case by case basis, if approved by the State's Chief Procurement Officer.

6. **PARTNER UTILIZATION:** Each state represented by WSCA-NASPO that chooses to participate in this Master Agreement independently has the option of utilizing partners. Only partners approved by the Participating State may be deployed. The participating State will define the process to add and remove partners in their participating addendum.

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT A - TERMS & CONDITIONS

MASTER AGREEMENT TERMS AND CONDITIONS

A. GENERAL TERMS, CONDITIONS & INSTRUCTIONS

1. **ACCEPTANCE OF TERMS AND CONDITIONS.** The contents of the RFP and the response of the successful responder will become Master Agreement contractual obligations, along with the final Master Agreement, if acquisition action ensues. A statement of acceptance of the proposed Contract Terms and Conditions, unless taken exception to, as specified in the RFP must be included in the response. Any suggestions for alternate language shall be presented. The Lead State is under no obligation to accept wording changes submitted by the responder. The Lead State is solely responsible for rendering decisions in matters of interpretation on all terms and conditions. Any response which fails to comply with this requirement may be disqualified as nonresponsive.

   All general proposal terms, specifications and WSCA-NASPO Terms & Conditions form a part of this RFP and will apply to any Master Agreements entered into as a result thereof.

2. **CONFLICT OF TERMS/ORDER OF PRECEDENCE:**
   a. A Participating Entity's Participating Addendum ("PA");
   b. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms & Conditions)
   c. The Solicitation including all Addendums; and
   d. Contract Vendor's response to the Solicitation

   These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

3. **ADDENDA TO THE RFP.** Any addendum issued will become a part of the RFP. The Lead State may modify or clarify the RFP by issuing one or more addenda to all parties who have received the RFP. Each responder must follow the directions on the addendum. Addenda will be numbered consecutively in the order they are issued.

4. **AWARD.** The award of this solicitation will be based upon the total accumulated points as established in the RFP, for separate items, by grouping items, or by total lot, and where at its sole discretion the Lead State believes it will receive the best value. The Lead State reserves the right to award this solicitation to a single responder, or to multiple responders, whichever is in the best interest of the Lead State. It is the State's intent to award to multiple responders. The Lead State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the Lead State.

   The Sourcing Team will make a recommendation on the award of this RFP. The commissioner of Administration or designee may accept or reject the recommendation of the Sourcing Team. The final award decision will be made by the Commissioner of Administration and the WSCA-NASPO Management Board.

5. **CLARIFICATION.** If a responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the responder shall immediately notify the Acquisition Management Specialist in writing, as

specified in the introduction, of such error and request modification or clarification of the document. This notification is due no later than seven calendar days prior to the proposal due date and time.

Responders are cautioned that any activity or communication with a State employee or officer, or a member of the Evaluation Team, regarding this Solicitation's contents or process, is strictly prohibited and may, as a result, have its response rejected. Any communication regarding this Solicitation, its content or process, must be directed to the Acquisition Management Specialist listed in the Solicitation documents.

6. **COMPLETION OF RESPONSES.** A response may be rejected if it is conditional or incomplete. Responses that contain conflicting, false, or misleading statements or that provide references that contradict or do not support an attribute or condition stated by the responder, may be rejected.

7. **MASTER AGREEMENT ADMINISTRATOR.** The Master Agreement Administrator designated by WSCA-NASPO and the State of Minnesota, Department of Administration is: Susan Kahle. Direct all correspondence and inquiries, legal questions, general issues, or technical issues regarding this RFP to:

   Susan Kahle
   Acquisition Management Specialist
   Department of Administration
   Materials Management Division
   50 Sherburne Avenue
   112 Administration Building
   St. Paul, MN 55155

   Fax: 651.297.3996
   E-mail: susan.kahle@state.mn.us

8. **DISPOSITION OF DATA SUBMITTED BY CONTRACT VENDOR.** All materials submitted in response to this RFP will become property of the Lead State and will become public record after the evaluation process is completed. The evaluation process is complete when negotiations with the selected vendors are final.

   By executing this Contract, the Contract Vendor certifies and agrees that all information provided in the Contract and in response to the solicitation will be made public in accordance with the solicitation and that no information has been designated Trade Secret pursuant to the Minnesota Government Data Practices Act.

   If the Contract Vendor submits information after execution of this Contract that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the Contract Vendor must:
   a. clearly mark all trade secret materials at the time the information is submitted;
   b. include a statement with regard to the information justifying the trade secret designation for each item; and,
   c. defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the Lead State, its agents and employees, from any judgments awarded against the Lead State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the Lead State's award of a Master Agreement. In submitting a response to the RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the Lead State. The Lead State will not consider the prices submitted by the responder to be trade secret materials.

9. **DISPUTE RESOLUTION PROCEDURES.** Any issue a responder has with the RFP document, which includes, but is not limited to, the terms, conditions, and specifications, must be submitted in writing to and received by the Master Agreement Administrator prior to the opening due date and time. Any issue a responder has with the Master Agreement award must be submitted in writing to the Master Agreement Administrator within five working days from the time the notice of the intent to award is issued. This notice may be made by any of the following methods: notification by letter, fax or email, or posted on the Materials Management website, www.mmd.admin.state.mn.us. The Lead State will respond to any protest received that follows the above procedure. For those protests that meet the above submission requirements, the appeal process is, in sequence: The responsible Master Agreement Administrator, the Materials Management Division (MMD) Assistant Director, and the MMD Director.

10. **ELECTRONIC FILES TO DOWNLOAD, COMPLETE, AND RETURN.** Responders must download a Word/Excel document.

11. **ENTIRE AGREEMENT.** A written Master Agreement (including the contents of this RFP and selected portions of Contract Vendor's response incorporated therein by reference) and any written addenda thereto constitute the entire agreement of the parties to the Master Agreement.

12. **IRREVOCABLE OFFER.** In accordance with this Request for Proposal, and subject to all conditions thereof, the undersigned agrees that its response to this RFP, or any part thereof, is an irrevocable offer for 180 days following the submission deadline date unless stated otherwise in the RFP. It is understood and agreed that the response, or any part thereof, when accepted by the appropriate department and State officials in writing, may become part of a legal and binding Master Agreement between the undersigned vendor and the State of Minnesota.

13. **MATERIAL DEVIATION.** A responder shall be presumed to be in agreement with these terms and conditions unless it takes specific exception to one or more of the conditions. Submission by the responder of its proposed language shall not be viewed as an exception unless the responder specifically states in the response that its proposed changes are intended to supersede the terms and conditions.

    RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE REQUEST FOR PROPOSAL. IF A RESPONDER MATERIALLY DEVIATES FROM THE GENERAL TERMS, CONDITIONS AND INSTRUCTIONS OR THE WSCA-NASPO TERMS AND CONDITIONS AND/OR SPECIFICATIONS, ITS RESPONSE MAY BE REJECTED.

    A material deviation is an exception to the Request for Proposal general or WSCA-NASPO terms and conditions and/or specifications that:

    a. gives the responder taking the exception a competitive advantage over other vendors; or,
    b. gives the Lead State something significantly different from that which the Lead State requested.

14. **NONRESPONSIVE RESPONSES.** Responses that do not comply with the provisions in the RFP may be considered nonresponsive and may be rejected.

15. **NOTICES.** If one party is required to give notice to the other under the Master Agreement, 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 to the Lead State shall be addressed as follows:

    STATE OF MINNESOTA:
    MN WSCA-NASPO COMPUTER EQUIPMENT CONTRACT ADMINISTRATOR
    112 Administration Bldg.
    50 Sherburne Avenue
    St. Paul, MN 55155
    651-296-2600

MASTER AGREEMENT TERMS AND CONDITIONS

B. WSCA-NASPO TERMS AND CONDITIONS

1. **ADMINISTRATIVE FEES.** The Contract Vendor shall pay a WSCA-NASPO Administrative Fee of one-tenth of one percent (0.1% or 0.001) in accordance with the Terms and Conditions of the Master Agreement no later than 60 days following the end of each calendar quarter. The WSCA-NASPO Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping). The WSCA-NASPO Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

   Additionally, some states 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 will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contract Vendor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements may not affect the WSCA-NASPO Administrative Fee or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

2. **AGREEMENT ORDER OF PRECEDENCE.** The Master Agreement shall consist of the following documents:
   a. A Participating Entity's Participating Addendum ("PA");
   b. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms and Conditions)
   c. The Solicitation including all addendums; and
   d. Contract Vendor's response to the Solicitation

   These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

3. **AMENDMENTS.** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Master Agreement Administrator.

4. **ASSIGNMENT OF ANTITRUST RIGHTS.** Contract Vendor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contract Vendor now has or which may accrue to the Contract Vendor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contract Vendor for the purpose of carrying out the Contract Vendor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

5. **ASSIGNMENT/SUBCONTRACT.** Contract Vendor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the WSCA-NASPO Master Agreement Administrator.

6. **CANCELLATION.** Unless otherwise stated in the terms and conditions, any Master Agreement may be canceled by either party upon 60 days' notice, in writing, prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation or in the applicable Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Participating Entity to indemnification by the Contract Vendor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the Master Agreement due to Contract Vendor default may be immediate if defaults cannot be reasonably cured as allowed per Default and Remedies term.

7. **CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF. NEGOTIATED.**
   7.1 Confidentiality. The parties acknowledges that they and their employees or agents may, in the course of providing the Product and Services under this Master Agreement, be exposed to or acquire information that is confidential . Any and all information of any form that is marked as confidential or would by its nature be deemed

confidential obtained in the performance of this Master Agreement, including, but not necessarily limited to (a) any Participating Entity records, (b) personnel records, (c) information concerning individuals, (d) software, (e) product plans, (f) marketing and sales information, (g) customer lists, and (h) "know-how," or trade secrets, is confidential information ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by disclosing party) publicly known; (b) is rightfully furnished by the disclosing party to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in recipient party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than disclosing party without the obligation of confidentiality, (e) is disclosed with the written consent of disclosing party or; (f) is independently developed by employees, agents or subcontractor of the parties who can be shown to have had no access to the Confidential Information

7.2 Non-Disclosure. The parties shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of this Master Agreement, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. The parties shall use commercially reasonable efforts in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, parties shall advise each other immediately if they learn or have reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement and shall at their expense cooperate in seeking injunctive or other equitable relief against any such person. Except as directed in writing , the parties will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement the parties shall turn over all documents, papers, and other matter in the recipient party's possession that embody Confidential Information. Notwithstanding the foregoing, the recipient party may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

7.3 Injunctive Relief. The parties acknowledge that breach of this Section, including disclosure of any Confidential Information, may cause irreparable injury that is inadequately compensable in damages. Accordingly, the injured party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. The parties acknowledge and agree that the covenants contained herein are necessary for the protection of the legitimate business interests and are reasonable in scope and content.

7.4 Participating Entity is agreeing to the above language to the extent is not in conflict with Participating Entities public disclosure laws.

8. **DEBARMENT**. The Contract Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in this transaction (Master Agreement) by any governmental department or agency. If the Contract Vendor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

   In any order against this Master Agreement for a requirement established by a Purchasing Entity that discloses the use of federal funding, to the extent another form of certification is not required by a Participating Addendum or the order of the Purchasing Entity, the Contractor's quote represents a recertification consistent with the terms of paragraph 8, Section 2D, Minnesota Terms and Conditions

9. **DEFAULTS & REMEDIES.**
   a. The occurrence of any of the following events shall be an event of default under this Master Agreement:
      i. Nonperformance of contractual requirements; or
      ii. A material breach of any term or condition of this Master Agreement; or
      iii. Any representation or warranty by Contract Vendor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
      iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contract Vendor, or the appointment of a receiver or similar officer for Contract Vendor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
      v. Any default specified in another section of this Master Agreement.
   b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days in which Contract Vendor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole

discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contract Vendor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contract Vendor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contract Vendor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:
   i. Exercise any remedy provided by law; and
   ii Terminate this Master Agreement and any related Master Agreements or portions thereof; and
   iii Impose liquidated damages as provided in this Master Agreement; and
   iv. Suspend Contract Vendor from receiving future bid solicitations; and
   v. Suspend Contract Vendor's performance; and
   vi. Withhold payment until the default is remedied.

d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

10. **DELIVERY.** Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contract Vendor. Additional delivery charges will not be allowed for back orders.

11. **FORCE MAJEURE.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The WSCA-NASPO Master Agreement Administrator may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

12. **GOVERNING LAW.** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreements shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreements or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

13. **INDEMNIFICATION. DELETED SEE SECTION 2C17.**

14. **INDEMNIFICATION – INTELLECTUAL PROPERTY. DELETED SEE SECTION 2C17.**

15. **INDEPENDENT CONTRACT VENDOR.** The Contract Vendor shall be an independent Contract Vendor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

16. **INDIVIDUAL CUSTOMER.** Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contract Vendor will apply the charges and invoice each Purchasing Entity individually.

