

PARTICIPATING ADDENDUM
WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION
DATA COMMUNICATIONS PRODUCTS AND SERVICES 14-19
Administered by the State of Utah (hereinafter "Lead State")

MASTER AGREEMENT No: AR602
Dell Marketing L.P.
(hereinafter "Contractor")

And

State of Utah
Contract Code WNN20AGS
(hereinafter "Participating State")

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1. **Scope:** This addendum covers the Data Communications Products and Services 14-19 contracts led by the State of Utah for use by state agencies and other entities located in the Participating **State** authorized by that state's statutes to utilize **state** contracts with the prior approval of the state's chief procurement official.

2. **Participation:** Use of specific WSCA-NASPO 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.

3. **Participating State Modifications or Additions to Master Agreement:**
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS
(FOR WSCA CONTRACTS and DTS RELATED CONTRACTS)

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

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- 3. LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.
- 4. RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
- 5. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation for Bids or to the Multi-Step Process.

1. Status Verification System

- (1) Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.
- (2) The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including UCA Section 63G-12-302 and to comply with all

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applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

(3) The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.

(4) Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

2. Indemnity Clause for Status Verification System

(1) Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

(2) Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

6. CONFLICT OF INTEREST: Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

7. CONFLICT OF INTEREST WITH STATE EMPLOYEES: In addition to the provisions of State

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of Utah Terms and Conditions # 6, Conflict of Interest, the Contractor certifies that no person in the State's employment, directly or through subcontract, will receive any private financial interest, direct or indirect, in the contract. The Contractor will not hire or subcontract with any person having such conflicting interest.

- 8. CONTRACTOR ACCESS TO SECURE STATE FACILITIES / CRIMINAL CONVICTION INFORMATION / FORMER FELONS:** The Contractor shall provide (at its own expense) the State with sufficient personal information about its agents or employees, and the agents and employees of its subcontractors (if any) who will enter upon secure premises controlled, held, leased, or occupied by the State during the course of performing this contract so as to facilitate a criminal record check, at State expense. "Sufficient personal information" about its agents or employees, and the agents and employees of its subcontractors (if any) means for the Contractor to provide to the State Project Manager, in advance of any on-site work, a list of the full names of the designated employees, including their social security number, driver license number and the state of issuance, and their birth date. Thereafter, on their first site visit, each contractor employee expected to work on-site shall be fingerprinted by the State, and the State is authorized to conduct a federal criminal background check based upon those fingerprints and personal information provided. Contractor, in executing any duty or exercising any right under this contract, shall not cause or permit any of its agents or employees, and the agents and employees of its subcontractors (if any) who have been convicted of a felony and misdemeanors other than minor misdemeanors to enter upon any premises controlled, held, leased, or occupied by the State. A felony and misdemeanor are defined by the jurisdiction of the State of Utah, regardless of where the conviction occurred.
- 9. DRUG-FREE WORKPLACE:** The Contractor will abide by the Department of Technology Services (DTS) drug-free workplace policies while on State of Utah premises. DTS will provide the Contractor with a copy of these written "drug-free workplace policies" upon request.
- 10. CODE OF CONDUCT:** When Contractor employees are working on-site, the Contractor agrees to follow DTS Policy 2000-001 Code of Conduct. If Contractor is working at facilities

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controlled by other State agencies, Contractor agrees to follow the Code of Conduct Policy of these other State agencies when Contractor is providing services at these facilities under provisions of this contract. The Contractor will assure that each employee or volunteer under Contractor's supervision receives a copy of such Code of Conduct. Upon request, DTS shall provide Contractor with a copy of any applicable codes of conduct for each on-site Services engagement for a State of Utah State Agency. If a Contractor or Subcontractor is working on-site at any Utah State agency which has a Code of Conduct applicable to this Contract, the DTS Project Manager will provide the Contractor with a copy in advance of the applicable Code of Conduct.

- 11. INDEMNITY CLAUSE:** Each party shall defend, indemnify and hold harmless the other party against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from gross negligence or willful misconduct of the indemnifying party performance of its obligations under the Master Agreement. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.
- 12. EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
- 13. TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date,

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upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

In the event of such termination, and professional services apply to the contract; the Contractor shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. The Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of the Contractor having to terminate contracts necessarily and appropriately entered into by the Contractor pursuant to this Contract.

- 14. SUSPENSION OF WORK:** Should circumstances arise which would cause the State to suspend the work, but not terminate the contract, this will be done by formal notice. The work may be reinstated upon advance formal notice from the State.
- 15. NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages. In the event of Non-Appropriation of Funds,

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Participating Entity shall return to Contractor any goods delivered by Contractor and not paid for by Participating Entity.

