



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Purchase Order

PURCHASE ORDER NO.
SELECT10

PAGE
1

BLANKET RELEASE
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CORRECT PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES, AND SHIPPING PAPERS. QUESTIONS CONCERNING THIS PURCHASE ORDER SHOULD BE DIRECTED TO THE BUYER AS NOTED BELOW.

CHANGE ORDER

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

INVOICE TO

ALL STATE AGENCIES
 AND POLITICAL SUBDIVISIONS
 VARIOUS LOCALES AS INDICATED
 BY ORDER

AGENCY COPY

VENDOR

*709064501 800-987-3355
 DELL MARKETING LP
 ONE DELL WAY RR8-06
 ROUND ROCK TX 78682

SHIP TO

ALL STATE AGENCIES
 AND POLITICAL SUBDIVISIONS
 VARIOUS LOCALES AS INDICATED
 BY ORDER

DATE PRINTED	TERMS OF SALE	FEIN/SSN	FUND		
08/09/2010	NET 30	742616805			
SHIP VIA	F.O.B.	FREIGHT TERMS	ACCOUNT NUMBER		
BEST WAY	DESTINATION	PREPAID	MUL-MUL		
LINE	QUANTITY	UOP	VENDOR ITEM NO.	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT.NO	ITEM NUMBER		
<p>BLANKET OPEN-END STATEWIDE CONTRACT</p> <p>TO PROVIDE MICROSOFT PRODUCTS THROUGH A LARGE ACCOUNT RESELLER, ALL IN ACCORDANCE WITH THE MICROSOFT SELECT AGREEMENT 6.1 BETWEEN MICROSOFT AND THE STATE OF WEST VIRGINIA.</p> <p>THIS BLANKET OPEN-END STATEWIDE CONTRACT IS TO SUPPLY LICENSE FOR SOFTWARE TO ALL WEST VIRGINIA STATE AGENCIES AND POLITICAL SUBDIVISIONS.</p> <p>THIS AWARDED IS PER THE FOLLOWING: REQUEST FOR QUOTATION DATED 4/29/2010 AND ALL SPECIFICATIONS AND ADDENDA THERETO. VENDOR'S BID DATED 06/11/2010.</p> <p>A NEW SELECT AGREEMENT MAY BE NEGOTIATED WITH MICROSOFT DURING THE LIFE OF THIS CONTRACT. THE TERMS AND CONDITIONS OF THE NEW AGREEMENT WILL SUPERCEDE THE TERMS AND CONDITIONS OF THE 6.1 AGREEMENT UPON THE MUTUAL WRITTEN CONSENT OF THE STATE AND THE SUCCESSFUL VENDOR. SUCH CONSENT SHALL BE PROCESSED AS A CHANGE ORDER TO THIS CONTRACT. IF MUTUAL CONSENT CAN NOT BE REACHED, THE CONTRACT</p>					
					<p>PURCHASING DIVISION CERTIFIED ENCUMBERED AUG 11 2010 <i>Beverly Toler</i></p>
<p>IF APPROVAL AS TO FORMS REQUIRED BY ATTORNEY GENERAL, CHECK HERE <input checked="" type="checkbox"/> <i>8/1/10</i></p>					<p>OPEN END</p> <p>TOTAL</p>

APPROVED FOR

ONE FISCAL YEAR

Sawyer & Workfield

APPROVED AS TO FORM BY ASSISTANT ATTORNEY GENERAL

BY *Ann Adkins* 304-558-8802
Austa S. Turner 08/09/10
 PURCHASING DIVISION AUTHORIZED SIGNATURE

GENERAL TERMS & CONDITIONS PURCHASE ORDER/CONTRACT

1. **ACCEPTANCE:** Seller shall be bound by this order and its terms and conditions upon receipt of this order.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **NON-FUNDING:** All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
4. **COMPLIANCE:** Seller shall comply with all federal, state and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor.
5. **MODIFICATIONS:** This writing is the parties' final expression of intent. No modification of this order shall be binding unless agreed to in writing by the Buyer.
6. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder may be assigned by the Seller without the Buyer's consent.
7. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this order will:
{a} conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; {b} be merchantable and fit for the purpose intended; and/or {c} be free from defect in material and workmanship.
8. **CANCELLATION:** The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
9. **SHIPPING, BILLING & PRICES:** Prices are those stated in this order. No price increase will be accepted without written authority from the Buyer. All goods or services shall be shipped on or before the date specified in this Order.
10. **LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the *West Virginia Code*.
11. **TAXES:** The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
12. **RENEWAL:** Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.htm and is hereby made part of the agreement provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
16. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.



