

# STATE OF MONTANA TERM CONTRACT

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**T.C. #: NASPO ValuePoint AR-602**  
**Dell Marketing L.P.**  
**Title: DATA COMMUNICATIONS PRODUCTS AND SERVICES**

CONTRACT TERM	FROM	June 1, 2014	CONTRACT STATUS	NEW (x)
	TO	May 31, 2019		RENEW ( )
VENDOR ADDRESS	Dell Marketing One Dell Way, Mail Stop 8707 Round Rock, TX 78682		ORDER ADDRESS	
ATTN:	Stephanie Miller		ATTN:	
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PRICES: Per NASPO ValuePoint Master Agreement

DELIVERY: Per NASPO ValuePoint Master Agreement

TERMS: Per NASPO ValuePoint Master Agreement

REMARKS: This contract was established by the NASPO ValuePoint Cooperative Purchasing Organization. NASPO ValuePoint competitively issues and awards cooperative contracts while leveraging the demand of multiple states to achieve the best possible contracts. Current pricing schedules may be viewed by going to [www.naspovaluepoint.org](http://www.naspovaluepoint.org) clicking on "current contracts", scrolling down to Data Communications Equipment and Associated OEM Maintenance & Training (NASPO ValuePoint-UT), Dell Marketing L.P., Webpage for NASPO ValuePoint Contracts.

**Executive Branch agencies**; excluding elected official agencies, SITSD, and the entities identified in §2-17-516, MCA; **may not procure servers, storage, and cloud services.**

This contract is Exclusive for all State Agencies and Non-Exclusive for the University System.

NASPO ValuePoint	 Rick Dorvall, CONTRACTS OFFICER	DATE: 12/04/2014
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**AUTHORIZED SIGNATURE**

## ATTACHMENT A – WSCA-NASPO Terms and Conditions



### WSCA-NASPO Master Agreement Terms and Conditions

#### **1. AGREEMENT ORDER OF PRECEDENCE:**

The Master Agreement shall consist of the following documents:

1. A Participating Entity's Participating Addendum ("PA");
2. WSCA-NASPO Master Agreement Terms and Conditions;
3. The Statement of Work;
4. The Solicitation; and
5. Contractor'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. Contractor 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 Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor, or any preprinted terms on any purchase order or ordering document submitted to Contractor.

**2. AMENDMENTS** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever unless agreed to in writing and executed by authorized representatives of both parties.

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

**4. CANCELLATION** Unless otherwise stated in the special 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 State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, 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 Contractor default may be immediate.

**5. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF**

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, 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 which is marked Confidential, 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.

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

**7. 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 Contractor 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 either party to the Master Agreement or Participating Agreement, or the appointment of a receiver or similar officer for either party to the Master Agreement or Participating Agreement 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, , the non-defaulting party shall issue a written notice of default, identifying the nature of the default, and providing a period of 90 calendar days in which the defaulting party 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 Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
- c. If the defaulting party is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, the defaulting party shall be in breach of its obligations under this Master Agreement and the non-defaulting party 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 Contracts or portions thereof; and
  - iii. Impose liquidated damages as provided in this Master Agreement; and
  - iv. Suspend Contractor from receiving future bid solicitations; and
  - v. Suspend Contractor'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.

**8. DELIVERY** Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Participating State agency or political subdivision. All deliveries shall be with a carrier selected by Contractor and shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**9. 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. WSCA-NASPO may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**10. GOVERNING LAW** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreement(s) 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 Agreement(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