17. **INSURANCE.** Except to the extent modified by a Participating Addendum, Contract Vendor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contract Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or at a Participating Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

a. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than $1 million per occurrence/$2 million general aggregate;
b. Contract Vendor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contract Vendor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Participating Entity by the Contract Vendor.

Prior to commencement of the work, Contract Vendor shall provide to the Participating Entity a written endorsement to the Contract Vendor's general liability insurance policy that (i) names the Participating Entity as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contract Vendor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Contract Vendor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at the Lead State Master Agreement Administrator's sole option, result in this Master Agreement's termination.

Coverage and limits shall not limit Contract Vendor's liability and obligations under this Master Agreement.

18. **LAWS AND REGULATIONS.** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

19. **LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY. DELETED – SEE SECTION 2B30 FOR REVISED TERM ADDRESSING TITLE OF PRODUCT.**

20. **NO WAIVER OF SOVEREIGN IMMUNITY.** The Lead State, Participating Entity or Purchasing Entity to the extent it applies 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.

    If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court of the Participating Entity's State.

21. **ORDER NUMBERS.** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels (if possible), packing slips, invoices, and on all correspondence.

22. **PARTICIPANTS.** WSCA-NASPO Cooperative Purchasing Organization LLC is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the WSCA/NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.,) for all 50 states and the District of Columbia. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award will be permissive.

23. **PARTICIPATION OF ENTITIES.** Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other entities (including cooperatives) authorized by 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 respective State Chief Procurement Official.

24. **PAYMENT.** Payment for completion of an order under this Master Agreement is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contract Vendor may assess overdue account charges up to a maximum rate of one percent per month

on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

25. **PUBLIC INFORMATION.** The Master Agreement and all related documents are subject to disclosure pursuant to the Participating Entity's public information laws.

26. **RECORDS ADMINISTRATION AND AUDIT.** The disclosure of records in Participating States relating to Participating addenda and orders placed against the Master Agreement shall be governed by the laws of the Participating State and entity who placed the order.

    The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

    Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for an overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records.

    The rights and obligations herein right exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State Master Agreement Administrator to review compliance with those obligations.

    Records will be retained longer if required by Participating Entity's law.

27. **REPORTS - SUMMARY AND DETAILED USAGE.** In addition to other reports that may be required by this solicitation, the Contract Vendor shall provide the following WSCA-NASPO reports.

    a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to WSCA-NASPO using the WSCA-NASPO Quarterly Sales/Administrative Fee Reporting Tool found at http://www.naspo.org/WNCPO/Calculator.aspx. Any/all sales made under the contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than the last day of the month following the end of the calendar quarter (as specified in the reporting tool).

    b. Detailed Sales Data. Contract Vendor shall also report detailed sales data by: state; entity/customer type, e.g., local government, higher education, K12, non-profit; Purchasing Entity name; Purchasing Entity bill-to and ship-to locations; Purchasing Entity and Contract Vendor Purchase Order identifier/number(s); Purchase Order Type (e.g., sales order, credit, return, upgrade, determined by industry practices); Purchase Order date; Ship Date; and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State no later than the last day of the month following the end of the reporting period. Reports shall be delivered to the Lead State and to the WSCA-NASPO Cooperative Development Team electronically through email; CD-Rom, jump drive or other electronic matter as determined by the Lead State.

       Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in Section 6, Attachment H.

    c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the Participating Addendum. Specific data in relation to sales to employees for personal use to be defined in the final contract award to ensure only public information is reported.

    d. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and WSCA-NASPO

shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

28. ACCEPTANCE AND ACCEPTANCE TESTING.

A. Acceptance. Purchasing Entity (the entity authorized under the terms of any Participating Addendum to place orders under this Master Agreement) shall determine whether all Products and Services delivered meet the Contractor's published specifications (a.k.a. "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 thirty (30) calendar days following delivery of non-acceptance of a Product or completion of Service. In the event that the Contractor has not been notified within 30 calendar days from delivery of Product or completion of Service, the Product and Services will be deemed accepted on the 31st day after delivery of Product or completion of Services. This clause shall not be applicable, if acceptance testing and corresponding terms have been mutually agreed to by both parties in writing.
B. Acceptance Testing. The Purchasing Entity (the entity authorized under the terms of any Participating Addendum to place orders under this Master Agreement) and the Contract Vendor shall determine if Acceptance Testing is applicable and/or required for the purchase. The terms in regards to acceptance testing will be negotiated, in writing, as mutually agreed. If Acceptance Testing is NOT applicable, the terms regarding Acceptance in the Contract shall prevail.

29. SYSTEM FAILURE OR DAMAGE. In the event of system failure or damage caused by the Contract Vendor or its Product, the Contract Vendor agrees to use its commercially reasonable efforts to restore or assist in restoring the system to operational capacity. The Contract Vendor shall be responsible under this provision to the extent a 'system' is defined at the time of the Order; otherwise the rights of the Purchasing Entity shall be governed by the Warranty.

30. TITLE OF PRODUCT. NEGOTIATED.

OWNERSHIP

a. Ownership of Documents/Copyright. Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contract Vendor in the performance of its obligations under the Master Agreement and paid for by the Purchasing Entity shall be the exclusive property of the Purchasing Entity and all such material shall be remitted to the Purchasing Entity by the Contract Vendor upon completion, termination or cancellation of the Master Agreement. The Contract Vendor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contract Vendor's obligations under this Master Agreement without the prior written consent of the Purchasing Entity.

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 Contract Vendor conceives or originates, either individually or jointly with others, which arises out of the performance of the Master Agreement, will be the property of the Purchasing Entity and are, by the Master Agreement, assigned to the Purchasing Entity along with ownership of any and all copyrights in the copyrightable material. The Contract Vendor also agrees, upon the request of the Purchasing Entity, to execute all papers and perform all other acts necessary to assist the Purchasing Entity to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contract Vendor for the Purchasing Entity in performance of the Master Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act.

c. Notwithstanding the above, the Purchasing Entity will not own any of the Contract Vendor's pre-existing intellectual property that was created prior to the Master Agreement and which the Purchasing Entity did not pay the Contract Vendor to create. Subject to payment in full for the products, equipment or services, the Contract Vendor grants the Purchasing Entity a perpetual, irrevocable, non-exclusive, royalty free license for Contract Vendor's pre-existing intellectual property that is contained in the products, materials, equipment or services that are purchased through this Master Agreement. Contract Vendor will retain all right, title and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the services, and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates or output which are developed, created or otherwise used by or on behalf of Contract Vendor in the course of performing the services

or creating the deliverables, other than portions that specifically incorporate proprietary or Confidential Information or data of Ordering Entity (collectively, the "Residual IP"), even if embedded in the deliverable.

31. **WAIVER OF BREACH.** Failure of Lead State Master Agreement Administrator, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State Master Agreement Administrator, Participating Entity, or Purchasing Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, a Participating Addendum, or order.

32. **WARRANTY.** The warranty provided must be the manufacturers written warranty tied to the product at the time of purchase and must include the following:: (a) the Product performs according to the specifications (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is designed and manufactured in a commercially reasonable manner, and (d) the Product is free of defects.

    For third party products sold by the Contract Vendor, the Contract Vendor will assign the manufacturer or publisher's warranty and maintenance. The Contract Vendor will provide warranty and maintenance call numbers and assist the customer in engaging the manufacturer on warranty and maintenance issues.

    Upon breach of the warranty, the Contract Vendor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contract Vendor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contract Vendor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or so ordered by the court.

33. **LIMITATION OF LIABILITY. NEGOTIATED.**

    A. CONTRACT VENDOR WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SOFTWARE OR SERVICES PROVIDED HEREUNDER. EXCEPT FOR YOUR BREACH OF PAYMENT OBLIGATIONS OR CONFIDENTIALITY REQUIREMENTS, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING: (1) LOSS OF REVENUE, INCOME, PROFIT OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH; (3) LOSS OF BUSINESS OPPORTUNITY; (4) BUSINESS INTERRUPTION OR DOWNTIME; OR (5) DELIVERABLES, DELL PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.

    B. CONTRACT VENDOR'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ALL PARTICIPATING ADDENDA SOURCED FROM THIS MASTER AGREEMENT (INCLUDING ANY PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER) SHALL NOT EXCEED THE AGGREGATE AMOUNT OF TEN MILLION DOLLARS ($10,000,000).

    C. THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATION OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR CONTRACT VENDOR'S SALE OF PRODUCTS, SOFTWARE OR SERVICES TO ORDERING ENTITY, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

34. **SERVICE AGREEMENTS. NEGOTIATED.** Contract Vendor may provide Services, Software or Deliverables to you in accordance with one or more "Service Agreements." **"Service Agreements"** are service contracts, including "Service Descriptions" available at www.dell.com/servicecontracts/us, "Statements of Work," and any other such mutually agreed upon documents. Each Service Agreement will be interpreted as a single agreement, independent of any other Service Agreement, so that all of the provisions are given as full effect as possible.

    Any and all licensing, maintenance, or order specific agreements referenced within the terms and conditions of this Master agreement are agreed to only to the extent that the terms do not conflict with the terms of the Participating Addendum or the Master Agreement, and to the extent the terms are not in conflict with the Participating Entities' applicable laws. In the event of conflict the terms and conditions, the Participating Addendum, and then the Master Agreement shall take precedence, as detailed in the Order of Precedence defined herein. Notwithstanding the

foregoing, licensing, maintenance agreements, or order specific agreements may be further negotiated by the Contract Vendor and the potential Purchasing Entity, provided the contractual documents are duly executed in writing.

35. **SOFTWARE LICENSE. NEGOTIATED.** Software (defined as any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form as well as the related documentation provided by Contract Vendor to Purchasing Entity) is subject to the separate license agreements accompanying the Software, along with any product guides, operating manuals, or other documentation included with the software media packaging or presented to Purchasing Entity during the installation or use of the Software. Purchasing Entity agrees that it will be bound by such license agreement.

    Any and all licensing, maintenance, or order specific agreements referenced within the terms and conditions of this Master agreement are agreed to only to the extent that the terms do not conflict with the terms of the Participating Addendum or the Master Agreement, and to the extent the terms are not in conflict with the Participating Entities' applicable laws. In the event of conflict the terms and conditions, the Participating Addendum, and then the Master Agreement shall take precedence, as detailed in the Order of Precedence defined herein. Notwithstanding the foregoing, licensing, maintenance agreements, or order specific agreements may be further negotiated by the Contract Vendor and the potential Purchasing Entity, provided the contractual documents are duly executed in writing.

36. **EXPORT COMPLIANCE. NEGOTIATED.** Contract Vendor, Lead State and Purchasing Entities acknowledge that products (including software) sold or licensed under this Master Agreement are subject to the export control laws and regulations of the United States and other countries from which they were supplied and in which they are used and Purchasing Entity agrees to abide by those laws and regulations. Purchasing Entity warrants that any software provided by it and used as a part of the services supplied by Contract Vendor under this Master Agreement contains no encryption or to the extent that it contains encryption such software is approved for export under the relevant laws or regulations.

37. **RETURNS AND EXCHANGES. NEGOTIATED.** Contract Vendor's return policy can be found at www.dell.com/returnspolicy and applies to any returns and exchanges. Before returning or exchanging a Product, Purchasing Entity must contact Contract Vendor directly to obtain an authorization number to include with the return. Purchasing Entity must return Products to Contract Vendor in their original or equivalent packaging, and Purchasing Entity is responsible for risk of loss, as well as shipping and handling fees. Additional fees, including up to a 15% restocking fee, may apply. Restocking fees must be approved by the customer. If Purchasing Entity fails to follow the return or exchange instructions provided by Contract Vendor, Contract Vendor will not be responsible for any loss, damage, or modification of a Product, or processing of a Product for disposal or resale. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with the original purchase. This restocking fee shall not apply in the case of Contract Vendor error.

MASTER AGREEMENT TERMS AND CONDITIONS

C. MINNESOTA TERMS AND CONDITIONS

1. **ACCEPTANCE OF PROPOSAL CONTENT.** The contents of this RFP and selected portions of response of the successful Proposer will become contractual obligations, along with the final Master Agreement, if acquisition action ensues. The Lead State is solely responsible for rendering the decision in matters of interpretation of all terms and conditions.

2. **ACCESSIBILITY STANDARDS.** The State of Minnesota has developed IT Accessibility Standards effective September 1, 2010, which entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A-D which can be viewed at http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf

   Responders must complete the WCAG VPAT form included in the FORMS section of the RFP. The completed VPAT form will be scored based on its compliance with the Accessibility Standards. The requested WCAG VPAT applies to the responder's website to be offered under the Contract. For products offered, VPATS are only to be provided upon request by the participating entity.

   Upon request by the participating entity, the responder must make best efforts to provide Voluntary Product Accessibility Templates (VPATS) for all products offered in its response. Click here for link to VPATS for both Section 508 VPAT and WCAG 2.0 VPAT http://mn.gov/oet/policies-and-standards/accessibility/#.