16. SALES TAX EXEMPTION: The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract. All other Participating Entities must provide Contractor with a valid and accurate tax-exemption certificate applicable to Participating Entity's Product purchase and ship-to location. Otherwise, Participating Entity is responsible for sales tax and any other taxes or governmental fees associated with the Participating Entity's order.

17. SECURE PROTECTION AND HANDLING OF DATA:

To the degree Contractor is given the State's data to perform services, Contractor agrees to the following:

1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Likewise Contractor agrees to maintain network security that conforms to one of the following:
 - a. Those standards the State of Utah applies to its own network, found at <http://www.dts.utah.gov>;
 - b. Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://web.nvd.nist.gov/view/ncp/repository/>;
or

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- c. Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.
2. **Data security:** Contractor agrees to protect and maintain the security of the State of Utah data with protection that is at least as good as or better than that maintained by the State of Utah. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated, (ex. Microsoft Notification).
3. **Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means, (ex. HTTPS or FTPS).
4. **Data Storage:** Contractor agrees that any and all State of Utah data will be stored, processed, and maintained solely on designated target servers approved of by DTS and that no State of Utah data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless such medium is part of the Contractor's designated backup and recovery process.
5. **Data Encryption:** Contractor agrees to store all State of Utah backup data as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key.
6. **Password Protection.** Contractor agrees that any portable or laptop computer that has access to a State of Utah network, or stores any non-public State of Utah data is equipped with strong and secure password protection.
7. **Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no State of Utah data of any kind shall be transmitted, exchanged or otherwise passed to other

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Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by DTS.

8. **Data Destruction:** The Contractor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all State of Utah data from all non-state computer systems and backups, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of DTS, whichever shall come first.
18. **NOTIFICATION AND DATA BREACHES:** Subject to reasonable cooperation from the State, Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other events requiring notification in accordance with *DTS Policy 5000-1250-PR1 Computer Incident Reporting Procedure* (copy available upon request). Subject to Section 42, Limitation of Liability, of the Master Agreement, in the event of a data breach of any Contractor's security obligations or other event requiring notification under applicable law (Utah Code Annotated § 13-44-101 thru 301 et al), Contractor agrees at its own expense to assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend the State of Utah against any claims, damages, or other harm related to such Notification Event. In the event of a data breach of any of Contractor's security obligations or other event requiring notification by Contractor under applicable law (Utah Code Annotated § 13-44-101 thru 301 et al), Contractor agrees to inform the State of such breach and cooperate with the State by sharing information relevant to the breach. Subject to Section 42, Limitation of Liability, of the Master Agreement, Contractor will indemnify the State for claims, or damages related to such Notification Event to the degree that such claim or damage is a result of Contractor's negligence.
19. **CHANGE MANAGEMENT:** Contractor agrees to comply with DTS Change Management Policy 4000-0004. This DTS policy requires that any work performed by the Contractor that has the potential to cause any form of outage, or modify the State's infrastructure architecture

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must first be reviewed by the DTS Change Management Committee, and coordinated accordingly. The DTS Project Manager will inform the Contractor if this change control requirement is applicable. Following this notification, any failure by the Contractor that causes outages or data security breaches caused by the Contractor as a direct result of failure to comply, will result in the Contractor's liability for the damages subject to Section 42, Limitation of Liability of the Master Agreement.

For reference purposes, the latest version of DTS Change Management Policy 4000-0004 is detailed at <http://dts.utah.gov/policies/documents/4000-0004changemanagementpolicy.pdf>.

- 20. PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives the State express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
- 21. CREDITING STATE IN ADVERTISING / PUBLICITY:** Any publicity given to the project or services provided herein shall identify the State of Utah's managing agency as the sponsoring agency and shall not be released without prior written approval by that State agency's Project Manager and Contractor.
- 22. STATE AGENCY WEB SITE BRANDING:** The Contractor agrees to use the DTS logo, or a newer version if replaced in the future, on websites produced under terms of this contract. Contractor further agrees to allow a State agency to also utilize their own web site branding and logo, if requested by that State agency. Any use of the Dell logo shall be pursuant to separate agreement.

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23. ORDERING AND INVOICING: All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.

24. PROMPT PAYMENT DISCOUNT: Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.

25. PAYMENT:

1. Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Annotated Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.

2. The contract total may be changed only by written amendment executed by authorized personnel of the parties. Unless otherwise stated in the Contract, all payments to the Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's purchasing

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card (major credit card). The State of Utah will not allow the Contractor to charge end users electronic payment fees of any kind.

