

NASPO ValuePoint
PARTICIPATING ADDENDUM



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

Master Agreement #: CTR060024
Contractor: Dell Marketing L.P.
Participating Entity: **STATE OF WYOMING**

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

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.

Scope and Participation:

1. Scope: This Participating Addendum includes the entire scope of the products and services available through the Master Agreement. 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.
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:

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CONTRACTOR:

Name:	Ashley Salinas
Address:	Dell Marketing L.P., One Dell Way, Round Rock, Texas 78682
Telephone:	512-542-1237
Email:	Dell Legal Notices@Dell.com and a.salinas@dell.com

PARTICIPATING ENTITY:

Name:	Brenda Crozier
Address:	2323 Carey Avenue (Idelman Mansion), Cheyenne, WY 82002
Telephone:	307-777-6708
Email:	Brenda.crozier@wyo.gov

6. Participating Entity Modifications 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:**
- 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 applicable Publisher.
 - 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 Entity and the Software Publishers as appropriate.
 - d. Use of Purchasing-card is at time of order placement only, and not permitted for payment of invoices issued by Contractor.
 - 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.

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- 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 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.

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.

7. Order of Precedence: This Participating Addendum, consisting of four (4) pages, and Attachment A, Wyoming General Conditions, consisting of six (6) pages, are added to the NASPO Master Agreement # CTR060024 (the "Master Agreement"). In the event of any conflict or inconsistency between this Participating Addendum, Attachment A, Wyoming General Conditions, and the Master Agreement, as amended, the following order of precedence will govern as between the Participating Entity and the Contractor: (1) this Participating Addendum. (2) Attachment A, Wyoming General Conditions, and (3) the Master Agreement, as amended, and then any other document incorporated by reference.
8. Lease Agreements: **Reserved**
9. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in State of Wyoming 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.
10. 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.

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

PARTICIPATING ENTITY

CONTRACTOR

Signature: DocuSigned by: <i>Mandy Koenig</i> 42EB37FF04B743F...	Signature: <i>Katherine Castillo</i>
Name: Mandy Koenig	Name: Katherine Castillo
Title: Procurement Manger	Title: Paralegal Advisor
Date: 12/29/2022	Date: Dec 15, 2022

ATTORNEY GENERAL APPROVAL AS TO FORM ONLY WITH ATTACHMENT A:

Tyler M. Renner #226740 Dec. 13, 2022
 Tyler M. Renner, Senior Assistant Attorney General Date

WYOMING DEPARTMENT OF ADMINISTRATION & INFORMATION:

DocuSigned by:
Patricia L. Bach
6F4BEF2B8DF5404...
 Patricia L. Bach, Director 1/4/2023
 Date

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Attachment A Wyoming General Conditions

This Attachment A, Wyoming General Conditions, is incorporated into the Participating Addendum. Together, those documents (the "Wyoming Documents") supplement and replace terms and conditions contained in State of Arizona NASPO ValuePoint Master Agreement CTR060024, dated August 23, 2022, (the "Master Agreement"), as between Dell Marketing, L.P. ("Contractor") and the State of Wyoming (referred to in this Attachment A as "State"). In the event of any conflict or inconsistency between the terms and conditions contained in the Master Agreement and the Wyoming Documents, the terms and conditions in the Wyoming Documents shall control, and shall supersede and replace the terms contained in the Master Agreement as between the Contractor and State.

The following provisions of the Master Agreement are amended as follows:

1. MASTER AGREEMENT SECTION, Payment, is amended to change the time for Payment after Acceptance from thirty (30) days to forty-five (45) days, pursuant to Wyo. Stat. § 16-6-602. Reference on page 79, section 4, 4.1 on the Master Agreement.

The following General Conditions of this Attachment A are hereby incorporated into the Participating Addendum:

1. **Acceptance.** Contractor shall notify State if State's purchase order is not accepted by Contractor. Any items received by State and not rejected within thirty (30) days of the date of the invoice shall be deemed accepted by State.

2. **General Provisions.**

A. Amendments. Any changes, modifications, revisions, or amendments to this Participating Addendum which are mutually agreed upon by the parties to this Participating Addendum shall be incorporated by written instrument, executed by all parties to this Participating Addendum.

B. Applicable Law, Rules of Construction, and Venue. The construction, interpretation, and enforcement of this Participating Addendum shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Participating Addendum as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Participating Addendum and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

C. Assignment Prohibited and Participating Addendum Shall Not Be Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Participating Addendum without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, 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) and either party may assign rights to payments arising under any order without consent of the other party. The Contractor shall not use this Participating Addendum, or any portion thereof, for collateral for any financial obligation without the prior written permission of the State.