3. **ADMINISTRATIVE PERSONNEL CHANGES.** The Contract Vendor must notify the Contract Administrator of changes in the Contract Vendor's key administrative personnel, in advance and in writing. Any employee of the Contract Vendor who, in the opinion of the State of Minnesota, is unacceptable, shall be removed from the project upon written notice to the Contract Vendor. In the event that an employee is removed pursuant to a written request from the Acquisition Management Specialist, the Contract Vendor shall have 10 working days in which to fill the vacancy with an acceptable employee.

4. **AMENDMENT(S).** Master Agreement amendments shall be negotiated by the Lead State with the Contract Vendor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. An approved Master Agreement amendment means one approved by the authorized signatories of the Contract Vendor and the Lead State as required by law.

5. **AMERICANS WITH DISABILITIES ACT (ADA).** DELETED.

6. **AWARD OF RELATED CONTRACTS.** In the event the Lead State undertakes or awards supplemental Contracts for work related to the Master Agreement or any portion thereof, the Contract Vendor shall cooperate fully with all other Contract Vendors and the State in all such cases. All Master Agreements between subcontractors and the Contract Vendor shall include a provision requiring compliance with this section.

7. **AWARD OF SUCCESSOR CONTRACTS.** In the event the State undertakes or awards a successor for work related to the Contract or any portion thereof, the current Contract Vendor shall cooperate fully during the transition with all other Contract Vendors and the State in all such cases. All Master Agreements between subcontractors and the Contract Vendor shall include a provision requiring compliance with this section.

8. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**
   a. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.
      Instructions for certification:
      1. By signing and submitting this proposal, the prospective lower tier participant [responder] is providing the certification set out below.

      2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

      3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal [response] is submitted if at any time the prospective lower tier participant learns that its certification

was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction [subcontract equal to or exceeding $25,000] with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from federal procurement and nonprocurement programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

9. **CHANGE REQUESTS.** The Lead State reserves the right to request, during the term of the Master Agreement, changes to the products offered. Products introduced during the term of the Master Agreement shall go through a formal review process. A formal process of changing the Master Agreement shall be developed during the negotiation of the Master Agreement. The Contract Vendor shall evaluate and recommend products for which agencies have an expressed need. The Lead State shall require the Contract Vendor to provide a summary of its research of those products being recommended for inclusion in the Master Agreement as well as defining how adding the product will enhance the Master Agreement. The Lead State may request that products, other than those recommended, are added to the Master Agreement.

In the event that the Lead State desires to add new products and services that are not included in the original Master Agreement, the Lead State requires that independent manufacturers and resellers cooperate with the already established Contract Vendor in order to meet the Lead State's requirements. Evidence of the need to add products or services should be demonstrated to the Lead State. The Master Agreement shall be modified via supplement or

amendment. The Lead State will negotiate the inclusion of the products and services with the Contract Vendor. No products or services will be added to the Master Agreement without the Lead State's prior approval.

10. **CONFLICT MINERALS.** Contract Vendor must provide information to the public on its website regarding the use of conflict minerals, as required by Section 13(p) of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. See: http://www.sec.gov/rules/final/2012/34-67716.pdf.

11. **COPYRIGHTED MATERIAL WAIVER.** The Lead State reserves the right to use, reproduce and publish proposals in any manner necessary for State agencies and local units of government to access the responses and/or to respond to request for information pursuant to Minnesota Government Data Practices Act, , including but not limited to emailing, photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that the response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the Lead State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the Lead State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the Lead State in the defense of any such action.

12. **EFFECTIVE DATE.** Pursuant to Minnesota law, the Master Agreement arising from this RFP shall be effective upon the date of final execution by the Lead State, unless a later date is specified in the Master Agreement.

13. **FOREIGN OUTSOURCING OF WORK.** Upon request, the Contract Vendor is required to provide information regarding the location of where services, data storage and/or location of data processing under the Master Agreement will be performed.

14. **GOVERNMENT DATA PRACTICES.** The Contract Vendor and the Lead State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the Lead 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 Lead State to the Contract Vendor and all data provided to the Lead State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with the Master Agreement 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).

    In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the Lead State. The Lead State will give the Contract Vendor 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 Contract Vendor or the Lead State.

    The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent 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 Master Agreement. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Master Agreement, the Contract Vendor shall retain responsibility under the terms of this article for such work.

15. **HAZARDOUS SUBSTANCES.** To the extent that the goods to be supplied by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

16. **HUMAN RIGHTS/AFFIRMATIVE ACTION.** The Lead State requires affirmative action compliance by its Contract Vendors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

    a. Covered contracts and Contract Vendors. One-time acquisitions, or a contract for a predetermined amount of goods and/or services, where the amount of your response is in excess of $100,000 requires completion of the Affirmative Action Certification page. If the solicitation is for a contract for an indeterminate amount of goods and/or services, and the State estimated total value of the contract exceeds $100,000 whether it will be a multiple award contract or not, you must complete the Affirmative Action Certification page. If the contract dollar amount or the State estimated total contract amount exceeds $100,000 and the Contract Vendor employed more than

40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, the Contract Vendor must comply with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600. A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600 that had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months must have a certificate of compliance issued by the commissioner of the Department of Human Rights (certificate of compliance). A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 that did not have more than 40 full-time employees on a single working day during the previous 12 months within Minnesota but that did have more than 40 full-time employees in the state where it has its principal place of business and that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.

b. Minn. Stat. § 363A.36, subd. 1 requires the Contract Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the commissioner of the Department of Human Rights (commissioner) as indicated by a certificate of compliance. Minn. Stat. § 363A.36 addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

c. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Contract Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552-5000.3559.

d. Disabled Workers. Minn. R. 5000.3550 provides the Contract Vendor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

(a) The Contract Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contract Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The Contract Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(c) In the event of the Contract Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(d) The Contract Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contract Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(e) The Contract Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contract Vendor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

e. Consequences. The consequences of a Contract Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of the Contract by the commissioner or the State.

f. Certification. The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

17. **INDEMNIFICATION. NEGOTIATED.** The Contract Vendor shall indemnify, protect, save and hold harmless the Lead State and the Participating Entity, its representatives and employees, from any and all third party claims or causes of action for personal bodily injury, including death, and damage to tangible personal property, including all legal fees incurred by the Lead State and the Participating Entity arising from the negligence in the performance of the Master Agreement by the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the Lead State's and Participating Entity's failure to fulfill its obligations pursuant to the Master Agreement.

    If the Participating Entity's laws require approval of a third party to defend Participating Entity, Participating Entity will seek such approval and if approval is not received, Contract Vendor is not required to defend that Participating Entity.

18. **INTELLECTUAL PROPERTY INDEMNIFICATION. NEGOTIATED** In the event of any such claim by any third party against the Participating Entity that Products, Software, Services or Deliverables (excluding Third-Party Products and open source software) prepared or produced by Dell and delivered pursuant to this Agreement infringe or misappropriate that third party's U.S. patent, copyright, trade secret, or other intellectual property rights (**"Indemnified Claims"**), the Participating Entity shall promptly notify the Contract Vendor. The Contract Vendor, at its own expense, shall indemnify; defend to the extent permitted by the Participating Entity's laws, and hold harmless the Participating Entity against any loss, cost, expense, or liability (including legal fees) arising out of such a claim, whether or not such claim is successful against the Participating Entity.

    If Contract Vendor receives prompt notice such a claim that in the Contract Vendor's opinion is likely to result in an adverse ruling, the Contract Vendor shall at its option (1) obtain a right for the Participating Entity to continue using such Products, Deliverables or Software or allow Contract Vendor to continue performing the Services; (2) modify such Products, Software, Services or Deliverables to make them non-infringing; (3) replace such Products, Software, Services or Deliverables with a non-infringing equivalent; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product, Deliverables or Software.

    Notwithstanding the foregoing, Contract Vendor shall have no obligation under this Section for any claim resulting or arising from (1) modifications of the Products, Software, Services Deliverables that were not performed by or on behalf of Contract Vendor; (2) the combination, operation, or use of the Products, Software, Services or Deliverables in connection with a third-party product, software or service (the combination of which causes the claimed infringement); or (3) Contract Vendor's compliance with Participating Entity's written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by Participating Entity. Contract Vendor's duty to indemnify and defend under this Section is contingent upon: (x) Contract Vendor receiving prompt written notice of the third-party claim or action for which Contract Vendor must indemnify Participating Entity, (y) Contract Vendor having the right to solely control the defense and resolution of such claim or action, and (z) Participating Entity's cooperation with Contract Vendor in defending and resolving such claim or action. This Section states Participating Entity's exclusive remedies for any third-party intellectual property claim or action, and nothing in this Agreement or elsewhere will obligate Contract Vendor to provide any greater indemnity to Participating Entity.

19. **JURISDICTION AND VENUE.** This RFP and any ensuing Master Agreement, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota, USA. Venue for all legal proceedings arising out of the Master Agreement, or breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota. By submitting a response to this Request for Proposal, a Responder voluntarily agrees to be subject to the jurisdiction of Minnesota for all proceedings arising out of this RFP, any ensuing Master Agreement, or any breach thereof.

20. **LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State.

21. **NONVISUAL ACCESS STANDARDS.** Pursuant to Minn. Stat. § 16C.145, the Contract Vendor shall comply with the following nonvisual technology access standards :

a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;

b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;

c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and

d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

22. **NOTICE TO RESPONDERS.** Pursuant to Minn. Stat. § 270C.65, subd. 3, Contract Vendors are required to provide their Federal Employer Identification Number or Social Security Number. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require a Contract Vendor to file tax returns and pay delinquent tax liabilities. These numbers will be available to federal and State tax authorities and State personnel involved in the payment of State obligations.

23. **ORGANIZATIONAL CONFLICTS OF INTEREST.** The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no 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 Contract Vendor is unable or potentially unable to render impartial assistance or advice to the State;
- the Contract Vendor's objectivity in performing the work is or might be otherwise impaired; or
- the Contract Vendor has an unfair competitive advantage.

The Contract Vendor 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 Contract Vendor 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 Master Agreement. In the event the Contract Vendor was aware of an organizational conflict of interest prior to the award of the Master Agreement and did not disclose the conflict to the Master Agreement Administrator, the State may terminate the Master Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract,""Contract Vendor," "Master Agreement", "Master Agreement Administrator" and "Contract Administrator" modified appropriately to preserve the State's rights.

24. **PAYMENT CARD INDUSTRY DATA SECURITY STANDARD AND CARDHOLDER INFORMATION SECURITY.** Contract Vendor assures all of its Network Components, Applications, Servers, and Subcontractors (if any) comply with the Payment Card Industry Data Security Standard ("PCIDSS"). "Network Components" shall include, but are not limited to, Contract Vendor's firewalls, switches, routers, wireless access points, network appliances, and other security appliances; "Applications" shall include, but are not limited to, all purchased and custom external (web) applications. "Servers" shall include, but are not limited to, all of Contract Vendor's web, database, authentication, DNS, mail, proxy, and NTP servers. "Cardholder Data" shall mean any personally identifiable data associated with a cardholder, including, by way of example and without limitation, a cardholder's account number, expiration date, name, address, social security number, or telephone number.

Subcontractors (if any) must be responsible for the security of all Cardholder Data in its possession; and will only use Cardholder Data for assisting cardholders in completing a transaction, providing fraud control services, or for other uses specifically required by law. Contract Vendor must have a business continuity program which conforms to PCIDSS to protect Cardholder Data in the event of a major disruption in its operations or in the event of any other disaster or system failure which may occur to operations; will continue to safeguard Cardholder Data in the event this Agreement terminates or expires; and ensure that a representative or agent of the payment card industry and a representative or agent of the State shall be provided with full cooperation and access to conduct a thorough security

review of Contract Vendor's operations, systems, records, procedures, rules, and practices in the event of a security intrusion in order to validate compliance with PCIDSS.

25. **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 the Master Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Master Agreement, 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.

26. **PREFERENCE.**
Targeted/Economically Disadvantaged. In accordance with Minn. Stat. § 16C.16, subds. 6 and 7, eligible certified targeted group (TG) businesses and certified economically disadvantaged (ED) businesses will receive a 6 percent preference on the basis of award for this RFP. The preference is applied only to the first $500,000 of the response to the RFP. Eligible TG businesses must be currently certified by the Materials Management Division prior to the bid opening date and time.

To verify TG/ED certification, refer to the Materials Management Division's web site at www.mmd.admin.state.mn.usunder "Vendor Information, Directory of Certified TG/ED Vendors."

To verify TG eligibility for preference, refer to the Materials Management Division's web site under "Vendor Information, Targeted Groups Eligible for Preference in State Purchasing" or call the Division's HelpLine at 651.296.2600.