3. The acceptance by the Contractor of final payment without a written protest filed with the State within ten (10) working days of receipt of final payment shall release the State from all claims and all liability to the Contractor for fees and costs of the performance of the services pursuant to this Contract.

4. Overpayment: The Contractor agrees that if during or subsequent to the contract performance, a CPA audit, or a State agency audit determines that payments were incorrectly reported or paid the State may adjust the payments. The Contractor shall, upon written request, immediately refund to DTS any such overpayments. The Contractor further agrees that the State shall have the right to withhold any or all-subsequent payments under this or other contracts that the Contractor may have with the State until recoupment of overpayment is made.

5. Payment withholding: the Contractor agrees that the adequate reporting, record keeping, and compliance requirements specified in this contract are a material element of performance and that if the Contractor's record keeping practices, compliance, and/or reporting to DTS are not conducted in a timely and satisfactory manner, DTS may withhold part or all payments under this or any other contract until such deficiencies have been remedied. This includes, but is not limited to, Contractors failure to provide timely invoicing, and/or other requirements described elsewhere within this contract. In the event of the payment(s) being withheld, DTS agrees to provide ten (10) day advance Notice to the Contractor of the deficiencies that must be corrected in order to bring about the release of withheld payment. Contractor shall have ten (10) days thereafter to correct the cited reporting or record keeping practice deficiencies or the contract may be terminated.

6. In addition, Contractor, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate any or all Services and refuse additional

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orders for Products or Software from Participating Entity until Contractor's receipt of all overdue amounts. Contractor shall have no liability to Participating Entity for any such suspension or termination of services or for its refusal of additional orders. Contractor further reserves the right to seek collection of all overdue amounts (including by referral to third party collectors), plus all reasonable legal fees (including reasonable attorney's fees) and costs associated with such collection.

7. All payments via a State or political subdivision "Purchasing Card" must be made at time of order placement only.

8. Any assignment by Participating Entity 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 Participating Entity from its obligations hereunder.

26. COPYRIGHT:

In the event that Contractor provides custom deliverables to the State of Utah, pursuant to a separate mutually agreed SOW, Contractor grants the ownership in copyrights to any reports, analyses, customized scripts and other work results which have been developed and delivered by Contractor exclusively for the State of Utah and are specifically identified within a framework of fulfilling the contractual obligations under a signed SOW ("Deliverables"), which Deliverables shall be deemed a work made for hire, such that all rights, title and interest in the work and Deliverables shall pass to the State of Utah to the extent they are documented in writing, subject to the following:

- (i) Contractor has received full payment for the Deliverables and applicable Services,
- (ii) each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this Agreement or that it develops

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or acquires from activities independent of the Services performed under this Agreement ("Background IP"),

- (iii) Contractor will retain all right, title and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates or output which are developed, created or otherwise used by or on behalf of Dell in the course of performing the Services or creating the Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or data of Customer (collectively, the "Residual IP"), even if embedded in the Deliverable.

Contractor agrees to grant to State of Utah a perpetual, non-exclusive, non-transferable, royalty-free license to use Contractor's Background IP (defined above), Utilities, and Residual IP solely for State of Utah to use the Deliverables.

All right, title and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets and trade dress) embodied in Contractor's Software, Products and Materials, as well as the methods by which the Services are performed and the processes that make up the Services, shall belong solely and exclusively to Contractor or the applicable suppliers or licensors, and Participating Entity shall have no rights whatsoever in any of the above, except as expressly granted in the contract. Contractor's Software, Products and Materials are protected pursuant to copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Participating Entity may not modify, remove, delete, augment, add to, publish, transmit, adapt, translate, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Software and Materials, in whole or in part.

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- 27. OWNERSHIP, PROTECTION AND USE OF RECORDS:** The Contractor may not use, except in meeting its obligations under this contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the State. The improper use or disclosure of any information concerning a State of Utah client, or a State of Utah employee for any purpose not directly connected with the administration of the State, or the Contractor's responsibilities with respect to services purchased under this agreement, is prohibited except on written consent of the state agency employee, state agency client, their attorney, or their responsible parent or guardian. The Contractor will be required to sign a Confidential Information Certification form in situations where they will be given access to confidential computerized records. The Contractor agrees to maintain the confidentiality of records it holds as agent for the State as required by Government Records Access and Management Act ("GRAMA"), or other applicable federal or state law. The Contractor, and any subcontractors under its control, expressly agrees not to use confidential client, or confidential federal, state, or local government data, without prior written permission from the State of Utah Project Manager and appropriate officials of the State Agency.
- 28. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** The improper use or disclosure by any party of protected internal Federal or State business processes, policies, procedures, or practices is prohibited. Participating Entity is required to identify to Contractor in advance any protected internal Federal or State business processes, policies, procedures, or practices. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by the Contractor, Contractor's employees, or their Subcontractors, unless prior written consent has been obtained in advance from the State of Utah Project Manager.
- 29. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All Deliverables must be delivered to the Participating within 30 days after termination or completion of the contracts, regardless of the

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reason for the contract termination, if the Participating Entity has paid in full for the Deliverables under the Contract.

