

NASPO ValuePoint

PARTICIPATING ADDENDUM



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

Master Agreement #: CTR060028
Contractor: SHI
Participating Entity: **STATE OF NORTH DAKOTA**

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

Scope and Participation:

1. Scope:

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

All Software titles **excluded** from this Participating Addendum except Adobe

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 is available for use by the Participating State's entities, governmental boards and commissions, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, nonprofit entities established on behalf of public entities, tribal agencies, and the International Peace Garden. 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 April 1, 2023 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.
- ☐ This Participating Addendum shall become effective as of the date of the last signature below and shall terminate on [date], unless terminated sooner or otherwise amended in accordance with the terms set forth herein. Notwithstanding the previous, in no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.

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

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CONTRACTOR:

Name:	Nicole Rasky
Address:	290 Davidson Ave Somerset NJ 08873
Telephone:	732-584-8227
Fax:	n/a
Email:	NASPO_SVAR@shi.com

Participating Entity:

Name:	Tricia Opp
Address:	600 East Boulevard Ave, Dept 012, Bismarck, ND 58505
Telephone:	701.328.1721
Fax:	701.328.1615
Email:	topp@nd.gov

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.

☒ 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:**

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.

- A. **Payment of Taxes by Participating Entity:** Participating Entity is not responsible for and will not pay local, state, or federal taxes. Participating Entity sales tax exemption number is E-2001. Participating Entity will furnish certificates of exemption upon request by Contractor. (Supplementing Master Agreement Special Terms and Conditions, 4.2 Applicable Taxes)
- B. **Termination for Lack of Funding or Authority:** Participating Entity, by written notice to Contractor, may terminate the whole or any part of this Participating Addendum under any of the following conditions (Supplementing Master Agreement Uniform Terms and Conditions, 9.0 Contract Termination):
 - i. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

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- ii. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Participating Addendum or are no longer eligible for the funding proposed for payments authorized by this Participating Addendum.
- iii. If any license, permit, or certificate required by law or rule, or by the terms of this Participating Addendum, is for any reason denied, revoked, suspended, or not renewed.

C. Alternative Dispute Resolution: Participating Entity does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial. (Replaces Special Terms and Conditions, 10.2 Mandatory Arbitration)

D. Injunctive Relief: Contractor shall immediately report to Participating Entity any and all unauthorized disclosures or uses of Participating Entity's confidential information or proprietary information of which Contractor or its staff is aware or has knowledge. Contractor acknowledges that any unauthorized publication or disclosure of Participating Entity's confidential information or proprietary information to others may cause immediate and irreparable harm to Participating Entity. If Contractor should publish or disclose such confidential information or proprietary information without authorization, Participating Entity shall immediately be entitled to or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify, defend, and hold harmless Participating Entity from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Contractor's unauthorized use or disclosure of Participating Entity's confidential information or proprietary information. As a condition to these indemnity obligations, Participating Entity will provide Contractor with prompt notice of any claim of which Participating Entity is aware and for which indemnification shall be sought under this Participating Addendum and shall cooperate in all reasonable respects with Contractor in connection with any such claim. (Supplementing Master Agreement terms and conditions)

E. Indemnification: The legal defense provided by Contractor to the Participating Entity under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Participating Entity is necessary. Any attorney appointed to represent the Participating Entity must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to reimburse the Participating Entity for all costs, expenses and reasonable attorneys' fees incurred if the Participating Entity prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. (Supplementing Master Agreement Special Terms and Conditions, 6.3 Indemnification)

F. Insurance: Contractor shall provide Participating Entity a certificate of insurance showing State of ND as the certificate holder based on the limits of insurance listed in Master Agreement Special Terms and Conditions, 6.2 Contractor Insurance Requirements.