**11. INDEMNIFICATION** Each party shall defend, indemnify and hold harmless the other party along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and 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, its employees or subcontractors or volunteers, at any tier, relating to the 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. INDEMNIFICATION - INTELLECTUAL PROPERTY** The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable ("Indemnified Party") from and against any third-party claim or action that Products, Software, Services or Deliverables (excluding Third-Party Products and open source software) prepared or produced by Contractor and delivered pursuant to this Master Agreement infringe or misappropriate that third party's U.S. patent, copyright, trade secret, or other intellectual property rights ("Indemnified Claims"). In addition, if Contractor receives prompt notice of an Indemnified Claim that, in Contractor's reasonable opinion, is likely to result in an adverse ruling, then Contractor shall at its option, (1) obtain a right for Participating Entity to continue using such Products, Deliverables or Software or allow Contractor 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, Contractor 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 Contractor; (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) Contractor'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. Contractor's duty to indemnify and defend under this Section is contingent upon: (x) Contractor receiving prompt written notice of the third-party claim or action for which Contractor must indemnify Participating Entity, (y) Contractor having the right to solely control the defense and resolution of such claim or action, and (z) Participating Entity's and WSCA-NASPO, the Lead State and Participating Entities cooperation with Contractor 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 Contractor to provide any greater indemnity to Participating Entity. 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.

**13. INDEPENDENT CONTRACTOR** The contractor shall be an independent contractor, 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.

**14. 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 Participating Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Participating Entity individually.

**15. INSURANCE** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor 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. Coverage shall be written on an occurrence basis except for Professional Liability (if required). The minimum acceptable limits shall be as indicated below 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) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies.

Prior to commencement of the work, Contractor shall provide to the Participating Entity a certificate of insurance that (i) names the Participating Entity as an additional insured under the Commercial General Liability policy and (ii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after renewal date. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement.

**16. 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.

**17. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY** Contractor and its applicable suppliers or licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title and interest in any ideas, concepts, know-how, documentation and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, Contractor grants Participating Entity a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which Participating Entity do business, solely for Participating Entity's internal use, and solely as necessary for Participating Entity to enjoy the benefit of the Services as stated in the applicable Service Agreements.

**18. NO WAIVER OF SOVEREIGN IMMUNITY** In no event shall this Master Agreement, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Participating Entity, be a waiver by the Participating Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

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 for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**19. ORDER NUMBERS** Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**20. PARTICIPANTS** WSCA-NASPO is the cooperative purchasing arm of the National Association of State Procurement Officials. It is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.,) for all 50 states, the District of Columbia and the organized US territories. 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(s) will be permissive.

**21. ENTITY PARTICIPATION** 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.

**22. PAYMENT** Payment for completion of a contract order 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 Contractor 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.

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 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.

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

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.

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

**24. RECORDS ADMINISTRATION AND AUDIT** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this Master Agreement. These records will be retained by the contractor for at least four years after the Master Agreement terminates, or until all audits initiated within the four years have been completed, whichever is later. The contractor agrees to allow WSCA-NASPO, State and Federal auditors, and state agency staff access to all the records of this Master Agreement and any order placed under this Master Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**25. REPORTS and ADMINISTRATIVE FEES** The contractor shall submit quarterly reports to the WSCA-NASPO Contract Administrator showing the quantities and dollar volume of purchases by each participating entity.

The contractor must pay a WSCA-NASPO administrative fee of one quarter of one percent (.25%) in accordance with the terms and conditions of the Master Agreement. The WSCA-NASPO administrative fee shall be submitted quarterly and is based on sales of products and services. The WSCA-NASPO administration fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some States may require that an additional fee be paid directly to the State on purchases made by procuring entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated in a Participating Addendum that is made a part of the Master Agreement. The contractor may adjust the Master Agreement pricing accordingly for purchases made by procuring agencies within the jurisdiction of the State. All such agreements may not affect the WSCA-NASPO administrative fee or the prices paid by the procuring agencies outside the jurisdiction of the State requesting the additional fee.

**26. STANDARD OF PERFORMANCE AND ACCEPTANCE** The Standard of Performance applies to all Product(s) and Services purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Participating Entity.

Participating Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within fifteen (15) calendar days of non-

acceptance of a Product or Service; otherwise the Products or Services shall be deemed accepted.

**27. SYSTEM FAILURE OR DAMAGE** In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

**28. TITLE OF PRODUCT** Upon Acceptance by the Participating Entity, Contractor shall convey to Participating Entity title to the Product free and clear of all liens, encumbrances, or other security interests, except title to Software which shall remain with the applicable licensors. Transfer of title to the Product shall include an irrevocable and perpetual license to use the Embedded Software in the Product. If Participating Entity subsequently transfers title of the Product to another entity, Participating Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Participating Entity or Participating Entity's transferee. Any rights to use or transfer any Software licensed pursuant to this Master Agreement shall be in accordance with the Publisher's Software License Agreement.