Reciprocal Preference. In accordance with Minn. Stat. §16C.06, subd 7, the acquisition of goods or services shall be allowed a preference over a non-resident vendor from a state that gives or requires a preference to vendors from that state, the preference shall be equal to the preference given or required by the state of the non-resident vendor. If you wish to be considered a Minnesota Resident vendor you must claim that by filling out the Resident Vendor Form included in this solicitation and include it in your response.

Veteran. In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference in the amount bid on state procurement to **certified small businesses** that are **majority-owned and operated by**:

(1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;
(2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
(3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. The preference is applied only to the first $500,000 of the response. If responder is claiming the veteran-owned preference, attach documentation, sign and return form with response to the solicitation. Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

27. **PUBLIC INFORMATION.** Once the information contained in the responses is deemed public information, interested parties may request to obtain the public information. You may call 651.201.2413 between the hours of 8:00 a.m. to 4:30 p.m. to arrange this.

28. **PUBLICITY.** Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, 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 Master Agreement prior to its approval by the State's Authorized Representative and the State's Assistant Director or designee of Materials Management Division. The Contract Vendor shall make no 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 the Master Agreement without the prior written consent of the

State's Assistant Director or designee of Materials Management Division. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

29. **PURCHASE ORDERS. NEGOTIATED.** The State requires that there will be no minimum order requirements or charges to process an individual purchase order. The Master Agreement number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract. Unless otherwise expressly agreed between a Purchasing Entity and the Contract Vendor, any preprinted terms on the Purchasing Entity's purchase order shall be given no force or effect and no terms of a purchase order that conflict with this Master Agreement or the Participating Addendum shall be binding on Contract Vendor.

30. **RIGHTS RESERVED.** Notwithstanding anything to the contrary, the State reserves the right to:
    a. reject any and all responses received;
    b. select, for Master Agreements or for negotiations, a response other than that with the lowest cost;
    c. waive or modify any informalities, irregularities, or inconsistencies in the responses received;
    d. negotiate any aspect of the proposal with any responder and negotiate with more than one responder;
    e. request a BEST and FINAL OFFER, if the State deems it necessary and desirable; and
    f. terminate negotiations and select the next response providing the best value for the State, prepare and release a new RFP, or take such other action as the State deems appropriate if negotiations fail to result in a successful Master Agreement.

31. **RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, and installation by the Contract Vendor and in the possession of the Contract Vendor or their authorized agent.

32. **SEVERABILITY.** If any provision of the Master Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions. If the remainder of the Master Agreement is capable of performance it shall not be affected by such declaration or finding and shall be fully performed.

33. **STATE AUDITS** (Minn. Stat. § 16C.05, subd. 5). The books, records, documents, and accounting procedures and practices of the Contract Vendor or other party, that are relevant to the Master Agreement or transaction are subject to examination by the contracting agency and either the Legislative Auditor or the State Auditor as appropriate for a minimum of six years after the end of the Master Agreement or transaction. The State reserves the right to authorize delegate(s) to audit this Master Agreement and transactions.

34. **SURVIVABILITY.** The following rights and duties of the State and responder will survive the expiration or cancellation of the resulting Master Agreements. These rights and duties include, but are not limited to paragraphs: Indemnification, Hold Harmless and Limitation of Liability, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Publicity, Intellectual Property Indemnification, and Admin Fees.

35. **TRADE SECRET/CONFIDENTIAL INFORMATION.** Any information submitted as Trade Secret must be identified and submitted per the Trade Secret Form and must meet Minnesota Trade Secret as defined in Minn. Stat. § 13.37

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT B - PRICING

1. **BAND(S) AWARDED:** Band 1: Desktop Band 2: Laptop Band 3: Tablet Band 4: Server Band 5: Storage.

2. **PRICE STRUCTURE.** The contract employs a MINIMUM discount-off baseline price list structure with category exceptions for each band. The category discounts may be higher or lower than the than the band discount. The minimum discount and categorized exceptions will be applied to all "quantity one" procurements. An end user will be able to verify pricing using the named base line price list and the minimum discounts with the categorized exceptions provided in the Master Agreement.

3. **PRICE GUARANTEE.** These discounts must remain firm, or the discount may be increased, during the term of the Master Agreement.

4. **BASELINE PRICE LIST.** The Base Line Price is designated in the Pricing Discount Schedule. The Base Line Price List must be accessible and verifiable by potential end users preferably on the Contract Vendor Website. All historic versions of the Baseline Price List must be made available upon request pursuant to the audit provisions.

5. **PRODUCT AND SERVICE SCHEDULE (PSS).** The Product and Service Schedule (PSS) identifies a complete listing of all products and services included in the awarded Master Agreement. The PSS serves as the Contract Catalog. **The PSS will be submitted to the Lead State following contract award and must be approved by the Lead State prior to the start of any sales.** The PSS must be available on the Contract Vendor website for end users to verify pricing based on the minimum discounts with category exceptions provided off a designated base line price list. The Contract Vendor will work with each State to develop a satisfactory PSS reflecting the individual States restrictions.

6. **CHANGES TO THE PSS.** Contract Vendor will request changes to the PSS utilizing an Action Request Form (ARF) Submittals will be reviewed by the Lead State quarterly. Obsolete and discontinued products will be removed.

7. **BULK/VOLUME PRICING.** Further bulk/quantity savings may be obtained when additional quantities are requested. Additional savings are expected when competing awarded vendors for volume pricing.

8. **PROMOTIONAL OFFERS.** Contract Vendors may provide promotions for deeply discounted products based on their inventory and sales. The Contract Vendors will be responsible to market these offers.

9. **PREMIUM SAVINGS PACKAGE PROGRAM.** Contract Vendors participating in the Premium Savings Package (PSP) Program will commit to the standard configurations. The standards currently are refreshed every six months (May and November). Refresh schedule is subject to change. See current configurations: http://www.wnpsp.com/index.html. States and other Participating Entities can choose to purchase these packages without any signing additional documents.

10. **TRADE-IN.** Trade-In Programs are the option of the Participating Entity. The Participating Addendum by each State may address the allowance of Trade-Ins.

11. **SERVICES.** Services are at the option of the Participating Entity. The Participating Addendum by each State may address service agreement terms and related travel.

12. **LEASING.** The Discount schedule will indicate if the Contract Vendor provides leasing. Participating Entities may enter in to lease agreements if they have the legal authority to enter into these types of agreements. The Participating Addendum by each State will identify if and how leasing agreement terms will be conducted.

13. **FREIGHT**. All prices shall be FOB Destination, prepaid and allowed (with freight included in the price), to the address, receiving dock or warehouse as specified on the ordering agency's purchase order, In those situations in which the "deliver-to" address has no receiving dock or agents, the Contract Vendor must be able to deliver to the person specified on the PO without additional cost. If there is a special case where inside delivery fee must be charged, the Contract Vendor will notify the customer in advance in order for the customer to determine if the additional cost will affect the decision to utilize the Contract Vendor.

14. **DELIVERY.** Delivery of ordered product should be completed within thirty (30) calendar days after receipt of an order, unless otherwise agreed to by the ordering agency.

Admin Minnesota
DEPARTMENT OF ADMINISTRATION

COMPUTER EQUIPMENT
2014-2019

WSCA-NASPO
COOPERATIVE PURCHASING ORGANIZATION

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT B - PRICING SCHEDULE

1. BASELINE PRICING DELL RETAIL PRICE LIST		
LINK: http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf		
2. BAND DISCOUNTS – (CATEGORY EXCEPTIONS APPLICABLE IN ALL BANDS)	DELL CATEGORY	MINIMUM DISCOUNT
BAND 1 DESKTOP	A	13.5%
BAND 2 LAPTOP	A	13.5%
BAND 3 TABLET	H	4%
BAND 4 SERVER	A	13.5%
BAND 5 STORAGE	A	13.5%
IMPORTANT: The minimum discount is provided, refer to Contract Vendor's Website for any additional discounts and request a quote for bulk/volume discounts. All prices shall be FOB Destination, prepaid and allowed (with freight included in the price). If there is a special case where inside delivery fee must be charged, the Contract Vendor will notify the customer in advance.		
CATEGORY EXCEPTIONS:		
Toner	F	1.5%
Value Latitude, OptiPlex, Workstation; Selected Products	H	4%
Selected Promo Offers; Inspiron; Selected Latitude; SC PowerEdge; Selected Dell | EMC, Dell Branded Peripherals/Imaging; PowerConnect, Axim, Projector, Printer	S	2.5%
Spare Parts, selected Dimension Brand	U, W, Z	.5%
3. THIRD PARTY PRODUCTS - (APPLICABLE IN ALL BANDS)	M	5.5%
CATEGORY EXCEPTIONS:		
Selected Third Party Products (software and peripherals)	X	.5%
Selected Third Party Printers	F	1.5%
4. SERVICES		
Services are at the option of Participating States. Participating Addendums by each State may address service agreement terms and related travel. States may negotiate additional services. The majority of Dell-branded hardware includes a one-year warranty. Customer may purchase warranty upgrades for 2, 3, 4 or 5 years for certain Dell-branded hardware as offered by Dell. For Dell standard warranty information see http://www.dell.com/learn/us/en/uscorp1/solutions/limited-hardware-warranties		
Selected Service on Poweredge Departmental Servers; Directline Service, 4-Hr On-Site Critical Care Plus; Business Care Plus On-Site Service (all years)	O	13.3%
On-site – Next Business Day On-site (extended yrs); Critical Care On-site Service (all yrs); other svcs	R,Z,Z1&ZS	.5%
5. LEASING		
Participating Addendum may identify if and how leasing agreement terms will be conducted.		
6. ADDITIONAL DISCOUNTS – Request a quote for discounts on bulk/volume purchases		

a. Per Transaction Multiple Unit: Contact your Sales Representative for additional discounts for volume purchases.

Minimum Dollar Volume Associated with Single Transaction	Maximum Dollar Volume Associated with Single Transaction	Cat A only, Single Transaction, Maximum of 10 ship to Locations
$50,000.00	$99,999.99	Greater than or Equal to 1%
$100,000.00	$199,999.99	Greater than or Equal to 2%
$200,000.00	$499,999.99	Greater than or Equal to 4%
$500,000.00	$999,999.99	Greater than or Equal to 6%
$1,000,000.00	No Maximum	Greater than or Equal to 8%

b. Cumulative: Cumulative Discounts are managed at the Master Agreement Level based on total volume.

Cumulative Dell Spend "Gates"	Category A Discount (Adjustment to the Matrix)
Up to $2B	13.5%
$2B to $4B	14%
$4B to $6B	14.5%
$6B to $8B	15%
$8B to $10B	15.5%
Over $10B	16%

c. Other Discounts provided: For purchases made online via Dell.com, Dell offers an additional 0.5% per category, except for Category O. For online purchases of Category O Services, Dell will offer a 13.5% discount.

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT C - PRODUCT AND SERVICE SCHEDULE (PSS)

1. **MAINTAINING THE PSS.** The Product and Service Schedule (PSS) identifies a complete listing of all products and services included in the awarded Master Agreement. The PSS serves as the WSCA-NASPO Contract Catalog. **The PSS will be submitted to the Lead State following contract award and must be approved by the Lead State prior to the start of any sales.** The PSS must be available on the Contract Vendor website for end users to verify pricing based on the minimum discounts with category exceptions provided off a designated base line price list. The Contract Vendor will work with each State to develop a satisfactory PSS reflecting the individual States restrictions. The Contract Vendor will work to develop a PSS satisfactory to the Lead State prior to the start of sales and containing the following information:

   a. Band number
   b. Part # - SKU #
   c. Manufacturer
   d. Description
   e. Minimum Discount
   f. Category Code (This code will be refined during the approval process)
   g. Other fields approved by the Lead State

2. **CHANGES TO THE PSS:** Contract Vendor will request changes to the PSS utilizing an Action Request Form (ARF) Submittals will be reviewed by the Lead State quarterly. Obsolete and discontinued products will be removed.

3. **FORMAT:** The format for the final product and service schedule will be approved within 30 days of contract award. Suggested format is provided below:

MANUFACTURER NAME _____ **DATE:** _____
BASELINE PRICE LIST: _____
LINK: _____

BAND	Part # - SKU#	MANUFACTURER	DESCRIPTION	MINIMUM DISCOUNT	CATEGORY CODE
1	XYZ	ABC	DESKTOP	60%	1M
2	550	ZZZZZZZ	LAPTOP CART	10%	2TM
3	123A	ABC	SUPER TABLET	25%	3A

4. **THIRD PARTY PRODUCTS:** A list of third party products is to be submitted to the Lead State. Approval must be received from the Lead State prior to adding third party products to the Product and Service Schedule. Master Agreement restrictions of third party products include:

   a. Contract Vendors can only offer Third Party Products in the bands they have been awarded.
   b. Contract Vendor cannot offer products manufactured by another Contract Vendor holding a Minnesota WSCA-NASPO Master Agreement unless approved by the Lead State.
   c. The Contract Vendor will assign the manufacturer or publisher's warranty and maintenance. The Contract Vendor will provide warranty and maintenance call numbers and assist the customer in engaging the manufacturer on warranty and maintenance issues.
   d. Any additions to the Third Party Product list must be submitted utilizing the Action Request Form.
   e. The approved Third Party Product list will be clearly posted on the Vendor provided website and updated as products are approved.