- 30. CONFIDENTIALITY:** In connection with this Agreement, each party may have access to or be exposed to information of the other party that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, "know-how," or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential, any Participating Entity records, personnel records, and information concerning individuals, is confidential information of Participating Entity (collectively, "**Confidential Information**"). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel, including employees, agents and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (1) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; or (2) is rightfully received by the recipient from a third party without a duty of confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall provide advance notice to other party before making such a disclosure. The obligations with respect to Confidential Information shall continue for two years from the date of disclosure.
- 31. TERMINATION UPON DEFAULT:** In the event this contract is terminated as a result of a default by the Contractor, the State may procure or otherwise obtain, upon such terms and conditions as the State deems appropriate, services similar to those terminated, and Contractor shall be liable to the State for any and all damages arising there from, including,

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but not limited to, attorneys' fees and excess costs incurred by the State in obtaining similar services subject to Section 42, Limitation of Liability of the Master Agreement.

- 32. PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).
- 33. WORKERS' COMPENSATION:** The Contractor shall furnish proof to the State, upon request and maintain during the life of this contract, workers' compensation insurance for all its employees related to this contract. Contractor shall require and verify that any of its subcontractors performing onsite services to the State have workers' compensation insurance.
- 34. COMMERCIAL GENERAL LIABILITY INSURANCE:** The Contractor agrees to provide and to maintain during the performance of the contract, at its sole expense, a policy of commercial general liability insurance. The limits of the policy shall be no less than \$1,000,000.00 for each occurrence and \$3,000,000.00 aggregate.
- It shall be the responsibility of the Contractor to require any of their Subcontractor(s) to secure the similar insurance coverage.
- 35. ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or

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provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

- 36. SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after the completion of or termination of this contract, for whatever reason: (a) State of Utah Standard IT Terms and Conditions # 2, Contract Jurisdiction, Choice of Law, and Venue; (b) State of Utah Standard IT Terms and Conditions # 17, Secure Protection and Handling of Data; (c) State of Utah Standard IT Terms and Conditions # 18, Notification and Data Breaches; (d) State of Utah Standard IT Terms and Conditions # 26, Copyright; (e) State of Utah Standard IT Terms and Conditions #27, Ownership, Protection, and Use of Records, including Residuals of such records; and (f) State of Utah Standard IT Terms and Conditions # 28, Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) State of Utah Standard IT Terms and Conditions # 29, Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; and (h) State of Utah Standard IT Terms and Conditions # 30, Confidentiality.
- 37. WAIVER:** The waiver by either party of any provision, term, covenant or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant or condition of this Contract.

If professional services are applicable to this solicitation/contract, the following terms and conditions apply:

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38. All professional services shall be performed in accordance with the applicable Service Description or Statement of Work executed between the parties.
39. **TIME:** For all work and services under this Contract, Contractor shall be liable for all damages to the State of Utah and anyone for whom the State of Utah may be liable, as a result of the failure to timely complete the scope of work required under this Contract subject to Section 42, Limitation of Liability of the Master Agreement. Contractor will agree to comply with timelines mutually agreed to in any SOW.
40. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by duly authorized representatives of both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
41. **PERFORMANCE EVALUATION:** The State of Utah may conduct a performance evaluation of the Contractor's services, including specific personnel of the Contractor. References in the Contract to Contractor shall include Contractor, Contractor's subcontractors, or subconsultants at any tier, if any. Results of any evaluation will be made available to the Contractor.
42. **WAIVERS:** No waiver by the State or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default.
43. **INSURANCE:**
1. To protect against liability, loss and/or expense in connection with the performance of services described under this Contract, the Contractor shall obtain and maintain in force during the entire period of this Contract without interruption, at its own expense, insurance as

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listed below from insurance companies authorized to do business in the State of Utah and with an A.M. Best rating of A- VII or better.

2. The following are minimum coverages that may be supplemented by additional requirements contained in the solicitation for this Contract or provided in an Attachment to this Contract; if no insurance limits are identified in the solicitation, insurance minimums will default to Section 34. Liability Insurance Requirements:

(1) Worker's Compensation Insurance and Employers' Liability Insurance. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction.