**29. WAIVER OF BREACH** Failure of Lead State or Participating 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 or Participating 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 or Participating Addendum.

**30. WARRANTY**

A. Limited Warranty. Dell warrants that the Dell-branded hardware Products will conform to the Dell specifications current when the Product is shipped and will be free from material defects in materials and workmanship during the applicable warranty period as specified in the documentation Dell provides with such products ("Limited Warranty") or for 90 days. The Limited Warranty period for Product begins on the Product ship date. Dell warrants that the Services will be provided in a good and workmanlike manner. Dell has the right to grant the licenses to the Software licensed under this Agreement, and such Software will substantially conform to the functional specifications and current documentation provided by Dell.

B. Disclaimers. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING PARAGRAPH, DELL, (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS (COLLECTIVELY, THE "DELL PARTIES") DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY

OF THE PRODUCTS, SOFTWARE, OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (2) RELATING TO THIRD-PARTY PRODUCTS, SOFTWARE, OR SERVICES; (3) RELATING TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE, OR DELL'S PERFORMANCE OF THE SERVICES; OR (4) REGARDING THE RESULTS TO BE OBTAINED FROM THE PRODUCTS, SOFTWARE, SERVICES, OR THE RESULTS OF ANY RECOMMENDATION BY DELL.

C. High-Risk Activities. The Products, Software, and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines, or any other application in which the failure of the Products, Software, or Services could lead directly to death, personal injury, or severe physical or property damage (collectively, "High-Risk Activities"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

D. Warranty Exclusions. Warranties do not cover damage due to external causes, such as accident, abuse, misuse, problems with electrical power, service not performed or authorized by Dell (including installation or de-installation), usage not in accordance with product or software instructions, normal wear and tear, or use of parts and components not supplied or intended for use with the products, software, or services. These warranties do not apply to Third-Party Products. Any warranty on a Third-Party Product is provided by the publisher, provider, or original manufacturer. All Third-Party Products are provided by Dell "as is."

E. With respect to Customer's use of the Software (1) neither Dell nor any of the Dell Parties makes any express or implied warranty that Software provided to Customer in connection with this Agreement is or will be secure, accurate, complete, uninterrupted, without error, or free of viruses, worms, other harmful components, or other program limitations; or that any errors in the Software will be corrected; (2) Customer assumes the entire cost of all necessary servicing, repair, or correction of problems caused by viruses or other harmful components, unless such errors or viruses are the direct result of dell's gross negligence or willful misconduct; and (3) Dell and the Dell Parties, jointly and severally, disclaim and make no warranties or representations as to the accuracy, quality, reliability, suitability, completeness, truthfulness, usefulness, or effectiveness of any reports, data, results, or other information obtained or generated by Customer related to Customer's use of the Software.

NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT DELL'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS

SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO CUSTOMER IN CUSTOMER'S JURISDICTION WILL APPLY TO CUSTOMER, AND DELL'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW

