

PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

MASTER PRICE AGREEMENT
Dell Marketing L.P.

A63307

State of Delaware

I. Scope

PARTICIPATING STATE OR PARTICIPATING ENTITY is defined according to the following: Agencies, or any other entity authorized by the laws of the State of Delaware ("State") to participate in the State centralized contracts (including but not limited to political subdivisions, public authorities, non-profits that exist solely for the benefit of the State constituents, and certain other entities as set forth in law), or the State acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation.

II. Changes

This Participating Addendum ("PA") includes the following additional clauses specific to State of Delaware requirements:

1. MANDATORY INSURANCE REQUIREMENTS:

Certificate of Insurance and/or copies of insurance policies for the following:

1. As a part of the addendum requirements, the Contractor shall obtain at its own cost and expense and keep in force and effect during the term of this addendum, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. The Contractor shall carry Comprehensive General Liability and at least one of the other coverages depending on the type of service or product being delivered.

- a. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence.

and

- b. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence.

2. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

3. Forty-five (45) days' written notice of cancellation or material change of any policies shall be required.
4. Before any work is done hereunder, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

**Contract Administrator, Government Support Services
WSCA Master Price Agreement A63307
State of Delaware
100 Enterprise Place, Suite 4
Dover, DE 19904**

Note: The State of Delaware shall not be named as an additional insured.

2. STATE OF DELAWARE BUSINESS LICENSE:

The Contractor shall either furnish Government Support Services with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200 -- Public Service, (302) 577-8205 -- Licensing Department.

Information regarding the State of Delaware's decision to enter into this participating addendum will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

3. NON-PERFORMANCE:

In the event the Contractor does not fulfill its obligations under the terms and conditions of this agreement, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the Master Price Agreement and the price of open market product shall be the responsibility of the Contractor. Under no circumstances shall monies be due the Contractor in the event open market products can be obtained below contract cost. Any monies charged to the Contractor may be deducted from an open invoice.

4. MANDATORY USAGE REPORT:

A report shall be furnished by the Contractor **MONTHLY Electronically in Excel format** detailing the purchasing of all items by the State of Delaware through this addendum. The format to be followed is described herein and shall be filed within fifteen (15) days after the end of each reporting period. Any exception to this mandatory requirement may result in cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, if the Contractor is determined to be in default of this mandatory report requirement, such conduct may be considered against them as justification by the State of Delaware for possible agreement termination.

5. **ORDERING PROCEDURE:**

The Contractor is required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. All correspondence shall reference the Master Price Agreement Number. The Contractor, its subcontractor(s) or assignee(s) must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State of Delaware's option, without imposing any additional fees, costs or conditions.

6. **BILLING:**

The Contractor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide The Master Price Agreement Number, ship to and bill to address, contact name and phone number.

7. **PAYMENT:**

The individual Participating Entity involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The Contractor, its subcontractor(s) or assignee(s) must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State of Delaware's option, without imposing any additional fees, costs or conditions.

8. **FORMAL CONTRACT AND/OR PURCHASE ORDER:**

No employee of the Contractor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, email, fax or State of Delaware's credit card shall serve as the authorization to proceed with work in accordance with the bid specifications and the special instructions, once it is received by the Contractor(s).

9. **TERMINATION OF P.O.'s:**

- a. Termination for Cause If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner its obligations, or if the Contractor violates any of the covenants, agreements, or stipulations of this addendum, the State of Delaware shall have the right to terminate the P.O. by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor in the performance of the P.O. shall, at the option of the Participating Entity, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Participating Entity.

- b. Termination for Convenience The State of Delaware may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Participating Entity.

10. RIGHTS AND OBLIGATIONS:

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the terms of this agreement, unless and until a valid executed purchase order has been approved by the State of Delaware Secretary of Finance, and all procedures of the State of Delaware Department of Finance have been complied with. A separate purchase order shall be issued for every project.

11. TERMINATION OF CONTRACT:

- a. Termination for Cause - If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations under this agreement after the Contractor has been given due written notification and a thirty (30) day cure period to remedy any such failure, or if the Contractor violates any of the covenants, agreements, or stipulations of this agreement, the State of Delaware shall thereupon have the right to terminate this agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this agreement shall, at the option of the Participating Entity, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Participating Entity.
- b. Termination for Convenience - The State of Delaware may terminate this agreement at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the Participating Entity, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the Participating Entity.

12. REMEDIES:

Except as otherwise provided in this Participating Addendum, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this addendum, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

13. CONTRACTOR EMERGENCY RESPONSE POINT OF CONTACT:

The Contractor shall provide a manned emergency group with established emergency processes and procedures available at an 800 number that can be contacted twenty-four (24) hours a day, seven (7) days a week for response in the event of a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the State of Delaware Emergency Operations Plan dated December 1, 2006.