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT D - WEBSITE

1. **IMPLEMENTATION.** Within 30 calendar days of Master Agreement award, the Contract Vendor must provide a sample URL of the Master Agreement webpage to the Lead State for review and approval. The Lead State will review and determine acceptability of the website format and data. If the information is determined to be unacceptable or incorrect, the Contract Vendor will have 15 calendar days to provide revisions to the Lead State. Once the website is approved, the Contract Vendor may not make material changes to the website without notifying the Lead State and receiving written approval of the changes utilizing the Action Request Form. The Contract Vendor must continue to monitor and update the website throughout the life of the contract. Periodic audits may be conducted to ensure websites are updated and Contract Vendors will be expected to correct deficiencies.

2. **WEBSITE CONTENT.** The website must be separate from the Contract Vendor's commercially available (i.e., public) on-line catalog and ordering systems. Contract Vendor agrees to pursue design of a website to include the items listed below. The Lead State will review and determine acceptability of the website format and data as stated in Item 1 above.

   a. Baseline Price List and historic versions
   b. Approved Product and Service Schedule (PSS)
   c. Product specifications, pricing, and configuration aids for the major product categories proposed that can be used to obtain an on-line quote
   d. Third Party Product list will be clearly posted on the Vendor provided website and updated as products are approved
   e. Link to the WSCA-NASPO EmarketCenter
   f. Online ordering capability with the ability to remember multiple ship to locations if applicable to product
   g. Contact information for order placement, service concerns (warranty and maintenance), problem reporting, and billing concerns
   h. Sales representatives for participating entities
   i. Purchase order tracking
   j. Available Twenty-four (24) hours per day, seven (7) days per week availability, except for regularly scheduled maintenance
   k. Additional Terms may not be posted on the Website without written approval of the Lead State
   l. Link to the WSCA-NASPO EmarketCenter if a State is participating
   m. Information on accessibility and accessible products
   n. If participating in Premium Savings Package Program, lead with these products and display prominently on the website
   o. Links to environmental certification, including but not limited to take-back/recycling programs,
   p. Information regarding the use of Conflict minerals, as required by Section 13(p) of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. See: http://www.sec.gov/rules/final/2012/34-67716.pdf
   q. Service options, service agreements for negotiations when allowed by a participating addendum
   r. EPEAT, Energy Star, etc.
   s. Link to Signed Participating Addendums
   t. Link to Signed Master Agreement
   u. Link to solicitation and Response

3. **TERMINATION** Upon termination or expiration of the Master Agreement awarded from this RFP all websites, on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website.

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT E - ACTION REQUEST UPDATE FORM (ARF)

The Action Request Form (ARF) provided in this document must be utilized by the Contract Vendor to provide quarterly updates of PSS and to make requests. The Action Request Forms may be reviewed quarterly by the Lead State.

DATE: _____

ATTN: WSCA-NASPO Master Agreement Administrator

RE: Master Agreement #_____with _____(Contract Vendor)

Dear WSCA-NASPO Master Agreement Administrator:

_____ (Contract Vendor) is providing the following update and/or requesting the action noted below.

Action Requested: _____
Action Log: _____ Verify Log is attached

SELECT ACTION BELOW AND PROVIDE REQUIRED INFORMATION:

___Update of Product & Service Schedule — Provide summary of additions, deletions and pricing changes.
NOTE: THIS WILL BE A NOTIFICATION OF CHANGES TO THE PSS, APPROVAL WILL NOT BE NEEDED
___Quarterly Self Audit — Check this box to verify the Quarterly Self Audit has been completed

___Third Party Product Addition — Provide warranty Guarantee

___Marketing Approval — Attach Materials for review

___Material Website Change — Describe and provide link for review

___Miscellaneous Inquiry — Provide detail (e.g. key contact change, etc.)

The Contract Vendor certifies Products and Services provided meet the terms and conditions of the Master Agreement and understands they may be audited for compliance. Additional information may be requested upon submission. The Lead State may remove previously approved items throughout the life of the Master Agreement if in the best interest at its sole discretion.

Contract Vendor: _____ Name of Requester: _____

Title of Requester: _____

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT E - ACTION REQUEST FORM (ARF)

ACTION REQUEST FORM
LOG

Submit updated Action Log with each update. Log must provide history of previous update.

CONTRACT VENDOR:_____

Contact Name and Email (for questions):_____

DATE:_____

DATE SUBMITTED	ACTION REQUESTED:	DATE APPROVED

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT F - REPORTING

1. **OWNERSHIP:** Recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and WSCA-NASPO shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided.

2. **DUE DATE:** Reports shall be due no later than the last day of the month following the end of the calendar quarter.

	FROM	TO	DUE
Q1	January 1	March 31	April 30
Q2	April 1	June 30	July 31
Q3	July 1	September 30	October 31
Q4	October 1	December 31	January 31

3. **REQUIRED REPORTS:**

	Report Name	Submitted to	Purpose & Submittal
1	WSCA-NASPO Administrative Fee	WSCA-NASPO	Identify total sales and administrative fee due to WSCA-NASPO 1) Go to: http://www.naspo.org/WNCPO/Calculator.aspx 2) Complete all contract report information fields 3) Enter total sales per State or Select "no sales for quarter" checkbox 4) Click on Submit button
2	WSCA-NASPO Detailed Sales	WSCA-NASPO	Detailed sales data by line item. Currently via an Excel Report template. Future MAY involve a portal. No modifications may be made by the Contract Vendor to the template. This report may also fulfill the reporting requirements of self audits, premium savings sales, and Bring Your Own Device Employee Sales.
3	Participating States	Participating State	Contract Vendor may utilize the detailed sales report to report to individual States unless otherwise directed by the State. States may require additional reporting.
4	Participating Addendum Status	WSCA-NASPO	Provides status of Participating Addendums. Excel Template to be provided by WSCA-NASPO.
5	Premium Saving Package (PSP)	PSP Lead	Additional reporting may be requested.
6	Quarterly Updates of PSS and Self Audit	Lead State	Utilize the Action Request Form (ARF)

COMPUTER EQUIPMENT
2014-2019

MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT G - DEFINITIONS

Acceptance. See Master Agreement Terms regarding Acceptance and Acceptance Testing.
Accessory. Accessories do not extend the functionality of the computer, but enhances the user experience i.e., mouse pad, monitor stand. For the purposes of this proposal, accessories are considered peripherals.
Bands: For the purpose of this solicitation, there are six product bands which may be awarded. Each product band includes related peripherals and services. Responders must only respond to Bands in which they manufacture the defined product. Responder may receive an award in one or more bands for which they manufacture a product based on the evaluation.
BAND 1: DESKTOP. A desktop computer is a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: 1) the processor, 2) display monitor and 3) input devices usually a keyboard and a mouse. All operating systems for tablets are allowed. Zero Clients, Thin clients, all in ones and workstations will also be included under desktops. Ruggedized equipment may also be included in the Product and Service schedule for this band.
BAND 2: LAPTOP. A laptop computer is a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery. All operating systems for tablets are allowed. Laptops will include notebooks, ultrabook, mobile thin clients, chromebooks and netbooks. Computers with mobile operating systems will also be included under laptops. Tablets that have the option to be utilized with a keyboard can be sold in this band. Ruggedized equipment may also be included in the Product and Service Schedule for this band.
BAND 3: TABLET. A tablet is a mobile computer that provides a touchscreen which acts as the primary means of control. All operating systems for tablets are allowed. Ruggedized equipment may also be included as a category in the Product and Service Schedule for this band.
BAND 4: SERVER. A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. This band also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems. Ruggedized equipment may also be included in the Product and Service Schedule for this band.
BAND 5: STORAGE. Storage is hardware with the ability to store large amounts of data. This band includes SAN switching necessary for the proper functioning of the storage environment. Ruggedized equipment may also be included in the Product and Service Schedule for this band.
~~**BAND 6: RUGGEDIZED DEVICES** Ruggedized refers to devices specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures and wet or dusty conditions. Ruggedized Devices may also be offered under bands 1-5 of the Master Agreement.~~ BAND 6 REMOVED. RUGGEDIZED EQUIPMENT MAY BE SOLD IN BANDS 1-5, PROVIDED IT MEETS BAND REQUIREMENTS.
Cloud Services. Delivery of computing as a service rather than a product, whereby shared resources, software and information are provided to computers and other devices as a utility over a network, such as the Internet. (Cloud Services including acquisitions structured as managed on-site services are not allowed.)
Contract Vendor or Contractor. The manufacturer responsible for delivering products or performing services under the terms and conditions set forth in the Master Agreement. The Contract Vendor must ensure partners utilized in the performance of this contract adhere to all the terms and conditions. For the purposes of this RFP, the term Partner will be utilized in naming the relationship a manufacturer has with another company to market and sell the contract. Participating States will have final determination/approval if a Partner may be approved for that state in the role identified by the Contract Vendor.
Components. Parts that make up a computer configuration.
Configuration. The combination of hardware and software components that make up the total functioning system.
Desktop. This is Band 1 of this solicitation. A desktop computer is a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: 1) the processor,

2) display monitor and 3) input devices usually a keyboard and a mouse. Desktop virtualization endpoints such as zero and thin clients will also be included under the Desktop Band.

Energy Star®. A voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at http://www.energystar.gov.

EPEAT. A system for identifying more environmentally preferable computer desktops, laptops, and monitors. It includes an ANSI standard - the IEEE 1680 EPEAT standard – and website www.epeat.net to identify products manufacturers have declared as meeting the standard. EPEAT provides a clear and consistent set of performance criteria for the design of products. It is not a third-party certification program. Instead, Manufacturers self-certify that their products are in conformance with the environmental performance standard for electronic products.

FOB Destination. Shipping charges are included in the price of the item and the shipped item becomes the legal property and responsibility of the receiver when it reaches its destination unless there is acceptance testing required.

FOB Inside Delivery. Special Shipping arrangements, such as inside delivery, may include additional fees payable by the Purchasing Entity. Any FOB inside delivery must be annotated on the Purchasing Entity ordering document.

General Consulting. Services related to advising agencies on how best to use information technology to meet business objectives. Examples of such services would include management and administration of IT systems. Each State will have varying laws, rules, policies and procedures surrounding general consulting which need adherence. Minnesota Statute section 16C.08 defines general consulting for the State of Minnesota. https://www.revisor.mn.gov/statutes/?id=16C.08

Laptop. This is Band 2 of this solicitation. A laptop computer is a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery. Laptop Band may include notebooks, ultrabooks, and netbooks. Computers with mobile operating systems will also be included under the Laptop Band.

Lead State. The State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States. Minnesota is the Lead State for this procurement and the laws of Minnesota Statute Chapter 16C apply to this procurement.

Manufacturer. A company that, as one of its primary business function, designs, assembles owns the trademark/patent and markets branded computer equipment.

Master Agreement. The underlying agreement executed by and between the Lead State and the Contract Vendor.

Middleware. Middleware is the software "glue" that helps programs and databases (which may be on different computers) work together. Its most basic function is to enable communication between different pieces of software.

Options. An item of equipment or a feature that may be chosen as an addition to or replacement for standard equipment and features.

Order. A purchase order, sales order, or other document used by a Purchasing Entity to order the Equipment.

Participating Addendum. A written statement of agreement signed by the Contract Vendor and a Participating State or other Participating Entity that clarifies the operation of this Master Agreement for the Participating Entity (e.g., ordering procedures specific to a Participating State) and may add other state-specific language or other requirements. A Participating Addendum evidences the Participant's willingness to purchase and the Contract Vendor's willingness to provide equipment under the terms and conditions of this Master Agreement with any and all exceptions noted and agreed upon.

Participating States. States that utilize the Master Agreement established by the RFP and enter into a Participating Addendum which further defines their participation.

Participating Entity. A Participating State, or other legal entity, properly authorized by a Participating State to enter into the Master Agreement through a Participating Addendum and that authorizes orders from the Master Agreement by Purchasing Entities. Under the WSCA-NASPO program, in some cases, local governments, political subdivisions or other entities in a State may be authorized by the chief procurement official to execute its own Participating Addendum where a Participating Addendum is not executed by the chief procurement official for that state that covers local governments, political subdivisions, or other government entities in the state.

Partner. A company, authorized by the Contract Vendor and approved by the Participating State, to provide marketing, support, or other authorized contract services on behalf of the Contract Vendor in accordance with the terms and conditions of the Contract Vendor's Master Agreement. In the RFP, Partner is the term that is used to call out the many different relationships a manufacturer may have with another company to market their product including, but not limited to agents, subcontractors, partners, fulfillment partners, channel partners, business partners, servicing subcontractor, etc.