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LINE	QUANTITY	UQP	VENDOR ITEM NO	UNIT PRICE		AMOUNT	
	DELIVERY DATE	CAT NO	ITEM NUMBER				
0001	06/30/2011	EA	099-00-01-001	.00000			
<p>WILL BE CANCELLED AND A NEW LAR WILL BE SELECTED THROUGH THE COMPETITIVE BID PROCESS.</p> <p>FEE: LICENSE FOR SOFTWARE</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON SEPTEMBER 15, 2010 AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR,</p>							
						TOTAL	

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE

APPROVED AS TO FORM BY
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BY _____
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<p>SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p>							

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TOTAL

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<p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 04/11/2001</p>							

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 PURCHASING DIVISION AUTHORIZED SIGNATURE

3 Cost Table

COST TABLE

% Discount below Microsoft's Estimated Retail Price (ERP)	18.04%	%
World Wide Fulfillment Media – Cost per CD	\$ 21.00	

Contact Information:
 Brandt Whisenant
 512-934-7981 (P)
 brandt_Whisenant@dell.com

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

- 1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
- 2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
- 3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
- 4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
- 5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
- 6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
- 7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
- 8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
- 9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
- 10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
- 11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
- 12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
- 13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
- 14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
- 15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
- 16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
- 17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
- 18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
- 19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
- 20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
- 21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:
STATE OF WEST VIRGINIA

VENDOR

Spending Unit: _____

Company Name: Dell Marketing, L.P.

Signed: _____

Signed: Steve McDonald

Title: _____

Title: Proposal Manager

Date: _____

Date: June 8, 2010

*Dell accepts these terms and conditions subject to the modifications and additional terms set forth on Attachment 1.

Attachment 1
to
State of West Virginia RFP Select 10

1. The terms of the WV-96 Agreement Addendum as amended by this Attachment 1 shall take precedence over all conflicting terms in the RFP and any resulting Award or Purchase Order.
2. Payment terms are net 30 days from invoice. Software shall be deemed accepted within 30 days of receipt unless the State notifies Dell of its rejection and the reasons therefor.
3. The State acknowledges that no Protected Health Information (PHI) is intended to be provided to or accessed by Dell in connection with this RFP. The State shall endeavor to restrict the unintentional transmission of or access to PHI.
4. The Antitrust term in the purchasing documents shall be replaced with the following:

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

5. Dell is acting as a reseller and all warranties and support are provided by Microsoft under the terms of the Microsoft Select Agreement 6.1 between Microsoft and the State of West Virginia, Purchase Order #MA04SW05. Dell does not accept liability for the State's data related to the products and services covered in this RFP.
6. Section 13 of WV-96 shall be replaced with the following:

Dell is not liable for products not being available for use, or for lost or corrupted data or software. Dell is not liable for any incidental, indirect, special or consequential damages under the Agreement, even if advised of their possibility. Dell's total liability arising out of, or in connection with, any event or series of connected events occurring in connection with this agreement shall not exceed the lesser of one million U.S. dollars (\$1,000,000) or the total dollar amount of products and services purchased by Customer pursuant to this agreement during the 12 month period immediately preceding the date Dell is notified by customer of any claim of liability, except where local law prohibits such limitation. The foregoing limitation does not apply to claims, suits, actions, liabilities, and costs of any kind, including reasonable 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 Dell, its agents, officers, employees or subcontractors.

AGREED:

DELL MARKETING L.P.

By: *Teresa Walden*

Name: Teresa Walden

Title: Contract Manager

Date: August 5, 2010

STATE OF WEST VIRGINIA

By: *David Tincher*

Name: David Tincher

Title: Director

Date: 8/9/10

Approved as to form prior to signature this 2nd day of August, 2010 by *Shaune Wayfield*
Deputy Attorney General



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RECEIPT TICKET FOR PURCHASE ORDER: SELECT10							
LINE	CATNO	ITEM NUMBER	DESCRIPTION			QTY	DATE
0001		099-00-01-001	FEE: LICENSE FOR SOFTWARE			_____	_____
SIGNATURE _____						DATE _____	
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