14. STANDARD PRACTICES:

With respect to work provided to or conducted for the Participating Entity by the Contractor, the Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished to the Participating Entity. The Contractor shall follow practices consistent with generally accepted professional and technical standards. The Contractor shall be responsible for ensuring that all services, products and deliverables furnished to the state are coordinated with the State of Delaware Department of Technology and Information (DTI) and are consistent with practices utilized by, or standards promulgated by DTI. If any service, product or deliverable furnished by the Contractor does not conform to DTI standards or general practices, the Contractor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards or practices.

15. CONFIDENTIALITY AND DATA INTEGRITY:

The State of Delaware, Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

The Contractor and the State of Delaware shall sign a mutually agreeable Non-Disclosure Agreement (NDA). The mutual NDA shall safeguard the confidentiality and integrity of each party's confidential information. If the Contractor utilizes service partners or service alliances in the performance of work, the Contractor may be required to secure an applicable signed the confidentiality statement from such service providers prior to their beginning work.

16. SECURITY

Computer, network, and information security is of paramount concern for the State of Delaware and the Department of Technology and Information. The State of Delaware wants to ensure that computer/network hardware and software does not compromise the security of its IT infrastructure. The SANS Institute and the FBI have released a document describing the Top 20 Internet Security Threats. The document is available at www.sans.org/top20.htm for your review. Provided the purchasing agent orders the appropriate commercially available security software to be factory-loaded, the Contractor will make commercially reasonable efforts to provide Dell-branded systems that are, at the time of shipment, free of the applicable vulnerabilities listed in that document.

17. PAYMENT OF TAXES:

The State of Delaware is tax exempt. Payments of taxes for any money received by the Contractor under this agreement shall be the Contractor's sole responsibility. If any Participating Entity authorized to purchase under this agreement is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Participating Entity to the extent of any tax liability assessed.

18. NON-APPROPRIATION:

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State of Delaware requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

19. SOVEREIGN IMMUNITY:

The State of Delaware does not waive its sovereign immunity by entering into this agreement and fully retains all immunities and defenses provided by law with regard to any action based on this agreement.

20. ANTITRUST:

By entering into a Contract, the Contractor agrees to consider, in the Contractor's Discretion, all causes of action it may now have or hereafter acquire under the antitrust Laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State of Delaware under said contract. For any Cause of action taken herein by Contractor, the State of Delaware, at the State of Delaware's Discretion, may participate in any such action. In the event that Contractor desires to participate in such action; the Contractor shall not oppose the State's request to join such action so long as the interests/positions of the State of Delaware are not adverse to the interests/positions on the Contractor.

21. INDEMNIFICATION:

A. The Contractor shall hold the State of Delaware, its Participating Entities and its agencies and employees harmless and shall indemnify the State of Delaware, its Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the Contractor, its agents, officers, employees or subcontractors.

B. Contractor shall not be liable for damages that are the result of negligence by the State of Delaware, its agencies, or its employees.

22. Primary Contact:

The primary participating entity contact for this participating addendum is as follows:

Name: Arnold Cookson

Participating Entity Name: State of Delaware

**Address: 100 Enterprise Place, Suite 4
Dover, DE 19904**

Telephone: 302-857-4553

Fax: 302-739-3779

E-mail: acookson@state.de.us

The primary Contractor contact for this participating addendum is as follows:

Name: Heather Smith, Senior Contracts Consultant

Contractor: Dell Marketing L.P.

Address: One Dell Way, R8-07, Round Rock, TX 78682

Telephone: 512.723.7380

Fax: 512.283.9092

E-mail: heather_m_smith@dell.com

III. Servicing Subcontractors:

Dell Service Providers and Marketing Agents will vary State by State and will be identified in the individual Participating Addendum or on the individual website for the Participating Entity.

IV. Ordering

All orders and payment will be issued directly to Dell Marketing L.P.

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

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

Signatures

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

Signatures as required by State Statutes, Rules or Policies

AGREED: DELL MARKETING L.P.
 Signature: *ChesLynn Browning*
 Name: ChesLynn Browning
 Title: Contract Manager
 Date: 2/22/07
 Address: One Dell Way, RR8
Round Rock, Texas 78682
 Telephone: 512-778-8226
 Fax: 1-877-248-3734
 Email: ChesLynn.Browning@dell.com

AGREED: State of Delaware
 Signature: *Dean W. Stotler*
 Name: Dean W. Stotler, MPA, NIRM
 Title: Director, Government Support
Services
 Date: 2/26/07
 Address: 100 Enterprise Place, Suite 4
Dever, DE 19904
 Telephone: 302-857-4550
 Fax: 302-739-3779
 Email: Dean.Stotler@state.de.us