(2) Professional liability insurance in the amount as described in the solicitation for this Contract, if applicable.

(3) Any other insurance described in the solicitation for this Contract, if applicable.

3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.

4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.

44. STANDARD OF CARE: The services of Contractor and its subcontractors and subconsultants at any tier will be provided in a good and workmanlike manner and in accordance with generally accepted industry standards. The services of Contractor and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude and complexity of the services that are the subject of this Contract. The Contractor

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shall be liable to the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. another Contractor's claim against the State of Utah), to the extent caused by gross negligence or willful misconduct that do not meet this standard of care subject to Section 42, Limitation of Liability of the Master Agreement.

- 45. STATE REVIEWS, LIMITATIONS:** The right of the State to perform plan checks, plan reviews, other reviews and/or comment upon the services of the Contractor, as well as any approval by the State, shall not be construed as relieving the Contractor from its professional and legal responsibility for services required under this Contract. No review by the State or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by the State of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract.

4. Utah Reporting and Administrative Fee Requirements

- A. **Administrative Fee:** The Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The State of Utah Administrative Fee will be .25% (one quarter of 1%) and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract for the period.
- B. **Quarterly Reports:** The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address salesreports@utah.gov.

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- C. **Payment and Report Schedule:** Payments and reports shall be made in accordance with the following schedule:

All Data Communication Provider's will be required to provide quarterly usage reports to the Utah WSCA-NASPO Contract Administrator or designee. The initiation and submission of the quarterly reports are the responsibility of the Data Communication Contract Provider. You are responsible to collect and report all sales data including your resellers and partners sales associated with your Master Agreement. There will be no prompting or notification provided by the WSCA-NASPO Contract Administrator. The quarterly usage reports are due as follows:

- Quarter #1: July 1 through September 30, due annually by November 30.
- Quarter #2: October 1 through December 31, due annually by February 28.
- Quarter #3: January 1 through March 31, due annually by May 31.
- Quarter #4: April 1 through June 30, due annually by August 31.

- D. **Timely Reports and Fees:** If the Administrative Fee is not paid by the Due Date or Quarterly Reports are not received by the Due Date, then the Contractor will be in breach of the Contract, and the Contract may be canceled for cause.

4. **Lease Agreements:** Lease agreements are authorized if applicable to authorized products allowable under this agreement. All lease agreements issued by State of Utah Executive Branch Agencies must follow all State of Utah leasing policies and procedures. Political subdivisions will follow their specific leasing processing and procedures.

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

Contractor Master Agreement Contact

Name	Diane Wigington
Address	One Dell Way, Mail Stop 8707, Round Rock, Texas 78682

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Telephone	(512) 728-4805
Fax	(512) 283-9092
E-mail	Diane_Wigington@dell.com

Contractor Participating Addendum Contact

Name	Amy Ivy
Address	One Dell Way, Mail Stop 8707, Round Rock, Texas 78682
Telephone	512-723-6201
Fax	
E-mail	Amy_Ivy@dell.com

Participating Entity Contact

Name	Jeff Mottishaw
Address	3150 State Office Building, Salt Lake City, Utah 84115
Telephone	801-538-1287
Fax	
E-mail	jmottishaw@utah.gov

6. **Subcontractors:** All Contractor authorized resellers and agents authorized in the State of Utah, as shown on the dedicated Contractor's website, are approved to provide sales and service support to participants in the WSCA-NASPO Master Price Agreement. Contractor shall make all determinations about which entities in the State of Utah that the Contractor **authorized resellers and agents** may support. The Contractor's dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

A. Dell authorized Resellers

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

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B. Dell authorized Agents

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

All purchase orders issued by ordering entities with the jurisdiction of this Participating Addendum must include the Participating Addendum number: WNN20AGS and the Master Price Agreement Number AR602.

7. 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.

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

Participating State:	Contractor:
By: 	By: stephanie_g_miller @dell.com <small>Digitally signed by stephanie_g_miller@dell.com DN: cn=stephanie_g_miller@dell.com Date: 2014.07.28 10:48:28 -05'00'</small>
Name: Paul F. Marsh	Name: Stephanie Miller
Title: Deputy Director	Title: Contract Manager
Date: 7/31/14	Date: July 28, 2014

[Additional signatures as required by Participating State]

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For questions on executing a participating addendum, please contact:

WSCA-NASPO	
Cooperative Development Coordinator	Paul Stembler
Telephone	651-206-3858
E-mail	pstembler@wsca-naspo.org

**[Please email fully executed PDF copy of this document to
PA@wsca-naspo.org to support documentation of participation and
posting in appropriate data bases]**