Peripherals. A peripheral means any hardware product that can be attached to, added within or networked with personal computers, servers and storage. Peripherals extend the functionality of a computer without modifying the core components of the system. For the purposes of this proposal, peripherals are defined as including accessories. Peripherals may be manufactured by a third party, however, Contract Vendor shall not offer any peripherals manufactured by another Contract Vendor holding a Master Agreement. The Contract Vendors shall provide the warranty service and

maintenance for all peripherals on the Master Agreement. **Examples of peripherals/accessories/options:** Include but are not limited to: printers, monitors, multifunction printers, audiovisual equipment, instructional equipment, cabling, modems, networking to support server, storage and client applications such as routers, switches. Software is an option which must be related to the purchase of equipment and subject to configuration limits. **Third party products are allowed to be offered as peripherals/accessories/options and may be offered in any related band.**
Per Transaction Multiple Unit Discount. A contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Participating Entity or multiple entities conducting a cooperative purchase.
Premium Savings Packages. Deeply discounted standard configurations available to Purchasing Entities using the Master Agreement. 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. WSCA-NASPO reserves the right to expand and modify the PSP throughout the life of the contract. See http://www.wnpsp.com/index.html.
Purchasing Entity – means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues an order against the Master Agreement and becomes financially committed to the purchase.
Ruggedized. This was band 6 of this solicitation. Ruggedized refers to equipment specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures and wet or dusty conditions.
Services. Broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master 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. Contract Vendors 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 resulting contracts. EACH PARTICIPATING STATE DETERMINES RESTRICTIONS AND NEGOTIATES TERMS FOR SERVICES.
Server. This is Band 4 of this solicitation. A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. This band also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems. Ruggedized equipment may also be included in the Product and Service Schedule for this band.
Storage. This is Band 5 of this solicitation. Storage is hardware with the ability to store large amounts of data. This band includes SAN switching necessary for the proper functioning of the storage environment. Ruggedized equipment may also be included in the Product and Service Schedule for this band.
Storage Area Network. A storage area network (SAN) is a high-speed special-purpose network (or subnetwork) that interconnects different kinds of data storage devices with associated data servers on behalf of a larger network of users.
Storage as a Service (STaaS). An architecture model by which a provider allows a customer to rent or lease storage space on the provider's hardware infrastructure on a subscription basis. E.g., manage onsite or cloud services.
Software. For the purposes of this proposal, software is commercial operating off the shelf machine-readable object code instructions including microcode, firmware and operating system software that are preloaded on equipment. The term "Software" applies to all parts of software and documentation, including new releases, updates, and modifications of software.
Tablet. This is Band 3 of this solicitation. A tablet is a mobile computer that provides a touchscreen which acts as the primary means of control. Tablet band may include notebooks, ultrabooks, and netbooks that are touchscreen capable.
Takeback Program. The Contract Vendor's process for accepting the return of the equipment or other products at the end of life.
Third Party Products. Products sold by the Contract Vendor which are manufactured by another company.
Upgrade. Refers to replacement of existing software, hardware or hardware component with a newer version.
Warranty. The Manufacturers general warranty tied to the product at the time of purchase.
Wide Area Network or WAN. A data network that serves users across a broad geographic area and often uses transmission devices provided by common carriers.
WSCA-NASPO. The WSCA-NASPO cooperative purchasing program, facilitated by the WSCA-NASPO Cooperative Purchasing Organization LLC, a 501(c)(3) limited liability company that is a subsidiary organization of the National Association of State Procurement Officials (NASPO). The WSCA-NASPO Cooperative Purchasing Organization facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. The WSCA-NASPO Cooperative Development Team is identified in the Master Agreement as the recipient of reports and may be performing contract administration functions as assigned by the Lead State Contract Administrator.

PARTICIPATING ADDENDUM
to the
NASPO ValuePoint Cooperative Procurement Program
COMPUTER EQUIPMENT MASTER AGREEMENT
Administered by the State of Minnesota

Master Agreement No: MNWNC-108

Dell Marketing, L.P.

And
The State of Florida
Dell Contract Code WN08AGW
Alternate Contract Source No. 43211500-WSCA-15-ACS

1. Scope: The State of Minnesota, Department of Administration, Materials Management Division publicly conducted a Request for Proposal on behalf of the State of Minnesota and the National Association of State Procurement Officials Cooperative Procurement Program (NASPO ValuePoint) resulting in Master Agreement number MNWNC-108. The Master Agreement led by the State of Minnesota along with a multi-state sourcing team, was created for use by state agencies and other entities that are authorized by that state's statutes to utilize cooperative agreements, upon written approval of the State's chief procurement official.

   The Master Agreement for computer equipment (desktops, laptops, tablets, servers, and storage, and ruggedized devices, including related peripherals & services) identifies the product bands awarded to the Contractor.

   This Participating Addendum (Addendum) is made and entered into as of the Effective Date by and between the State of Florida (Participating State) and Dell Marketing, L.P. (Contractor). This Addendum allows for purchase of computer equipment from the Master Agreement. This Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the terms of the Master Agreement.

2. Participation: Use of specific NASPO ValuePoint cooperative agreements by eligible users authorized by a Participating State's statutes are subject to the prior approval of the respective State Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer.

3. Order of Precedence:
   In the event of a conflict, the following documents shall have priority in the order set forth below:

   a. This Participating Addendum
   b. Exhibit 2, PUR 1000
   c. Exhibit 1, Minnesota NASPO ValuePoint Master Agreement No. MNWNC-108.

   Contractor Modifications or Additions to terms and conditions. Notwithstanding any term to the contrary in Exhibit 2:
   a. Returns and Exchanges. Additional fees, including up to a 15% restocking fee, may apply. Dell will

notify eligible user if such fees apply upon receipt of return request.

b. Software Licensing. The terms of the Master Agreement shall be the controlling terms with respect to Software licensing.

c. Payment. Eligible User will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a Product or completion of Service. In the event that the Contractor has not been notified within 30 calendar days from delivery of Product or completion of Service, the Product and Services will be deemed accepted on the 31st day after delivery of Product or completion of Services.

d. Subcontracting. Contractor may retain subcontractors from time to time in the ordinary course of business to perform imaging or Custom Factory Integration, warranty, break/fix, administrative and back office services, provided that such subcontractors will not have access to Eligible User's confidential data (other than billing and contact information) and provided that Contractor shall remain responsible for the performance of its obligations under this Addendum.

e. Delivery. F.O.B. Destination. Title and risk of loss pass to customer upon delivery. Dell standard 3-5 day ground shipping and handling will be paid for by Contractor. There may be additional fees for custom shipping or delivery requests, including but not limited to inside delivery, which will be quoted to customer upon request.

5. Participating State Modifications or Additions to Master Agreement:

A. Upon execution of this Addendum, all eligible users may purchase products and services under contract using the Florida alternate contract source number 43211500-WSCA-15-ACS. Eligible users acknowledge and agree to be bound by the terms and conditions of the Master Agreement except as otherwise specified in this Addendum.

1. The following are modifications to the Master Agreement:

a. PUR 1000 Form:, General Contract Conditions, is attached hereto and incorporated herein as Exhibit 2

b. Discriminatory Vendors. A vendor placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or transact business with any public entity.

c. Effective Date: This Addendum shall become effective on the last date signed below and is

coterminous with Exhibit 1, unless terminated earlier by the Participating State.

d. Vendor Registration and Transaction Fees: In order to complete any transaction between an eligible user and the Contractor, the Contractor must be registered with the Department of State, Division of Corporations (www.sunbiz.org) and in MyFloridaMarketPlace. Section 287.042(1)(h), Florida Statutes, and Rule 60A-1.031, Florida Administrative Code, is hereby incorporated by reference. All transactions are subject to a transaction fee pursuant to the rule. This fee amount will be adjusted to the Contractor's Master Agreement pricing and not invoiced or charged to the Eligible User.

e. Purchases: In order to procure products and services hereunder, eligible users shall issue purchase orders or use a purchasing card which shall reference Florida alternate contract source number 43211500-WSCA-15-ACS. Use of a purchasing-card is permitted at the time of order placement only, and not permitted for payment of invoices issued by Contractor. Eligible users are responsible for reviewing the terms and conditions of this Addendum including all Exhibits.

f. Compliance with Laws: The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Rule 60A-1 of the Florida Administrative Code govern this Addendum. By way of further non-exhaustive example, the Contractor shall comply with section 274A of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for termination or nonrenewal of this Addendum.

g. Additional Eligible User Terms: If any additional ordinance, rule, or other local governmental authority requires additional contract language before an eligible user can make a purchase under this Addendum, the eligible user is responsible for entering a separate agreement with the Contractor and capturing that additional contract language therein.

h. Provisions of section 287.058, Florida Statutes: The provisions of section 287.058(1)(a)- (c) and (g), Florida Statutes, are hereby incorporated by reference.

i. Public Records: The Contractor shall allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this Addendum,

unless the records are exempt from section 24(a) of Article I of the State Constitution or subsection 119.07(1), Florida Statutes. The Participating State may unilaterally terminate this Addendum if the Contractor refuses to allow public access as required in this section. If, under this Addendum, the Contractor is providing services and is acting on behalf of the public agency as provided under subsection 119.011(2), Florida Statutes, the Contractor must:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
(2) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
(4) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of this Addendum and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to public agency in a format that is compatible with the information technology systems of the Department.

j. The State of Florida's performance and obligation to pay under this Addendum is contingent upon an annual appropriation by the Legislature. The vendor shall comply with section 11.062, Florida Statutes and section 216.347, Florida Statutes, prohibiting use of funds to lobby the Legislature, Judicial, or state agencies.

B. Contract Document: This Addendum and its Exhibits set forth the entire agreement between the parties with respect to the subject matter of the contract.

C. Intellectual Property: The parties do not anticipate that any intellectual property will be developed as a result of this Addendum. However, unless specified otherwise in the Statement of Work entered into by Dell and the Eligible User, the rights, title and interest in any deliverables or intellectual property developed as a result of this Addendum shall be subject to the terms of Section 30 of the Master Agreement

D. Employment Eligibility Verification: Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E- Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall require resellers/partners performing work or providing services under this Addendum to utilize the E-Verify system to verify employment of all new employees hired by the reseller/partner during the Addendum term.

E. Price List/Preferred Price: The Contractor's price list will be the same as the WSCA-NASPO price list, and the Department will post a link on the Department's website to the price list posted on the WSCA-NASPO website. Contractors are encouraged to provide special pricing and/or tiered discount rates applicable to State of Florida Eligible Users wherever possible. Paragraph 4(b) of the PUR1000 is not applicable.

F. Scrutinized Company List: In executing this Addendum, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to subsection 287.135(5), Florida Statutes, Contractor agrees the Participating State may immediately terminate this Addendum for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Addendum.

G. Orders: Any Order placed by eligible users under this Participating Addendum referencing Alternate Contract Source No. 43211500-WSCA-15-ACS for a product and/or service available from the Master Agreement shall be deemed to be a sale under and governed by the prices and other terms and conditions of the Master Agreement and this Addendum unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

1. The Contractor agrees to meet the following requirements:
   a. Provide appropriate contact information for eligible users to use for product and/or service inquiries and purchases, as well as, the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the Master Agreement; and
   b. If orders are to be sent to resellers/partners for fulfillment then the Contractor is

responsible for providing and updating this list of authorized resellers/partners for use to the Participating State/Entity.

2. Contractor must be able to accept purchase orders via fax, e-mail, or cXML as identified in H.1 below.

H. Electronic Invoicing: The Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MyFloridaMarketPlace (MFMP) within ninety (90) days from Addendum effective date. Electronic invoices shall be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below:

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

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

The Contractor will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

I. Contract Quarterly Reports: The Contractor shall submit a Quarterly Report in the Standard Report Format and with the Data Elements, described below, electronically to the Participating State/Entity within 30 days of the end of the quarter. The Contractor will cooperate with Participating State/Entity to accommodate reasonable requests for additional reports within 30 days written notice of such request, provided such additional reports are within Contractor's standard reporting capabilities with respect to data elements and format ("Contractor Standard Reports"). Custom reports not within Contractor's standard reporting capabilities may be available upon request for a reasonable fee to be quoted upon Contractor's review of the request. Failure to provide the Quarterly Report or other Contractor Standard Reports reasonably requested by the Participating State/Entity may result in the Contractor being found in default and may result in termination of this Addendum.

Sales will be reviewed on a quarterly basis. Should no sales be recorded in two consecutive contract quarters, the Participating State/Entity may terminate this Addendum.