**31. ASSIGNMENT OF ANTITRUST RIGHTS** IN THE EVENT THAT CONTRACTOR INITIATES LITIGATION FOR A PURPORTED ANTITRUST VIOLATION FOR ALLEGED OVERCHARGES, AND AS A RESULT OF SUCH LITIGATION, WHETHER BY FINAL JUDGMENT OR SETTLEMENT OF ITS CLAIMS, CONTRACTOR RECEIVES MONETARY COMPENSATION, CONTRACTOR HEREBY AGREES TO PASS ON TO THE PARTICIPATING ENTITY A PORTION OF SUCH COMPENSATION IF, AND ONLY IF, THE FOLLOWING CONDITIONS OCCUR: (A) THE COMPENSATION RECEIVED BY THE PARTICIPATING ENTITY IN SETTLEMENT OR JUDGMENT IS DIRECTLY ATTRIBUTABLE TO SOFTWARE, HARDWARE, GOODS AND/OR SERVICES INCLUDED WITHIN THE COMPUTER PRODUCTS OR OTHER GOODS AND/OR SERVICES SOLD BY CONTRACTOR TO THE PARTICIPATING ENTITY UNDER THIS MASTER AGREEMENT; (B) IT WAS DETERMINED IN THE ANTITRUST LITIGATION (WHETHER BY JUDICIAL FINDING OR STIPULATION) THAT THE OVERCHARGE IN SOFTWARE, HARDWARE, GOODS AND/OR SERVICES SUFFERED BY CONTRACTOR WAS, IN FACT, PASSED ON TO THE PARTICIPATING ENTITY IN THE COMPUTER PRODUCTS OR OTHER PRODUCTS OR OTHER GOODS AND/OR SERVICES PURCHASED BY THE PARTICIPATING ENTITY UNDER THIS MASTER AGREEMENT DURING THE TIME PERIOD REFERENCED IN THE LITIGATION; AND (C) IN CALCULATING THE AMOUNT OF COMPENSATION WHICH CONTRACTOR AGREES TO PASS ON TO THE PARTICIPATING ENTITY, CONTRACTOR MAY DEDUCT ITS ACTUAL COSTS OF SUIT, INCLUDING ATTORNEY'S FEES, INCURRED IN ACHIEVING THE SETTLEMENT OR JUDGMENT.

**32. WSCA-NASPO eMARKET CENTER** Awarded responders are required to participate in the WSCA-NASPO eMarket Center and, working through WSCA-NASPO's contractor (SciQuest), connect with the eMarket Center. The ideal situation would be to use either a hosted (by SciQuest) or Punchout Level 2 catalog configurations, but actual requirements will be determined by the Lead State Contract Administrator, WSCA-NASPO, WSCA-NASPO's contractor (SciQuest) and the awarded contractor, after award. Participation does not require an awarded responder to have any special level of technology or technological understanding.

33. Contractor's sale of Products, Software, and Services as well as its performance of Services and Participating Entity's use of the Software are subject to the terms of this Master Agreement between NASPO-WSCA, Host State and Participating Entity and Contractor. "Contractor" shall include any Contractor affiliates with which such an order is placed. Purchases of Products, Software or Services under this Agreement shall be solely for Participating Entity's own internal use and not for resale purposes.

34. Quoted prices will remain in effect only until the expiration date of the quote or Contractor's acceptance of Participating Entity's order, and such prices are subject to shortages in materials or resources, increases in the cost of manufacturing or other factors.

**35. CHANGED OR DISCONTINUED PRODUCTS, SOFTWARE OR SERVICES** Contractor's policy is one of ongoing update and revision. Contractor may revise or discontinue Product, Software or Services offerings at any time without prior notice to Participating Entity. A change in a Product, Software or Service may occur after a Participating Entity places an order but before Contractor ships the Product or Software or performs the Service. As a result, Products, Software or Services Participating Entity receives might display minor differences from the Products, Software or Services Participating Entity orders. However, the Dell-branded Software and Products will meet or exceed all material specifications of such order. Parts used in repairing or servicing Products may be new, equivalent-to-new or reconditioned.

**36. RETURNS AND EXCHANGES** Contractor's return policy Includes:

1. Supplier offers the State the option to return most Goods purchased directly from Supplier. State may return eligible Goods for a credit or a refund of the purchase price paid, less shipping and handling, and any applicable restocking fees, as set forth in detail below.

**21-Day Return Period for Certain Goods and Accessories:** Except as provided below, all Hardware, Software, accessories, peripherals, parts may be returned within 21 days from the date on the packing slip or invoice for a credit or a refund of the purchase price paid, less shipping and handling. Any Good returned to Supplier without prior authorization from Supplier will be considered an unauthorized return, and the State will not receive credit for the Good and Supplier will not ship the Good back to State.