G. Technology Standards: When Participating Entity requires services, Contractor shall

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comply with applicable Participating Entity enterprise architecture technology standards. These standards can be found on Participating Entity's website at <https://www.ndit.nd.gov/standards>. If Contractor is unable to comply with any applicable standard, Contractor shall request a waiver from that requirement by submitting a Request for Exemption from Information Technology Standards or Statutory Policies (SFN 51687) form in coordination with Participating Entity's procurement officer for the Participating Entity's review and approval or disapproval. (Supplements Master Agreement terms and conditions)

- H. **Work Product:** When Participating Entity requires services to be performed by Contractor, and unless otherwise specified in a Scope of Work, all work product, equipment or materials created for Participating Entity or purchased by Participating Entity under this Participating Addendum belong to Participating Entity and must be immediately delivered to Participating Entity at Participating Entity's request upon termination of this Participating Addendum (Supplements Master Agreement terms and conditions).
- I. **Travel Expenses:** When Participating Entity requires travel for requested services, Participating Entity shall reimburse Contractor for expenses related to travel at amounts not to exceed those outlined below:
 - i. **Lodging:** Reimbursement shall not exceed the then-current, published GSA rate for the travel location. Copies of receipts are required for lodging reimbursement. Participating Entity shall not reimburse for incidental and miscellaneous expenses charged to the room, including: alcohol, telephone charges, or entertainment (e.g., movies).
 - ii. **Transportation:** Air travel shall be reimbursed by Participating Entity at the actual cost of airfare for coach class travel only. Contractor shall make air travel arrangements at least fourteen (14) days in advance whenever possible. Reimbursement for rented, chartered, or contracted vehicle transportation shall be limited to reasonable rates as determined by Participating Entity.
 - iii. **Meals:** Meals shall be paid on a per diem basis for each day of travel at then-current, published GSA per diem rate for the travel location. Per diem for the first and last day of travel shall be paid at seventy-five percent (75%) of the GSA per diem rate. Requests for per diem payments must include the start and end dates of travel, the location where the services are performed, and the allowable per diem amount for each trip on the billing/invoice.

Payment for any travel expenses that exceed the travel budget as agreed upon by the Parties must be approved by Participating Entity's project manager. (Supplements Master Agreement terms and conditions)

- J. **Retainage:** Unless otherwise specified in a Scope of Work, when Participating Entity requires services, deliverable payments may be subject to retainage. Retained percentage will be defined in the service request. Retained amounts due to Contractor shall be paid upon Final Acceptance (Supplements Master Agreement terms and conditions).
- K. **Personnel:** (Supplements Master Agreement Special Terms and Conditions, 7.2 Contractor Personnel)

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- i. When required by Participating Entity, Contractor will designate a Project Manager and provide individuals to meet the requirements and accomplish the work as stated in this Participating Addendum including any mutually agreed upon Scope of Work.
- ii. Contractor agrees any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally proposed, and that Participating Entity's approval of a substitution is not construed as an acceptance of the substitution's performance potential. Participating Entity agrees that an approval of a substitution will not be unreasonably withheld.
- iii. Upon request by Participating Entity, Contractor shall replace any Contractor personnel that Participating Entity determines, in its sole discretion, to be unable to perform the responsibilities of this Participating Addendum acceptably, e.g., inappropriate or unprofessional personal conduct, professional inabilities, etc.

(Supplements Master Agreement Special Terms and Conditions, 16.8 Background Checks)

- iv. Contractor agrees that Participating Entity may require any personnel Contractor assigns to perform work under this Participating Addendum, including employees, contracted staff, subcontractors, or other individuals, to submit to a criminal history record check in accordance with N.D.C.C. §12-60-24, through the authority granted to the chief information officer of the Participating Entity pursuant to N.D.C.C. § 54-59-20. Participating Entity shall have the right to reject any individual Contractor assigns to perform work under this Participating Addendum if, in Participating Entity's sole discretion, it determines that the results of the criminal history record check make the individual unacceptable. Contractor agrees to be responsible for all costs associated with criminal history record checks carried out pursuant to this paragraph.

L. Project Management: When services to be performed by Contractor or when Contractor develops deliverables as required, the following items may apply as required by the Participating Entity (Supplements Master Agreement terms and conditions):

- i. Reporting - Contractor shall deliver reports as required by Participating Entity to include Contractor's progress on the project and meeting the objective/deliverables as stated in the Scope of Work. Reports may also include project variance in accordance with N.D.C.C. § 54-59-23.
- ii. Integrated Change Control Process
 - (a) Contractor and Participating Entity will utilize an integrated change control request process to manage changes during the life of a project.
 - (b) Each change request duly authorized in writing by the Parties shall be incorporated into and considered part of the Scope of Work under this Participating Addendum.
 - (c) During the course of this Participating Addendum, if Contractor determines or could reasonably determine any Participating Entity actions or directions constitute a requirement to perform additional work, Contractor shall notify Participating Entity within thirty (30) calendar days that Participating Entity has requested Contractor to

