

## **PARTICIPATING ADDENDUM**



### **SOFTWARE VALUE ADDED RESELLER (SVAR) LED BY THE STATE OF ARIZONA**

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Master Agreement #: CTR060024

Contractor: Dell Marketing L.P.

Participating Entity: **STATE OF SOUTH DAKOTA – CONTRACT 17721**

This Participating Addendum is entered into by Contractor and Participating Entity (collectively, the "Parties").

### **Scope and Participation:**

This Participating Addendum covers the NASPO ValuePoint Software Value Added Reseller Master Agreement number CTR060024 contract led by the State of Arizona (the "Master Agreement") for use by state agencies and other entities located in the Participating Entity authorized by that state's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. The Software and Services available under this Participating Addendum include all Software and Services as specified below, for which Contractor is acting as a reseller for the Software and Services provided by the applicable Software Publishers.

1. Scope:

- ☒ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above.

Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Arizona and Contractor for Software Value Added Reseller (SVAR). This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

**For internal use by the State:** Political subdivisions (cities, counties, public schools, state universities, etc.) of the State of South Dakota may purchase directly from the Contractor according to their own procurement procedures. Any IT related purchase by state executive branch agencies is subject to the authority and prior approval of the Bureau of Information and Telecommunications. The Contractor will not be responsible to ensure compliance of this requirement.

The Contractor may, at the Contractor's discretion, extend pricing from this agreement to Indian tribal governments and non-profit organizations in South Dakota. Any sales made to Indian tribes and non-profit organizations from this agreement shall be included in any

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required reports and shall be subject to the NASPO VALUEPOINT administrative fee.

3. Term:

☒ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

4. Pricing: The prices for the Software and Services shall be as specified in the Master Agreement, based on a markup of Contractor's invoiced cost. Pricing shall not be based off a discount off manufacturer's suggested retail price, which is inapplicable to this Participating Addendum.5. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:**CONTRACTOR:**

|            |                                                             |
|------------|-------------------------------------------------------------|
| Name:      | Ashley Salinas                                              |
| Address:   | Dell Marketing L.P.<br>One Dell Way<br>Round Rock, TX 78682 |
| Telephone: | 512-542-1237                                                |
| Fax:       | None Available                                              |
| Email:     | a.salinas@dell.com                                          |

**PARTICIPATING ENTITY:**

|            |                                                                                           |
|------------|-------------------------------------------------------------------------------------------|
| Name:      | Lori King                                                                                 |
| Address:   | Office of Procurement Management<br>523 East Capitol Avenue<br>Pierre, South Dakota 57501 |
| Telephone: | 605-773-4580                                                                              |
| Fax:       | 605-773-4840                                                                              |
| Email:     | lori.king@state.sd.us                                                                     |

**Participating Entity Modifications and Additions to the Master Agreement**

☒ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

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**South Dakota's state specific contract terms set forth in Attachment A are incorporated by reference into this Participating Addendum.**

- a. The Participating Entity's rights to use the Software delivered by Contractor are governed by the terms of the applicable end-user license agreement, including, if applicable, when such terms are provided via an Electronic Ordering System or other online form.
- b. Contractor warrants that the Software and Services will perform substantially in a manner consistent with the corresponding standard documentation issued by the Publisher for the applicable Software and Services.
- c. Contractor is acting as a reseller for the Software and Services provided by the Software Publishers (including, without limitation, any SaaS), and may not have direct access to, or control over, the operation, functionality, terms and conditions or data security of the Software or Services. The applicable Publisher and/or service provider shall remain responsible for performance of its products and services, including any data security according to its standard terms. If requested by the Participating Entity, Contractor will reasonably cooperate with the Participating State and the Software Publishers as appropriate.
- d. Contractor may use affiliates or other qualified subcontractors to perform its obligations hereunder, provided that (i) Contractor shall remain responsible for the performance of its obligations under this Participating Addendum; and (ii) either party may assign rights to payments arising under any order without consent of the other party.
- e. Any preprinted terms on a Participating Entity purchase order shall be given no force or effect and no terms of a purchase order that conflict with this Participating Addendum shall be binding on Contractor.
- f. In the event of any audit, inspections, or testing, notwithstanding any conflicting terms in the Master Agreement, Contractor agrees to grant access to Contractor's sales records only, at the expense of the Participating Entity in exercise of its rights, provided that Contractor operations are not adversely interrupted, and Contractor is not unduly burdened from the cost of such an audit, inspection, or testing. As Contractor is a reseller of third party Software and Services, when requested, Contractor will work with the Participating Entity and such third party to reasonably assist in obtaining access to such records or testing (including, where applicable, SOC 2 reports) as may be available and as applicable to the performance under this Participating Addendum.
- g. If Participating Entity requests removal of any of Contractor's personnel from Participating Entity's facilities or from further assignment Contractor will make reasonable efforts to honor such request when reasonable and commercially practicable, provided that Contractor shall maintain final authority over all personnel decisions.

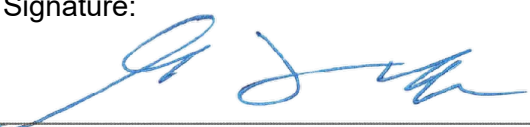
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Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

6. Lease Agreements: **Reserved**
7. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.
8. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing 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 the order.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

**PARTICIPATING ENTITY****CONTRACTOR**

|                                                                                                   |                                                                                                    |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Signature:<br> | Signature:<br> |
| Name:<br><b>Steven L. Berg</b>                                                                    | Name:<br>Alyssa Sayles                                                                             |
| Title:<br><b>Director of Procurement Management</b>                                               | Title:<br>Contract Administrator                                                                   |
| Date:<br>10/7/2022                                                                                | Date:<br>October 7, 2022                                                                           |

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at [info@naspovaluepoint.org](mailto:info@naspovaluepoint.org).