Exceptions to Supplier's 21-Day Return Period:

Software may not be returned at any time, unless the Software being returned is:

1. Application software or operating systems installed by Supplier on a returnable system which is being returned within the applicable return period; or
2. Media-based software that is unopened and still in its sealed package or, if delivered electronically, software that State have not accepted by clicking "I agree to these Terms and Conditions," or has later rejected those terms.
3. Except as otherwise set forth herein, new PowerEdge™, PowerConnect™ and PowerVault™ Goods purchased directly from Supplier may be returned within 30 days from the date on the packing slip or invoice.
4. Unless State has a separate agreement with Supplier, or except as provided below, all returnable Goods purchased directly from Supplier by large enterprise or public customers may be returned within 30 days from the date on the packing slip or invoice.
5. Dell EqualLogic™ and EqualLogic-branded products, Dell |EMC and EMC-branded products, Dell Compellent™ and Compellent-branded products, Dell KACE™ and KACE-branded products, Dell Force10™ and Force10-branded products, PowerVault ML6000 tape libraries,

PowerVault DL and DR products, Dell SonicWALL™ and SonicWALL-branded products, Dell Wyse™ and Wyse-branded products, Dell Quest™, Quest™, ScriptLogic™ and VKernel™ branded products, Dell Software branded products, Dell AppAssure™ and AppAssure™ branded products, non-Dell-branded enterprise products, enterprise software, and customized products may not be returned at any time.

6. Licenses purchased under any type of volume license agreement may be returned only with the express approval of the publisher, which in many circumstances will not be granted.

7. Non-Dell branded mobile phone offers fulfilled by third-party partners are subject to partner return policies, which may have shorter return periods.

8. Consumer, Small Business and Member Purchase Program (MPP) purchases eligible for the Easy Returns program may be returned within 30 days from the date on the packing slip or invoice.

Promotional Items: If State returns a purchased item that qualified State for a discount, promotional item or promotional card ( for example, buy a service, get a computer half off; buy a computer, get a free printer; buy a TV, get a promotional gift card) and either (i) do not also return the discounted or promotional item or (ii) have already redeemed the promotional card, Supplier may deduct the value of the discount, promotional item or redeemed card from any refund State receive for the return of the purchased item.

How to Return a Product: Before returning a product, State MUST first contact Supplier customer service and obtain a Credit Return Authorization (CRA) number before the end of the applicable return period. Supplier will not accept returns without a CRA number. To find the appropriate phone number or to send an email to customer service to request a CRA number, go to [www.dell.com/contact](http://www.dell.com/contact) or see the "Contacting Dell" or "Getting Help" section of your customer documentation. NOTE: State must ship the product to Supplier within 5 days of the date that Supplier issues the Credit Return Authorization number and MUST follow these steps:

Ship back all Goods State is seeking to return to Supplier and for which State received a CRA number. For partial returns, State's credit may be less than the invoice or individual component price due to bundled or promotional pricing or any unadvertised discounts or concessions.

Return the Goods in their original packaging, in as-new condition, along with any media, documentation and any other items that were included in the original shipment.

3. Ship the Goods at State's expense, and insure the shipment or accept the risk of loss or damage during shipment

Upon receipt of the return, Supplier will issue a credit or a refund of the purchase price paid, less shipping and handling subject to this policy.

Note: Before the State returns the Hardware or Software to Supplier, State must (1) back up any data on the hard drive(s) and on any other storage device in the product and (2) remove any and all confidential, proprietary and personal information as well as removable media such as flash drives, CDs and PC Cards. Supplier is not responsible for any confidential, proprietary or personal information; lost or corrupted data; or damaged or lost removable media that may be included with State's return.

Before returning or exchanging a Product, Participating Entity must contact Contractor directly to obtain an authorization number to include with Participating Entity's return. Participating Entity must return Products to Contractor in their original or equivalent packaging, and Participating Entity are responsible for risk of loss, as well as shipping and handling fees. Additional fees, including up to a 15% restocking fee, may apply. If Participating Entity fail to follow the return or exchange instructions provided by Contractor, Contractor 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 Participating Entity's original purchase.

