

PARTICIPATING ADDENDUM
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Computer Equipment
Administered by the State of Minnesota (hereinafter "Lead State")

MASTER AGREEMENT
Master Agreement No: MNWNC-108
Dell Marketing, L.P.
Dell Master Agreement No. WN91AGY
(hereinafter "Contractor")
And
State of Kansas
Dell Contract Code WN13AGW
(hereinafter "Participating State/Entity")

State of Kansas Contract #: 40400

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1. Scope: This addendum allows for purchase of the following Computer Equipment/Services: Band 1 – Desktop, Band 2 – Laptop, Band 3 – Tablet, Band 4: Server, and Band 5: Storage led by the State of Minnesota along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State/Entity that is authorized by that state's statutes to utilize state /entity contracts, and which receives prior written approval of the state's chief procurement official.

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The configuration limits and restrictions for the Master Agreement are provided with revisions identified by the Participating State in this Participating Addendum.

This Addendum will be effective on October 1, 2015.

This Addendum will be coterminous with the Master Agreement and any extensions of the Master Agreement, unless terminated pursuant to MASTER AGREEMENT TERMS AND CONDITIONS B. WSCA-NASPO TERMS AND CONDITIONS, Section 6 Cancellation.

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. Unless otherwise specified, all state agencies, political subdivisions, including public education entities, and other entities (including cooperatives) in the State of Kansas are eligible to procure under this Participating Addendum.

3. Order of Precedence:

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 NASPO ValuePoint Master Agreement. 2. ~~Minnesota~~ NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)

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3. The Solicitation including all Addendums; and 4. 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.

4. Modifications or Additions to Master Agreement:

- a) The laws of the State of Kansas shall govern this agreement.
- b) State of Kansas Contractual Provisions Attachment (as modified), DA-146a attached and incorporated into this Addendum as Attachment A will have prior precedence over the listed items in section 3. Order of Precedence.
- c) Travel expenses if applicable, shall be reimbursed under the same rates and conditions as noted in the "Employee Travel Expense Reimbursement Handbook" found at: <http://da.state.ks.us/ar/employee/travel/travbk.htm> unless otherwise agreed upon with the purchasing entity.
- d) Upon request of the purchasing entity, the Contract shall accept a Business Procurement Card (BPC) or other like instrument in lieu of a warrant for payment under this agreement. Use of this instrument is at time of placement only, and not permitted for payment of invoices issued by Contractor.
- e) Returns and Exchanges. Additional fees, including up to a 15% restocking fee, may apply.
- f) Contractor may not subcontract or delegate the performance of its obligations under this Agreement in whole or in part, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, without the prior written

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consent of Participating State (other than subcontractors retained by Contractor from time to time in the ordinary course of business to perform CFI, warranty, break/fix, administrative and back office services who will not have access to Buyer's confidential data other than billing and contact information) and provided that Contractor shall remain responsible for the performance of its obligations under this Agreement.

g) Reports and Administrative Fees:

The Contractor shall submit calendar quarterly reports to the Division of Purchases for all acquisitions, less returned product ("actual, net invoice sales"), made from this Addendum. This report will be submitted in the format as required under the Master Agreement and will include as a minimum the ~~agency name~~, quantity, description and amount. The report will be provided electronically and a check sent payable to the State of Kansas – Office of Procurement and Contracts for an amount equal to one half of one percent (0.50%) of the total net sales (gross sales minus returns, credits, and deductions) for the quarterly period. Contractor's NASPO ValuePoint pricing will be adjusted by this fee and not invoiced or charged to the Purchasing Entity.

The report and fee shall be submitted 30 days following the end of the calendar quarter to reports@da.ks.gov.

h) A State of Kansas, Tax Clearance Certificate is required to execute this contract.

5. Lease Agreements:

Political subdivisions or educational entities that have the authority may finance the purchases from this Master Agreement. If financing is through a lease agreement, that agreement is separate from this agreement and between the Contractor and the agency.

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

Contractor - Participating Addendum Contact

| | |
|-----------|--|
| Name | David F. White |
| Address | One Dell Way, Mail Stop RR 1-33, Round Rock, Texas 78682 |
| Telephone | 512-725-3702 |
| Fax | 512-283-9092 |
| E-mail | David_F_White@Dell.com |

Contractor - Master Agreement Contact

| | |
|-----------|---|
| Name | Diane Wigington |
| Address | One Dell Way, Mailstop RR1-33, Round Rock, TX 78682 |
| Telephone | 512-728-4805 |
| Fax | 512-283-9092 |
| E-mail | Diane_Wigington@dell.com |

Participating State

| | |
|-----------|---|
| Name | Neal Farron, State of Kansas, Department of Administration, Office of Procurement and Contracts |
| Address | 900 SW Jackson, STE 451 South |
| Telephone | 785-296-3122 or 785-296-2376 |
| Fax | 785-296-7240 |
| E-mail | Neal.Farron@da.ks.gov |

7. Partner Utilization: Each state represented by NASPO ValuePoint participating in this Master Agreement independently have the option of utilizing partners. Only partners approved by this Participating State may be deployed. The participating State will define the process to add and remove partners and may define the partner's role in their participating addendum. The Contractors partners' participation will be in accordance with the terms and conditions set forth in the

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aforementioned Master Agreement.

Approved partners will be mutually agreed to and will be provided on a separate listing. Dell Marketing, L.P. the participating state when changes occur.

Contractor has defined Partners as Resellers and Agents with capabilities as follows:

a. Contractor authorized Resellers

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

b. Contractor authorized Agents

1. Contractor authorized Agents are authorized to provide quotes, sales assistance, configuration guidance and ordering support for hardware, software and services available this Participating Addendum.

2. Contractor authorized Agents ARE NOT authorized to accept orders, purchase orders or payment from entities ordering under this Participating Addendum.

8. 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.

9. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

All orders are to reference State Contract #40400 | WN13AGW on Purchase Order. Ordering instructions will be provided on a separate listing and is to be provided to the participating state when changes occur.

10. Any assignment by Participating State of its purchase order to a third-party financing

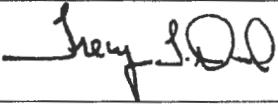
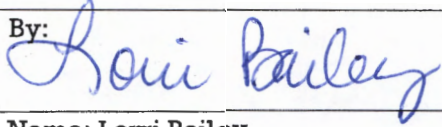
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company (other than Dell Financial Services, LLC) must be approved in advance in writing by Contractor, and in no case shall any such approval excuse Participating State from its obligations hereunder.

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

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|---|--|
| Participating State: State of Kansas | Contractor: Dell Marketing LP |
| By:  <i>Tracy Diel</i> <small>MS</small> | By:  <i>Lorri Bailey</i> |
| Name: Tracy Diel | Name: Lorri Bailey |
| Title: Director of Procurements and Contracts | Title: Public Contracts Manager |
| Date: <i>9/25/2015</i> | Date: <i>9/28/2015</i> |

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

| | |
|-------------------------------------|--------------------------|
| Cooperative Development Coordinator | Tim Hay |
| Telephone | 503-428-5705 |
| E-mail | thay@naspovaluepoint.org |

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403)E
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.