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org).

## **ATTACHMENT A**

### **STATE OF SOUTH DAKOTA CONTRACTUAL PROVISIONS**

**Important: This form contains mandatory provisions and must be attached to or incorporated into all copies of any contractual agreement with the State of South Dakota. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain all of the following provisions: "THE PROVISIONS FOUND IN THIS STATE OF SOUTH DAKOTA CONTRACTUAL PROVISIONS ATTACHMENT, WHICH IS ATTACHED TO THIS CONTRACT, ARE HEREBY INCORPORATED INTO THIS CONTRACT WITH THE SAME FORCE AND EFFECT AS FULLY SET FORTH IN THE BODY OF THIS CONTRACT."**

1. It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of this contract into which this attachment is incorporated.

2. Vendor/contractor acknowledges that the State of South Dakota would not have entered into this contract without the provisions of this Attachment.

3. All contractual agreements are subject to, governed by, and construed in accordance with the laws of the State of South Dakota. Any action, suit, or other proceeding under, pursuant to, or governed by this contract shall be brought and maintained in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

4. The vendor/contractor agrees that the continuation of this contract is dependent on receipt of both an appropriation and expenditure authority from the South Dakota Legislature. In the event that the Legislature does not provide both an appropriation of funds and expenditure authority for any fiscal year, or if funds become unavailable because of federal funds reduction, then and in that event, this contract shall be null and void and shall expire at the end of the last fiscal year in which both funding and expenditure authority shall be available for this contract to the State and the State agency involved. Vendor/contractor agrees that a termination for lack of funds pursuant to this paragraph shall not result in a claim against the State, nor against any State agency, agent, officer, or employee.

5. Neither the State of South Dakota, nor any State agency, agent, officer, or employee shall hold harmless or indemnify any vendor/contractor for any loss or damage beyond the amounts provided for tort claims against the State by South Dakota law. Neither the State, nor any State agency, agent, officer, or employee shall assume liability to any third person by means of a contract or agreement. The State has not, and shall not, waive or give up any immunity or protection afforded to the State of South Dakota by the Eleventh Amendment to the Constitution of the United States, and no provision of this agreement shall be interpreted as, or be deemed as, a waiver of such Amendment, nor of any immunity afforded by it to the State of South Dakota.

6. Vendor/contractor agrees to comply with all federal, state and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing

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### **STATE OF SOUTH DAKOTA CONTRACTUAL PROVISIONS**

goods or services pursuant to this agreement, and vendor/contractor will be solely responsible for obtaining current information about such requirements.

7. Notwithstanding any language to the contrary, no interpretation shall be allowed that would find the State of South Dakota or any State agency has agreed to any binding arbitration, nor to the payment of damages or liquidated damages upon occurrence of a contingency. The State of South Dakota does not and shall not agree to pay any attorneys' fees or late charges in excess of those provided for in the South Dakota Prompt Payment Act, SDCL chapter 5-26.

8. By signing this contract, representative of vendor/contractor hereby warrants and represents that such person is duly authorized by vendor/contractor to execute this contract on behalf of vendor/contractor, and that vendor/contractor agrees to be bound by the provisions hereof.

9. This contract shall not require the State of South Dakota to purchase any insurance, nor shall the State of South Dakota be obligated to provide for any self-insurance beyond that required by South Dakota law relating to tort claims. Vendor/contractor shall be required to provide insurance for: (1) Commercial General Liability; (2) Professional Liability; (3) Business Automobile Liability; and (4) Workers' Compensation, with terms and conditions as set out in the Master Agreement.

10. Vendor/contractor hereby acknowledges that the State of South Dakota and all State agencies are public entities and are subject to all South Dakota statutes and laws governing open records and open meetings. It shall not be a violation or breach of this agreement for the State of South Dakota or any State agent, agency, officer, or employee to take any action that said State agency, agent, officer, or employee in good faith believes is necessary to comply with any State of South Dakota law governing open meetings or open records.

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### **STATE OF SOUTH DAKOTA CONTRACTUAL PROVISIONS**

11. Pursuant to Executive Order 2020-01, for contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000.00) or more, by signing this Agreement vendor/contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Vendor/contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

12. Vendor/contractor will not provide to the State any computer or telecommunication hardware or video surveillance hardware, or any components thereof, or any software that was manufactured, provided, or developed by a covered entity. As used in this paragraph, "covered entity" means the following entities and any subsidiary, affiliate, or successor entity and any entity that controls, is controlled by, or is under common control with such entity: Kaspersky Lab, Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any entity that has been identified as owned or controlled by, or otherwise connected to, People's Republic of China. Vendor/contractor will immediately notify the State if vendor/contractor becomes aware of credible information that any hardware, component, or software was manufactured, provided, or developed by a covered entity.

13. Vendor/contractor hereby acknowledges and agrees that each product and service purchased through this Agreement pose different, unique security risks to the State. Therefore, each purchase made through this Agreement by a state executive agency under the purview of the Governor must be reviewed by the Bureau of Information and Telecommunications and may be subject to additional contract clauses applicable to that specific purchase.