**37. SERVICE AGREEMENTS** Contractor may provide Services, Software or Deliverables to Participating Entity in accordance with one or more "Service Agreements." "Service Agreements" are service contracts, including "Service Descriptions" available at [www.dell.com/servicecontracts/us](http://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.

**38. SUSPENSION OR MODIFICATION OF SOFTWARE OR SERVICES** Contractor may suspend, terminate, withdraw or discontinue all or part of the Services or Participating Entity's access or one or more users' access to the Software (and third-party software) upon receipt of a subpoena or law-enforcement request, or when Contractor believes, in its sole discretion, that Participating Entity (or Participating Entity's users) have breached any term of this Agreement or an applicable Service Agreement or are involved in any fraudulent, misleading or illegal activities.

With respect to Software provided or otherwise made available to Participating Entity by Contractor in connection with Services, it may be necessary for Contractor to perform scheduled or unscheduled repairs or maintenance or remotely patch or upgrade the software, which may temporarily degrade the quality of the Services or result in partial or complete outage of the Software. Contractor provides no assurance that Participating Entity will receive advance notification of such activities or that the Software or Services will be

uninterrupted or error-free. Unless otherwise agreed to in writing between Participating Entity and Contractor, any degradation or interruption in the Software or Services shall not give rise to a refund or credit of any fees paid by Participating Entity.

PARTICIPATING ENTITY AGREE THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOFTWARE, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF THE SOFTWARE. CONTRACTOR SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF PARTICIPATING ENTITY'S ACCESS TO OR USE OF THE SOFTWARE.

### **39. SUPPORT SERVICES**

**A. Participating Entity's Responsibilities.** When Services consist of repair of Dell-branded systems, such Services shall be those repair services that are necessary to fix a defect in materials or workmanship of a system or any standard system component covered by this Agreement. Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment or repair by anyone other than Contractor (or its representatives) are not included. Unless otherwise expressly provided in a Service Agreement, Services do not include repair of any system or system component that has been damaged as a result of (1) accident, misuse or abuse of the system or component (such as use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Contractor (or its representatives); (2) the moving of the system from one geographic location or entity to another; or (3) an act of nature such as lightning, flooding, tornado, earthquake or hurricane.

**B. Participating Entity Authorization for Provision of Services.** Some warranties or service-contracts for Third-Party Products may become void if Contractor or anyone other than an authorized service provider provides services for or works on such hardware or software (such as providing maintenance or repair services for the Third-Party Products). CONTRACTOR DOES NOT TAKE RESPONSIBILITY FOR ANY EFFECT THAT THE CONTRACTOR SERVICES MAY HAVE ON THOSE WARRANTIES OR SERVICE CONTRACTS.

Participating Entity authorize Contractor to use or otherwise access any and all Participating Entity-provided Third-Party Products as necessary or as requested by Participating Entity in Contractor's performance of the Services, including copying, storing and reinstalling a backup system or data. Participating Entity shall defend, indemnify and hold Contractor harmless from any third-party claim or action arising out of Participating Entity's failure to provide such authorization (such as obtain appropriate licenses, intellectual-property rights or any other permissions, regulatory certifications or approvals associated with technology, software or other components).

**40. SOFTWARE**

**A. Accompanying License.** Software is subject to the separate software license agreements accompanying the software, along with any product guides, operating manuals or other documentation included with the software media packaging or presented to Participating Entity during the installation or use of the Software. Participating Entity agrees that Participating Entity will be bound by such license agreement.

**B. Software License from Contractor.** With respect to Software provided or otherwise made available to Participating Entity by Contractor in connection with the Services, if no license terms accompany the Software, then subject to Participating Entity's compliance with the terms set forth in this Agreement, Contractor hereby grants Participating Entity a personal, nonexclusive license to access and use such Software only during the term of the Services and solely as necessary for Participating Entity to enjoy the benefit of the Services as stated in the applicable Service Agreements.

**I. Restrictions.** Participating Entity may not copy, modify or create a derivative work, collective work or compilation of the Software, and may not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof. Participating Entity may not license, sell, assign, sublicense or otherwise transfer or encumber the Software; may not use the Software in a managed-services arrangement; and may not use the Software in excess of the authorized number of licensed seats for concurrent users, sites or other criteria specified in the applicable Service Agreements. In addition, Participating Entity may not access the Software to monitor its availability, performance or functionality, or for any other benchmarking or competitive purpose.