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perform additional work in the form of a change request utilizing the process above. Contractor understands that it waives the right to request additional time and reimbursable costs if Contractor fails to notify Participating Entity within thirty (30) calendar days of determining or reasonably being able to determine that any Participating Entity actions or directions constitute a requirement to perform additional work under this Participating Addendum.

iii. **Deliverable Acceptance**

- (a) Upon completion of a deliverable, Contractor will furnish Participating Entity with the deliverable and associated documentation, the expected performance, and agreed upon Acceptance Criteria.
- (b) After receipt of each deliverable, Participating Entity will have five (5) working days or a different period of time as is agreed to by the Parties, in which to accept or reject each item in writing. Participating Entity will accept by signature. If Participating Entity rejects it, Participating Entity will specify in writing its grounds for rejection and Contractor shall use its reasonable efforts to revise any issues for the deliverables to be acceptable to Participating Entity within the following five (5) working days. If Participating Entity rejects it a second time, Participating Entity will have the option of repeating the procedure as described in this acceptance statement above, escalating the issue to the appropriate Participating Entity contact or terminating this Participating Addendum upon written notice to Contractor.

iv. **Final Acceptance -**

- (a) The successful completion of all deliverables as stated in the Scope of Work in accordance with the deliverable acceptance process AND
- (b) The final delivered product fully implemented in Participating Entity's live production environment AND
- (c) Participating Entity has sixty (60) calendar days thereafter in which to accept or reject it in writing. If Participating Entity rejects it, Participating Entity shall specify in writing its grounds for rejection and Contractor shall use reasonable efforts to make the deliverable(s) conform to the requirements of this Participating Addendum as soon as possible and at no additional cost to Participating Entity. Contractor shall continue to use reasonable efforts to make the deliverable(s) conform to the requirements of this Participating Addendum until Participating Entity accepts the deliverable(s) or terminates this Participating Addendum upon written notice to Contractor.

M. SaaS and Data Security: Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by Chief Information Officer of the Participating Entity. (Supplements Master Agreement Uniform Terms and Conditions, 3.11 Offshore Performance of Work Prohibited)

N. Data Processing and Location: Contractor shall transmit, process, and store Participating Entity Data within the continental United States. (Supplements Master

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Agreement Uniform Terms and Conditions, 3.11 Offshore Performance of Work Prohibited)

- O. **Confidentiality:** Contractor shall not use or disclose any information it receives from Participating Entity under this Participating Addendum that Participating Entity has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by Participating Entity. Participating Entity shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating Entity determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of Participating Entity and Contractor to maintain confidentiality of information under this section continues beyond the Term of this Participating Addendum. (Supplements Master Agreement Special Terms and Conditions, 13.2 Data Protection and Confidentiality of Information)
- P. **Spoliation – Notice of Potential Claims:** Contractor shall promptly notify Participating Entity of all potential claims that arise or result from this Participating Addendum. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Participating Entity the opportunity to review and inspect such evidence, including the scene of an accident. (Supplements Master Agreement terms and conditions)
- Q. **Applicable Law and Venue:** This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens. (Supplements Master Agreement terms and conditions)
- R. **Attorney Fees and Costs:** In the event a lawsuit is instituted by Participating Entity to obtain performance under this Participating Addendum, and Participating Entity is the prevailing Party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay Participating Entity's reasonable attorney fees and costs in connection with the lawsuit. (Supplements Master Agreement terms and conditions)
- 5. **Lease Agreements:** Leasing programs are not allowed under this Participating Addendum.
- 6. **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.
- 7. **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,

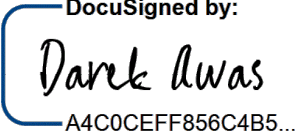
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and subject to the pricing and other terms and conditions of, the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to the order.

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

Participating Entity**CONTRACTOR**

Signature: 	Signature:  A4C0CEFF856C4B5...
Name: Tricia Opp	Name: Darek Awas
Title: IT Procurement Officer	Title: Manager - Contracts
Date: 1/24/2023	Date: 01/23/2023

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

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.