Standard Report Format and Data Elements: Contractor shall report detailed sales data under this Participating Addendum in the format as required under the Master Agreement. Data elements on such report include:

- State;
- Entity/customer type, e.g., local government, higher education, K12, non-profit;
- Purchasing Entity name;
- Purchasing Entity bill-to and ship-to locations;
- Purchasing Entity and Contractor Purchase Order identifier/number(s);
- Purchase Order Type (e.g., sales order, credit, return, upgrade, determined by industry practices);
- Purchase Order date;
- Ship Date; and
- Line item description, including product number if used. The report shall be submitted.

Reports shall be delivered to the Participating State/Entity electronically through email; CD-Rom, jump drive or other electronic matter as determined by the Participating State/Entity.

J. Business Review Meetings: The Participating State/Entity reserves the right to schedule business review meetings as frequently as necessary. The Participating State/Entity will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Participating State/Entity for review and acceptance. The Contractor shall address the agenda items and any of the Participating State/Entity's additional concerns at the meeting. Failure to comply with this section may result in the Contractor being found in default and Addendum termination.

K. Commitment to Diversity in Government Contracting: The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, women-, wartime-, and service-disabled veteran business enterprises in the economic life of the State. The State of Florida Mentor Protégé Program connects minority-, women-, wartime-, and service-disabled veteran business enterprises with private corporations for business development mentoring. We strongly encourage firms doing business with the State of Florida to consider this initiative. For more information on the Mentor Protégé Program, please contact the Office of Supplier Diversity at (850) 487-0915 or osdhelp@dms.myflofida.com.

Upon request, the Contractor shall report to the Office of Supplier Diversity spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period. Commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this Addendum.

L. Resellers/Partners: The Contractor may use resellers/agents in order to provide computer equipment and services. All resellers/partners shall be the direct responsibility of the Contractor. The Contractor is responsible for all liability, terms and conditions within Master Agreement and this Addendum. The Contractor shall make all determinations about which entities in the State of Florida that the Contractor authorized reseller/agent may support. The Contractors resellers/agents' participation will be in accordance with the terms and conditions set forth in the

aforementioned Master Agreement and this Addendum. If a reseller/agent is authorized to conduct business on behalf of the Contractor and the reseller/agent is to receive compensation from the Contractor for its services, then any dispute between the Contractor and the reseller/agent shall be resolved between the Contractor and the reseller/agent. The State of Florida is not a party to any agreement entered into between the Contractor and its resellers/agents. The Contractor shall be responsible to report all contract sales (and pay any associated MFMP transaction fees), including those of any such resellers/partners and shall ensure that all such resellers/partners meet the following requirements:

- Have an ACTIVE Registration with the Florida Department of State, Division of Corporations (www.sunbiz.org)
- Registered in the MFMP Vendor Information Portal (https://vendor.myfloridamarketplace.com)
- Not be on the State of Florida's Convicted, Suspended, or Discriminatory lists http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists
- Have a copy of e-Verify Status on file
- Have a current W-9 filed with the Florida Department of Financial Services (https://flvendor.myfloridacfo.com)

Contractor authorized Resellers shall provide quotes, accept purchase orders, and accept payment from entities ordering under this Participating Addendum.

Contractor authorized Agents are authorized to provide quotes, sales assistance, configuration guidance and ordering support for hardware, software and services available this Participating Addendum. Contractor authorized Agents ARE NOT authorized to accept orders, purchase orders or payment from entities ordering under this Participating Addendum.

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

Contractor

Name	Katherine Dunay
Address	Dell Marketing, L.P. One Dell Way, Mailstop RR1-33Round Rock, TX 78682
Telephone	512-728-4805
E-mail	Katherine_Dunay@dell.com

Participating Entity

Name	Jerilyn Bailey
Address	Florida Department of Management Services 4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950
Telephone	850-921-4072
E-mail	jerilyn.bailey@dms.myflorida.com

N. Warrant of Authority: Each person signing this Addendum warrants that he or she is duly authorized to do so and to bind the respective party.

6. Lease Agreements. Leasing is allowed under this Master Agreement pursuant to Paragraph 39 of the PUR1000, and the separately negotiated Dell Financial Services L. L.C. Master Lease Agreement for those entities utilizing this Participating Addendum who are authorized to enter into lease agreements under applicable law. Any assignment by an eligible user of its purchase order to a third-party financing company (other than Dell Financial Services, LLC) must be approved in advance in writing by Contractor, and in no case shall any such approval excuse eligible user from its obligations hereunder.

7. Terms. The Participating State is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

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

PARTICIPATING ADDENDUM
to the
NASPO ValuePoint Cooperative Procurement Program
COMPUTER EQUIPMENT MASTER AGREEMENT
Administered by the State of Minnesota

Master Agreement No: MNWNC-108

Dell Marketing, L.P.

And
The State of Florida
Dell Contract Code WN08AGW
Alternate Contract Source No. 43211500-WSCA-15-ACS

Participating State: Florida	**Contractor:** Dell Marketing LP
By:	By:
Name: Erin Rock	Name: Lauren D. Newberry
Title:	Title: Contracts Consultant
Date: 9-2-15	Date: 8/14/2015

Florida's Chief Procurement Officer:
By:
Name: Roz Ingram
Title: Director of State Purchasing and Chief Procurement Officer
Date: 9/2/15

Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

State of Florida
PUR 1000
General Contract Conditions

Contents

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
41. Products Available from the Blind or Other Handicapped.
42. Modification of Terms.
43. Cooperative Purchasing.

44. Waiver.
45. Annual Appropriations.
46. Execution in Counterparts.
47. Severability.

1. Definitions. The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

2. Purchase Orders. In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

3. Product Version. Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

4. Price Changes Applicable only to Term Contracts. If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. ~~During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.~~ This section is not applicable in accordance with Section 5(E) of the Participating

Addendum.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

5. Additional Quantities. For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

6. Packaging. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

7. Inspection at Contractor's Site. The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

8. Safety Standards. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

9. Americans with Disabilities Act. Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

10. Literature. Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

11. Transportation and Delivery. Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

12. Installation. Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

13. Risk of Loss. Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

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

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

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

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

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

16. Taxes. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

17. Governmental Restrictions. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind . Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: http://dlis.dos.state.fl.us/barm/genschedules/gensched.htm). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations

of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

19. Indemnification. The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

20. Limitation of Liability. For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of $100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible . No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

21. Suspension of Work. The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

22. Termination for Convenience. The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

23. Termination for Cause. The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

24. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result . **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated

performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

25. Changes. The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

26. Renewal. Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

27. Purchase Order Duration. Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

28. Advertising. Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

29. Assignment. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

30. Antitrust Assignment. The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

31. Dispute Resolution. Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

32. Employees, Subcontractors, and Agents. All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business

operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. Contractor Employees, Subcontractors, and Other Agents. The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

35. Insurance Requirements. During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

36. Warranty of Authority. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

37. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

38. Notices. All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

39. Leases and Installment Purchases. Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at http://www.pridefl.com.

41. Products Available from the Blind or Other Handicapped. Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at http://www.respectofflorida.org.

42. Modification of Terms. The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s.287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

44. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

45. Annual Appropriations. The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

46. Execution in Counterparts. The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

47. Severability. If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

AMENDMENT NO.: 1 - Renewal

PARTICIPATING ADDENDUM
NASPO ValuePoint Cooperative Procurement Program
COMPUTER EQUIPMENT MASTER AGREEMENT
Master Agreement No: MNWNC-101
Dell Marketing LP
And
The State of Florida
Alternate Contract Source No. 43211500-WSCA-15-ACS

This Amendment ("Amendment") effective April 1, 2017, to the Computer Equipment, Peripherals, & Services Contract No. 43211500-WSCA-15-ACS ("Contract"), between the State of Florida, Department of Management Services ("Department") and Dell Marketing LP ("Contractor") are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Participating Addendum unless otherwise defined herein.

Contract Renewal. The Department hereby executes its renewal option for a three (3) year period pursuant to Section 287.057(13), Florida Statutes. The new contract expiration date is March 31, 2020.

I. Transaction Fees. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), Florida Statutes. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees, when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

II. Public Records. The Participating Addendum is amended to add the following:
If, under this Contract, the Contractor is providing services and is acting on behalf of a public agency as provided by section 119.0701(2)(b), F.S., the Contractor shall:
(a) Keep and maintain public records required by the public agency to perform the service.

(b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor

shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CONTRACT MANAGER.

III. Annual Appropriation. The Participating Addendum is amended to add the following: Pursuant to section 287.0582, F.S., if the ACS binds the State or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the ACS is contingent upon an annual appropriation by the Legislature.

IV. Cooperation with the Inspector General. Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: http://dos.myflorida.com/library-archives/records-management/general-records-schedules/), whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

V. Conflict. To the extent any of the terms of this Amendment conflict with the terms of the Contract, the terms of this Amendment shall control.

VI. Warrant of Authority. Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.

VII. Effect. Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect.

Contractor Participating Addendum Contact

Name	Katherine Dunay
Address	One Dell Way, Mail Stop RR 1-33, Round Rock, Texas 78682
Telephone	512-723-0818
Fax	512-283-9092
E-mail	Katherine_Dunay@Dell.com

Participating State Contact

Name	Jeremy Williams
Address	Florida Department of Management Services 4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950
Telephone	850-414-6740
Fax	850-414-8331
E-mail	Jeremy.Williams@dms.myflorida.com

State of Florida,
Department of Management Services

By: _____

Name: Erin Rock

Title: Chief of Staff

Date: 3-27-17

Dell Marketing LP

By: _____

Name: Charlene L. Wilkinson

Title: Contracts Manager

Date: 3/7/2017

PARTICIPATING ADDENDUM
to the
NASPO ValuePoint Cooperative Procurement Program
COMPUTER EQUIPMENT MASTER AGREEMENT
Administered by the State of Minnesota

Master Agreement No: MNWNC-108

Dell Marketing, L.P.

And
The State of Florida
Dell Contract Code WN08AGW
Alternate Contract Source No. 43211500-WSCA-15-ACS

1. Scope: The State of Minnesota, Department of Administration, Materials Management Division publicly conducted a Request for Proposal on behalf of the State of Minnesota and the National Association of State Procurement Officials Cooperative Procurement Program (NASPO ValuePoint) resulting in Master Agreement number MNWNC-108. The Master Agreement led by the State of Minnesota along with a multi-state sourcing team, was created for use by state agencies and other entities that are authorized by that state's statutes to utilize cooperative agreements, upon written approval of the State's chief procurement official.

   The Master Agreement for computer equipment (desktops, laptops, tablets, servers, and storage, and ruggedized devices, including related peripherals & services) identifies the product bands awarded to the Contractor.

   This Participating Addendum (Addendum) is made and entered into as of the Effective Date by and between the State of Florida (Participating State) and Dell Marketing, L.P. (Contractor). This Addendum allows for purchase of computer equipment from the Master Agreement. This Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the terms of the Master Agreement.

2. Participation: Use of specific NASPO ValuePoint cooperative agreements by eligible users authorized by a Participating State's statutes are subject to the prior approval of the respective State Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer.

3. Order of Precedence:
   In the event of a conflict, the following documents shall have priority in the order set forth below:

   a. This Participating Addendum
   b. Exhibit 2, PUR 1000
   c. Exhibit 1, Minnesota NASPO ValuePoint Master Agreement No. MNWNC-108.

   Contractor Modifications or Additions to terms and conditions. Notwithstanding any term to the contrary in Exhibit 2:
   a. Returns and Exchanges. Additional fees, including up to a 15% restocking fee, may apply. Dell will

notify eligible user if such fees apply upon receipt of return request.

b. Software Licensing. The terms of the Master Agreement shall be the controlling terms with respect to Software licensing.

c. Payment. Eligible User will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a Product or completion of Service. In the event that the Contractor has not been notified within 30 calendar days from delivery of Product or completion of Service, the Product and Services will be deemed accepted on the 31st day after delivery of Product or completion of Services.

d. Subcontracting. Contractor may retain subcontractors from time to time in the ordinary course of business to perform imaging or Custom Factory Integration, warranty, break/fix, administrative and back office services, provided that such subcontractors will not have access to Eligible User's confidential data (other than billing and contact information) and provided that Contractor shall remain responsible for the performance of its obligations under this Addendum.

e. Delivery. F.O.B. Destination. Title and risk of loss pass to customer upon delivery. Dell standard 3-5 day ground shipping and handling will be paid for by Contractor. There may be additional fees for custom shipping or delivery requests, including but not limited to inside delivery, which will be quoted to customer upon request.

5. Participating State Modifications or Additions to Master Agreement:

A. Upon execution of this Addendum, all eligible users may purchase products and services under contract using the Florida alternate contract source number 43211500-WSCA-15-ACS. Eligible users acknowledge and agree to be bound by the terms and conditions of the Master Agreement except as otherwise specified in this Addendum.