**II.** Participating Entity is further prohibited from (1) attempting to use or gain unauthorized access to Contractor or to any third party's networks or equipment; (2) permitting other individuals or entities to use the Software or copy the Software or Services; (3) attempting to probe, scan or test the vulnerability of Software or a system, account or network of Contractor or any of its customers or suppliers; (4) interfering or attempting to interfere with service to any user, host or network; (5) engaging in fraudulent activity of any nature; (6) transmitting unsolicited bulk or commercial messages; (7) restricting, inhibiting or otherwise interfering with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Software (except for tools with safety and security functions); or (8) restricting, inhibiting, interfering with or otherwise disrupting or causing a performance degradation to any Contractor (or Contractor Service supplier) facilities used to deliver the Services.

**III. Audit.** Participating Entity hereby grant Contractor, or an agent designated by Contractor, the right to perform an audit of Participating Entity's use of the Software during normal business hours; Participating Entity agree to cooperate with Contractor in such audit; and Participating Entity agree to provide Contractor with all records reasonably related to Participating Entity's use of the Software. The audit will be limited to verification of Participating Entity's compliance with the terms of this Agreement.

**IV. Open Source Software.** A portion of the Software may contain or consist of open source software, which Participating Entity may use under the terms and conditions of the specific

license under which the open source software is distributed.

THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL CONTRACTOR, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**41. HIGH-RISK DISCLAIMER** The Dell-branded Products, Software and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines or any other application in which the failure of the products, software or services could lead directly to death, personal injury or severe physical or property damage (collectively, "High-Risk Activities"). Contractor expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

**42. LIMITATION OF LIABILITY**

I. CONTRACTOR 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. THE PRECEDING SENTENCE SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11, INDEMNIFICATION OF THIS AGREEMENT. EXCEPT FOR PARTICIPATING ENTITY'S BREACH OF PAYMENT OBLIGATIONS OR CONFIDENTIALITY OBLIGATIONS UNDER THIS MASTER AGREEMENT, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING: (1) LOSS OF REVENUE, INCOME, PROFIT OR SAVINGS; (2) LOSS OF BUSINESS OPPORTUNITY; (3) BUSINESS INTERRUPTION OR DOWNTIME; OR (4) DELIVERABLES, CONTRACTOR PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.

II. CONTRACTOR'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER) SHALL NOT EXCEED AN AGGREGATE AMOUNT IN EXCESS OF \$5,000,000.00 (FIVE MILLION DOLLARS).

III. 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 CONTRACTOR'S SALE OF PRODUCTS, SOFTWARE OR SERVICES TO PARTICIPATING 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.

**43. EXPORT COMPLIANCE** Participating Entity acknowledges that the Products, Software and Services provided under this Agreement, which may include technology and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."), may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which Participating Entity or Participating Entity's system is located, and may also be subject to the customs and export laws and regulations of the country in which the Products, Software or Services are rendered or received. Participating Entity agrees to abide by those laws and regulations. Participating Entity further represents that any software provided by Participating Entity and used as part of the Products, Software or Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If Participating Entity cannot make the preceding representation, Participating Entity agrees to provide Contractor with all of the information needed for Contractor to obtain export licenses from the U.S. Government or any other applicable national government and to provide Contractor with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Participating Entity is solely responsible for obtaining any necessary licenses relating to the export of software. Contractor also may require export certifications from Participating Entity for software. Contractor's acceptance of any order for Products, Software, or Services is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government; Contractor is not liable for delays or failure to deliver Products, Software, or Services resulting from Participating Entity's failure to obtain such license or to provide such certification. Each Party agrees to indemnify, defend and hold the other harmless from any third-party claims, demands, or causes of action against the other due to the indemnifying party's violation or alleged violation of the applicable export laws, regulations or orders. **Excluded Data.** Participating Entity acknowledges that Software and Services provided under this Agreement are not designed with security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) other personally identifiable information that is subject to heightened security requirements as a result of Participating Entity's internal policies or practices or by law (collectively referred to as "Excluded Data"). Participating Entity hereby agrees that Participating Entity is solely responsible for reviewing its data that will be provided to Contractor (or to which Contractor will have access) to ensure that it does not contain Excluded Data.