D. Availability of Funds. Each payment obligation of the State is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Participating Addendum, the Participating Addendum may be terminated by the State at the end of the period for which the funds are available. The State shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

E. Award of Related Contracts. The State may award supplemental or successor contracts for work related to this Participating Addendum or may award contracts to other contractors for work related to this Participating Addendum. The Contractor shall cooperate fully with other contractors and the State in all such cases.

F. Certificate of Good Standing. The Contractor shall provide to the State a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Contractor is authorized to conduct business in the State of Wyoming, if required, before performing work under this Participating Addendum. Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Participating Addendum.

G. Compliance with Laws. The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Participating Addendum.

H. Extensions. Nothing in this Participating Addendum shall be interpreted or deemed to create an expectation that this Participating Addendum will be extended beyond the term described herein. Any extension of this Participating Addendum shall be initiated by the State and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Participating Addendum or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Participating Addendum.

I. Force Majeure. Neither party shall be liable for failure to perform under this Participating Addendum if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

J. Independent Contractor. The Contractor shall function as an independent contractor for the purposes of this Participating Addendum, and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Participating Addendum, the Contractor shall be free from control or direction over the details of the performance of services under this Participating Addendum. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Participating Addendum, and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Participating Addendum. Nothing in this Participating Addendum shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or any Purchasing Entity, or to incur any obligation of any kind on behalf of the State of Wyoming or any Purchasing Entity. The Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Participating Addendum.

K. Kickbacks. The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Participating Addendum, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Participating Addendum. If the Contractor breaches or violates this warranty, the State may, at its discretion, terminate this Participating Addendum without liability to the State, or deduct from the contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

L. Nondiscrimination. The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Participating Addendum.

M. Notices. All notices arising out of, or from, the provisions of this Participating Addendum shall be in writing and given to the parties at the addresses provided under this Participating Addendum, either by regular mail, email (Brenda.crozier.wyo.gov and a.salinas@dell.com) or delivery in person.

N. Notice of Sale or Transfer. The Contractor shall provide the State with commercially reasonable notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Participating Addendum.

O. Prior Approval. This Participating Addendum shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Participating Addendum has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information Procurement Division, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-3-3204(b)(iv).

P. Publicity. Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the State as the sponsoring entity and shall not be released without prior written approval from the State.

Q. Severability. Should any portion of this Participating Addendum be judicially determined to be illegal or unenforceable, the remainder of the Participating Addendum shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

R. Sovereign Immunity and Limitations. Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and each Purchasing Entity that is an instrumentality of the State of Wyoming expressly reserve sovereign immunity by entering into this Participating Addendum and any purchase order, and each Purchasing Entity constituting a governmental entity expressly reserves governmental immunity. All of them specifically retain all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. §

1-39-101, *et seq.*, and all other applicable law. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Contractor or a third party, including, but not limited to, the following: the State's liability for damages; choice of law in a state other than Wyoming; conflicts of law provisions; venue and forum-selection clauses in a state other than Wyoming; Contractor-provided defense or control of litigation or settlement; the State's liability for acts or omissions of third parties; any requirement that the State pay attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; the State's indemnification of another party; and confidentiality. Any such provisions in the Master Agreement, the Participating Addendum, or in any purchase order, attachment, URL, EULA, or document incorporated by reference, will not be binding on the State of Wyoming or any Purchasing Entity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Participating Addendum shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

S. Taxes. The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

T. Termination of Participating Addendum. Either Party may terminate this Participating Addendum without cause upon ninety (90) days written notice. Either Party may terminate this Participating Addendum for material breach by the other party, if such other party has failed to cure the material breach within a reasonable grace period of no less than thirty (30) days as set forth by the other party in writing.

U. Third-Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Participating Addendum shall not be construed so as to create such status. The rights, duties, and obligations contained in this Participating Addendum shall operate only between the parties to this Participating Addendum and shall inure solely to the benefit of the parties to this Participating Addendum. The provisions of this Participating Addendum are intended only to assist the parties in determining and performing their obligations under this Participating Addendum.

V. Titles Not Controlling. Titles of sections and subsections are for reference only and shall not be used to construe the language in this Participating Addendum.

W. Waiver. The waiver of any breach of any term or condition in this Participating Addendum shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver

X. Counterparts. This Participating Addendum may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Participating Addendum.

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