1. The following are modifications to the Master Agreement:

a. PUR 1000 Form:, General Contract Conditions, is attached hereto and incorporated herein as Exhibit 2

b. Discriminatory Vendors. A vendor placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or transact business with any public entity.

c. Effective Date: This Addendum shall become effective on the last date signed below and is

coterminous with Exhibit 1, unless terminated earlier by the Participating State.

d. Vendor Registration and Transaction Fees: In order to complete any transaction between an eligible user and the Contractor, the Contractor must be registered with the Department of State, Division of Corporations (www.sunbiz.org) and in MyFloridaMarketPlace. Section 287.042(1)(h), Florida Statutes, and Rule 60A-1.031, Florida Administrative Code, is hereby incorporated by reference. All transactions are subject to a transaction fee pursuant to the rule. This fee amount will be adjusted to the Contractor's Master Agreement pricing and not invoiced or charged to the Eligible User.

e. Purchases: In order to procure products and services hereunder, eligible users shall issue purchase orders or use a purchasing card which shall reference Florida alternate contract source number 43211500-WSCA-15-ACS. Use of a purchasing-card is permitted at the time of order placement only, and not permitted for payment of invoices issued by Contractor. Eligible users are responsible for reviewing the terms and conditions of this Addendum including all Exhibits.

f. Compliance with Laws: The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Rule 60A-1 of the Florida Administrative Code govern this Addendum. By way of further non-exhaustive example, the Contractor shall comply with section 274A of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for termination or nonrenewal of this Addendum.

g. Additional Eligible User Terms: If any additional ordinance, rule, or other local governmental authority requires additional contract language before an eligible user can make a purchase under this Addendum, the eligible user is responsible for entering a separate agreement with the Contractor and capturing that additional contract language therein.

h. Provisions of section 287.058, Florida Statutes: The provisions of section 287.058(1)(a)- (c) and (g), Florida Statutes, are hereby incorporated by reference.

i. Public Records: The Contractor shall allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this Addendum,

unless the records are exempt from section 24(a) of Article I of the State Constitution or subsection 119.07(1), Florida Statutes. The Participating State may unilaterally terminate this Addendum if the Contractor refuses to allow public access as required in this section. If, under this Addendum, the Contractor is providing services and is acting on behalf of the public agency as provided under subsection 119.011(2), Florida Statutes, the Contractor must:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
(2) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
(4) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of this Addendum and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to public agency in a format that is compatible with the information technology systems of the Department.

j. The State of Florida's performance and obligation to pay under this Addendum is contingent upon an annual appropriation by the Legislature. The vendor shall comply with section 11.062, Florida Statutes and section 216.347, Florida Statutes, prohibiting use of funds to lobby the Legislature, Judicial, or state agencies.

B. Contract Document: This Addendum and its Exhibits set forth the entire agreement between the parties with respect to the subject matter of the contract.

C. Intellectual Property: The parties do not anticipate that any intellectual property will be developed as a result of this Addendum. However, unless specified otherwise in the Statement of Work entered into by Dell and the Eligible User, the rights, title and interest in any deliverables or intellectual property developed as a result of this Addendum shall be subject to the terms of Section 30 of the Master Agreement

D. Employment Eligibility Verification: Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E- Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall require resellers/partners performing work or providing services under this Addendum to utilize the E-Verify system to verify employment of all new employees hired by the reseller/partner during the Addendum term.

E. Price List/Preferred Price: The Contractor's price list will be the same as the WSCA-NASPO price list, and the Department will post a link on the Department's website to the price list posted on the WSCA-NASPO website. Contractors are encouraged to provide special pricing and/or tiered discount rates applicable to State of Florida Eligible Users wherever possible. Paragraph 4(b) of the PUR1000 is not applicable.

F. Scrutinized Company List: In executing this Addendum, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to subsection 287.135(5), Florida Statutes, Contractor agrees the Participating State may immediately terminate this Addendum for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Addendum.

G. Orders: Any Order placed by eligible users under this Participating Addendum referencing Alternate Contract Source No. 43211500-WSCA-15-ACS for a product and/or service available from the Master Agreement shall be deemed to be a sale under and governed by the prices and other terms and conditions of the Master Agreement and this Addendum unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

1. The Contractor agrees to meet the following requirements:
   a. Provide appropriate contact information for eligible users to use for product and/or service inquiries and purchases, as well as, the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the Master Agreement; and
   b. If orders are to be sent to resellers/partners for fulfillment then the Contractor is

responsible for providing and updating this list of authorized resellers/partners for use to the Participating State/Entity.

2. Contractor must be able to accept purchase orders via fax, e-mail, or cXML as identified in H.1 below.

H. Electronic Invoicing: The Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MyFloridaMarketPlace (MFMP) within ninety (90) days from Addendum effective date. Electronic invoices shall be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below:

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

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

The Contractor will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

I. Contract Quarterly Reports: The Contractor shall submit a Quarterly Report in the Standard Report Format and with the Data Elements, described below, electronically to the Participating State/Entity within 30 days of the end of the quarter. The Contractor will cooperate with Participating State/Entity to accommodate reasonable requests for additional reports within 30 days written notice of such request, provided such additional reports are within Contractor's standard reporting capabilities with respect to data elements and format ("Contractor Standard Reports"). Custom reports not within Contractor's standard reporting capabilities may be available upon request for a reasonable fee to be quoted upon Contractor's review of the request. Failure to provide the Quarterly Report or other Contractor Standard Reports reasonably requested by the Participating State/Entity may result in the Contractor being found in default and may result in termination of this Addendum.

Sales will be reviewed on a quarterly basis. Should no sales be recorded in two consecutive contract quarters, the Participating State/Entity may terminate this Addendum.

Standard Report Format and Data Elements: Contractor shall report detailed sales data under this Participating Addendum in the format as required under the Master Agreement. Data elements on such report include:

- State;
- Entity/customer type, e.g., local government, higher education, K12, non-profit;
- Purchasing Entity name;
- Purchasing Entity bill-to and ship-to locations;
- Purchasing Entity and Contractor Purchase Order identifier/number(s);
- Purchase Order Type (e.g., sales order, credit, return, upgrade, determined by industry practices);
- Purchase Order date;
- Ship Date; and
- Line item description, including product number if used. The report shall be submitted.

Reports shall be delivered to the Participating State/Entity electronically through email; CD-Rom, jump drive or other electronic matter as determined by the Participating State/Entity.

J. Business Review Meetings: The Participating State/Entity reserves the right to schedule business review meetings as frequently as necessary. The Participating State/Entity will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Participating State/Entity for review and acceptance. The Contractor shall address the agenda items and any of the Participating State/Entity's additional concerns at the meeting. Failure to comply with this section may result in the Contractor being found in default and Addendum termination.

K. Commitment to Diversity in Government Contracting: The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, women-, wartime-, and service-disabled veteran business enterprises in the economic life of the State. The State of Florida Mentor Protégé Program connects minority-, women-, wartime-, and service-disabled veteran business enterprises with private corporations for business development mentoring. We strongly encourage firms doing business with the State of Florida to consider this initiative. For more information on the Mentor Protégé Program, please contact the Office of Supplier Diversity at (850) 487-0915 or osdhelp@dms.myflofida.com.

Upon request, the Contractor shall report to the Office of Supplier Diversity spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period. Commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this Addendum.

L. Resellers/Partners: The Contractor may use resellers/agents in order to provide computer equipment and services. All resellers/partners shall be the direct responsibility of the Contractor. The Contractor is responsible for all liability, terms and conditions within Master Agreement and this Addendum. The Contractor shall make all determinations about which entities in the State of Florida that the Contractor authorized reseller/agent may support. The Contractors resellers/agents' participation will be in accordance with the terms and conditions set forth in the

aforementioned Master Agreement and this Addendum. If a reseller/agent is authorized to conduct business on behalf of the Contractor and the reseller/agent is to receive compensation from the Contractor for its services, then any dispute between the Contractor and the reseller/agent shall be resolved between the Contractor and the reseller/agent. The State of Florida is not a party to any agreement entered into between the Contractor and its resellers/agents. The Contractor shall be responsible to report all contract sales (and pay any associated MFMP transaction fees), including those of any such resellers/partners and shall ensure that all such resellers/partners meet the following requirements:

- Have an ACTIVE Registration with the Florida Department of State, Division of Corporations (www.sunbiz.org)
- Registered in the MFMP Vendor Information Portal (https://vendor.myfloridamarketplace.com)
- Not be on the State of Florida's Convicted, Suspended, or Discriminatory lists http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists
- Have a copy of e-Verify Status on file
- Have a current W-9 filed with the Florida Department of Financial Services (https://flvendor.myfloridacfo.com)

Contractor authorized Resellers shall provide quotes, accept purchase orders, and accept payment from entities ordering under this Participating Addendum.

Contractor authorized Agents are authorized to provide quotes, sales assistance, configuration guidance and ordering support for hardware, software and services available this Participating Addendum. Contractor authorized Agents ARE NOT authorized to accept orders, purchase orders or payment from entities ordering under this Participating Addendum.

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

PARTICIPATING ADDENDUM
to the
NASPO ValuePoint Cooperative Procurement Program
COMPUTER EQUIPMENT MASTER AGREEMENT
Administered by the State of Minnesota

Master Agreement No: MNWNC-108

Dell Marketing, L.P.

And
The State of Florida
Dell Contract Code WN08AGW
Alternate Contract Source No. 43211500-WSCA-15-ACS

Contractor

Name	Katherine Dunay
Address	Dell Marketing, L.P. One Dell Way, Mailstop RR1-33Round Rock, TX 78682
Telephone	512-728-4805
E-mail	Katherine_Dunay@dell.com

Participating Entity

Name	Jerilyn Bailey
Address	Florida Department of Management Services 4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950
Telephone	850-921-4072
E-mail	jerilyn.bailey@dms.myflorida.com

N. Warrant of Authority: Each person signing this Addendum warrants that he or she is duly authorized to do so and to bind the respective party.

6. Lease Agreements. Leasing is allowed under this Master Agreement pursuant to Paragraph 39 of the PUR1000, and the separately negotiated Dell Financial Services L. L.C. Master Lease Agreement for those entities utilizing this Participating Addendum who are authorized to enter into lease agreements under applicable law. Any assignment by an eligible user of its purchase order to a third-party financing company (other than Dell Financial Services, LLC) must be approved in advance in writing by Contractor, and in no case shall any such approval excuse eligible user from its obligations hereunder.

7. Terms. The Participating State is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

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

PARTICIPATING ADDENDUM
to the
NASPO ValuePoint Cooperative Procurement Program
COMPUTER EQUIPMENT MASTER AGREEMENT
Administered by the State of Minnesota

Master Agreement No: MNWNC-108

Dell Marketing, L.P.

And
The State of Florida
Dell Contract Code WN08AGW
Alternate Contract Source No. 43211500-WSCA-15-ACS

Participating State: Florida	Contractor: Dell Marketing LP
By:	By:
Name: Erin Rock	Name: Lauren D. Newberry
Title:	Title: Contracts Consultant
Date: 9-3-15	Date: 8/14/2015

Florida's Chief Procurement Officer:
By:
Name: Roz Ingram
Title: Director of State Purchasing and Chief Procurement Officer
Date: 9/2/15

Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

State of Florida
PUR 1000
General Contract Conditions

Contents

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
41. Products Available from the Blind or Other Handicapped.
42. Modification of Terms.
43. Cooperative Purchasing.

44. Waiver.
45. Annual Appropriations.
46. Execution in Counterparts.
47. Severability.

1. Definitions. The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

2. Purchase Orders. In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

3. Product Version. Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

4. Price Changes Applicable only to Term Contracts. If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. ~~During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.~~ This section is not applicable in accordance with Section 5(E) of the Participating

Addendum.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

5. Additional Quantities. For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

6. Packaging. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

7. Inspection at Contractor's Site. The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

8. Safety Standards. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

9. Americans with Disabilities Act. Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

10. Literature. Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

11. Transportation and Delivery. Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

12. Installation. Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

13. Risk of Loss. Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

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

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

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

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

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

16. Taxes. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

17. Governmental Restrictions. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind . Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: http://dlis.dos.state.fl.us/barm/genschedules/gensched.htm). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations

of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

19. Indemnification. The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

20. Limitation of Liability. For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of $100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible . No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

21. Suspension of Work. The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

22. Termination for Convenience. The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

23. Termination for Cause. The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

24. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result . **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated

performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

25. Changes. The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

26. Renewal. Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

27. Purchase Order Duration. Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

28. Advertising. Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

29. Assignment. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

30. Antitrust Assignment. The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

31. Dispute Resolution. Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

32. Employees, Subcontractors, and Agents. All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business

operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. Contractor Employees, Subcontractors, and Other Agents. The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

35. Insurance Requirements. During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

36. Warranty of Authority. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

37. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

38. Notices. All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

39. Leases and Installment Purchases. Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at http://www.pridefl.com.

41. Products Available from the Blind or Other Handicapped. Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at http://www.respectofflorida.org.

42. Modification of Terms. The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s.287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

44. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

45. Annual Appropriations. The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

46. Execution in Counterparts. The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

47. Severability. If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.