**44. REGULATORY REQUIREMENTS** Contractor is not responsible for determining whether any Third-Party Product to be used in the Products, Software or performance of the Services, satisfies the local regulatory requirements of the country to which such Products, Software,

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**DATA COMMUNICATIONS PRODUCTS AND SERVICES 14-19**  
**Administered by the State of Utah (hereinafter "Lead State")**

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

And

State of Montana  
(hereinafter "Participating State")  
Dell Contract Code WNN47AGS

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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. Unless otherwise specified, all state agencies, political subdivisions, including public education entities, and other entities (including cooperatives) in the State of Montana are eligible to procure under this Participating Addendum.

**COOPERATIVE PURCHASING**: Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

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

**ACCESS AND RETENTION OF RECORDS**: Contractor agrees to provide the department, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.



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**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

**COMPLIANCE WITH LAWS:** Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

**NON-COMPLIANCE WITH DEPARTMENT OF ADMINISTRATION REQUIREMENTS:** The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

**NON-EXCLUSIVE CONTRACT:** The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

**REDUCTION OF FUNDING:** The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that



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would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

**VENUE:** This interpretation of this Participating Addendum or any order placed against the Master Agreement are governed by the laws of Montana without reference to Montana's conflict of laws principles. The parties agree that any litigation concerning this Participating Addendum or an order placed against the Master Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

To the extent of a conflict in terms between the WSCA-NASPO Master Agreement and this Participating Addendum, the following descending order of precedence shall apply:

1. Participating Addendum "Statutory Requirements"
2. Participating Addendum (remainder of addendum)
3. WSCA Master Agreement

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



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Contractor

Master Agreement Contact

Name	Diane Wigington
Address	One Dell Way, Mail Stop 8707, Round Rock, Texas 78682
Telephone	512-728-4805
Fax	512-283-9092
E-mail	diane.wigington@dell.com

Contractor

Participating Addendum Contact

Name	David White
Address	One Dell Way, Mail Stop 8707, Round Rock, Texas 78682
Telephone	512-725-3702
Fax	512-283-9092
E-mail	david_f_white@dell.com

Participating Entity

Name	Rick Dorvall
Address	125 North Roberts St., Helena, MT 59620
Telephone	406-444-3366
Fax	406-444-2529
E-mail	rickdorvall@mt.gov

5. Subcontractors: All Dell authorized Resellers and Agents in the State of Montana, as shown on the dedicated (cooperative contract) website, are approved to provide sales and service support to participants in the WSCA-NASPO Master Price Agreement. Dell shall make all determinations about which entities in the State of Montana that the Dell authorized Reseller and Agents may support. The Dell authorized Resellers and Agents 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 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 WNN47AGS and the Master Agreement number AR602 on the order.**

**6. Orders:** Any Order placed by an entity ordering under this Participating Addendum for a hardware, software and/or services 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 unless the parties to the Order agree in writing that another contract or agreement applies to such Order.



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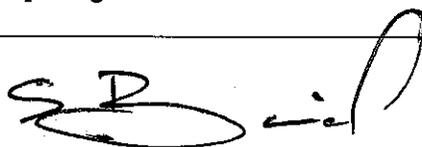
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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State:	Contractor: Dell Marketing L.P.
By: 	By: 
Name: <u>STEVE BALAMONTE</u>	Name: David F. White
Title: <u>GSD ADMIN.</u>	Title: Contracts Manager
Date: <u>7 OCT 2014</u>	Date: October 1, 2014

Approved as to Legal Content:

Mike Manson 10-1-14  
Legal Counsel (Date)

Chief Information Officer Approval:

Ronald A. Balaban 10/16/14  
Chief Information Officer (Date)  
Department of Administration

