

Participating Addendum Number 022-Dell
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
State of North Dakota
and
Dell Marketing L.P.

This Participating Addendum is entered into by State of North Dakota ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 23026, executed by Contractor and the State of Minnesota for Computer Equipment, Peripherals & Related Services ("Master Agreement"):

Dell Marketing L.P. ("Contractor")
One Dell Way,
Mail Stop RR1-33
Round Rock, Texas 78682

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Stephanie Storm
Contract Program Manager
Stephanie.Storm@dell.com
(512) 720-7634

Participating Entity's contact for this Participating Addendum is:

Abby Dschaak
Procurement Officer
600 East Boulevard Ave, Dept 012
Bismarck, ND 58505
aadschaak@nd.gov
701-328-4912

- II. TERM.** This Participating Addendum is effective as of November 1, 2023, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum, established pursuant to N.D.C.C § 54-44.4-13, may be used by all state agencies, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C § 39-04.2, and the International Peace Garden. Participating Entity has sole authority to determine which additional entities authorized by state statute are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** 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*.
- V. SCOPE.** Contractor is authorized to sell products/services in Category 1 Windows OS, Category 2 Non-Windows OS, and Category 3 Servers & Storage under this Participating Addendum. Except as otherwise stated above, this Participating Addendum incorporates the scope, pricing, terms, and conditions, including the terms of Exhibit E: Contractor Terms and Conditions, of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities. The parties may mutually agree to negotiate the software licenses and product service specific terms of Exhibit E:

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as part of an order when applicable. Any agreed upon changes shall be set forth in a written document signed by authorized representatives of both parties.

- a. **Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
- b. **Equipment Leasing/Rental.** Equipment leasing and rental is not allowed under this Participating Addendum.
- c. **Equipment Trade-in, Takeback, and/or Recycling Program.** Trade-in, takeback, and/or recycling of products by agencies covered by this Addendum are subject to approval of OMB State Surplus Property pursuant to N.D.C.C. § 54-44.4.6.
- d. **Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.

- VI. **ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.
- VII. **PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Quarterly reports will be provided by Contractor to Participating Entity showing (i) a summary of orders under this Participating Addendum for which Contractor has invoiced the ordering entities (ii) Purchasing Entities, (iii) description, and (iv) amount.
- VIII. **FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. If agreed to in a writing signed by both parties, Contractor agrees to comply with the requirements set forth therein.
- IX. **ATTACHMENTS.** This Participating Addendum includes Attachment A: Participating Entity Modifications and Additions to Master Agreement Terms and Conditions.
- X. **NOTICE.** Any notice required herein shall be sent to the following:

For Contractor:

Stephanie Storm
Contract Program Manager
Stephanie.Storm@dell.com
(512) 720-7634

For Participating Entity:

Abby Dschaak
Procurement Officer
600 East Boulevard Ave, Dept 012
Bismarck, ND 58505
aadschaak@nd.gov
701-328-4912

- XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

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

CONTRACTOR:

Ana Pitti
Signature

Ana Pitti
Printed Name

Paralegal Senior Analyst
Title

September 26, 2023
Date

PARTICIPATING ENTITY:

Abigail Dschaak
Signature

Abigail Dschaak
Printed Name

State Procurement Officer
Title

9/26/2023
Date

**Attachment A – Participating Entity Modifications and Additions to
Master Agreement Terms and Conditions**

I. CONFIGURATION LIMITS (SUPPLEMENTS MASTER AGREEMENT #4)

The following copiers cannot be sold unless the Participating Entity (applies to State Agencies only) has received prior contract exemption approval:

- a. Convenience Black and White Copiers with Speed in Impressions per Minute (IPM) 90 or greater
- b. Convenience Hybrid Copiers with Speed in Impressions per Minute (IPM) 50 or greater
- c. Any Production Black and White Copiers
- d. Any Wide Format Copiers
- e. Any Color Production Copiers

II. TERMINATION (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM #42)

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:

- a. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- b. If federal or state laws or rules are modified or interpreted in a way that the services or good 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.
- c. If any license, permit, or certificate required by law or rule for the sale of the products or provision of services under this Participating Addendum, or required by the terms of this Participating Addendum, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Participating Addendum under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

III. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

To the extent applicable to Contractor's performance hereunder, Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

Contractor shall have and keep current all licenses and permits required by law for the sale of the products or provision of services hereunder during the Term of this Participating Addendum.

Contractor is prohibited from boycotting Israel for the duration of this Participating Addendum. (See N.D.C.C § 54-44.4-15.) Contractor represents that it does not and will not engage in a boycotting Israel during the term of this Participating Addendum. If Participating Entity receives evidence that Contractor boycotts Israel,

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Participating Entity shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Contractor has fewer than ten full-time employees.

Contractor's failure to comply with this section may be deemed a material breach by Contractor entitling Participating Entity to terminate in accordance with the Termination for Cause section of the Master Agreement, Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions, item 42.

IV. INJUNCTIVE RELIEF (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 40)

Contractor shall promptly report to Participating Entity any and all unauthorized disclosures or uses of Participating Entity's confidential information or proprietary information of which Contractor has actual 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 either party should publish or disclose such confidential information or proprietary information of the other party without authorization, the disclosing party shall immediately be entitled to seek injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

V. INDEMNIFICATION (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 34)

In addition to the indemnification obligations of the Master Contract, any attorney appointed to represent the State 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 State for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Participating Addendum.

VI. LIMITATIONS OF LIABILITY (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 35)

The following is inserted as the first sentence of Limitations of Liability section before subsections a, b, and c: "The terms of the NASPO ValuePoint Master Agreement govern to the extent allowed under applicable law."

VII. INSURANCE (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 28.B.1)

Commercial general liability, including premises operations, blanket contractual liability, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.

VIII. CONFIDENTIALITY (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 40A)

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.

IX. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Participating Addendum, certain records may be open to the public upon request.

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Public records may include: (a) records Participating Entity receives from Contractor under this Participating Addendum, (b) records obtained by either Party under this Participating Addendum, and (c) records generated by either Party under this Participating Addendum.

Contractor agrees to contact Participating Entity immediately upon receiving a request for information under the public records law and to comply with Participating Entity's instructions on how to respond to such request.

X. SPOILIATION – 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.

XI. SEVERABILITY

If any term of this Participating Addendum is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Participating Addendum did not contain that term.

XII. APPLICABLE LAW AND VENUE (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 39)

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*.

XIII. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Participating Addendum, Participating Entity does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial.

XIV. 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.

XV. STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, State shall have the right to audit Contractor's invoice records related to this Participating Addendum for a period of three years following the date of the invoice. Invoice records shall be produced for the State's inspection in an electronic format, in accordance with the reporting format created by Contractor's business system of record. Contractor shall not be required to furnish any data in a format other than that of the standard reports created by Contractor's business system of record. A sample report can be furnished to the State upon request. The State shall not charge Contractor in any event for the cost of conducting an audit initiated by the State or an agent duly authorized by the State. Contractor shall not be required to perform any data analysis against data points that are known to the State or should be known to the State. This includes analysis of invoiced amounts against amounts in orders issued by the State, or

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against pricing discounts that are designated in the contract. Participating Entity, State Auditor, or Auditor's designee shall provide reasonable notice to Contractor prior to conducting examination.