

NASPO ValuePoint
PARTICIPATING ADDENDUM



**SOFTWARE VALUE ADDED
RESELLERS**

Led by the State of Arizona
State of Utah Contract #: MA3997

Master Agreement #: CTR060024

Contractor: **DELL MARKETING, L.P.**

Participating Entity: **STATE OF UTAH**

Participating Entity Contract #: **MA3997**

Participating Addendum Terms and Conditions:

1. Scope: This addendum covers ***Dell Marketing Software Value Added Resellers Master Agreement*** led by the **State of Arizona** for use by state agencies and other entities located in the State of Utah authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. An amendment to this PA is not required when offerings are adjusted in the Master Agreement, so long as all additions remain within the master agreement's original scope.
2. Pricing: The pricing and rates are set forth in Attachment A.
3. Contract Effective Dates: This PA is effective upon final signature of both parties, and expires upon the expiration or termination of the NASPO ValuePoint Master Agreement # CTR060024. A contract amendment is not necessary in the event of the renewal or extension of the Master Agreement, so long as such renewal/extension was originally provided within the solicitation supporting the master agreement.
4. Order of Precedence: The order of precedence is:
 - a. State of Utah Participating Addendum;
 - b. Master ValuePoint Master Agreement #CTR060024, including all attachments thereto;
 - c. A purchase Order or Scope of Work/Specifications issued against the Master Agreement
 - d. The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

Contractor's response to the Solicitation, as revised (if permitted) and accepted

5. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Utah. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
6. Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Software Value Added Resellers by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management

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of information technology resources of a state.

7. Subcontractors: All contactors, dealers, and resellers authorized in the State of Utah, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
8. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices 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 such order.
9. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Contractor	Dell Marketing, L.P.
Name:	Ashley Salinas
Address:	One Dell Way, Round Rock, Texas 78682
Telephone:	512-542-1237
Email:	Dell_Legal_Notices@Dell.com

Participating Entity

Name:	Grant Herdrich
Address:	4315 S 2700 W FL 3, Taylorsville, UT 84129-2128
Telephone:	801-957-7125
Email:	gherdrich@utah.gov

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10. ADDITIONAL TERMS AND CONDITIONS

The following terms and conditions will apply to this participating addendum.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, or Technology" means Contractor will either (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah or Eligible User; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by State of Utah or Eligible User; or (c) have access to or receive any State Data or Confidential Information.
- b. "Authorized Persons" means the Contractor's employees, affiliates, officers, partners, Subcontractors, or agents of Contractor who need Access to Secure State Facilities, Data, or Technology to enable the Contractor to perform its responsibilities under this Contract.
- c. "Background IP" means intellectual property (IP) owned or controlled prior to the effective date of this Contract or that IP developed or acquired from activities independent of the services performed under this Contract, including but not limited to (a) methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services, and (b) processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible User.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference.
- e. "Contract Period" means the term of this Contract, as set forth in the Contract Signature Page(s).
- f. "Contract Signature Page(s)" means the cover page that the Division and Contractor sign.
- g. "Contractor" means the individual or entity identified on the Contract Signature Page(s). "Contractor" includes Contractor's agents, officers, employees, partners, contractors, and Subcontractors at any level.
- h. "Custom Deliverables" means the product that Contractor is required to design, develop, or customize and deliver to the Eligible User as specifically described in an associated statement of work for which all interest and title shall be transferred to and owned by the Eligible User. This includes every invention, design, development, customization, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor pursuant to this Contract.. This does not include Background IP.

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- i. "Data Breach" means the unauthorized access or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data
- j. "Division" means the State of Utah Division of Purchasing.
- k. "DTS" means the Utah Department of Technology Services.
- l. "Eligible User(s)" and "Purchasing Entity(ies)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
- m. "Federal Criminal Background Check" means a fingerprint-based, nationwide background check conducted and processed by the FBI.
- n. "Good" means : The Third-Party Software offered for resale by the Contractor under the Master Agreement. .
- o. "Intellectual Property Rights" means all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and other protection afforded by law to inventions, models, designs, technical information, and applications.
- p. "Non-Public Data" means records or data that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person's name; government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; or Protected Health Information.
- q. "Protected Health Information" (PHI) is as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations.
- r. "Response" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
- s. "Security Incident" means the attempted unauthorized access to State Data that may result in the use, disclosure, or theft of State Data.
- t. "Services" means the Value-Added Reseller Services offered by Contractor under the Master Agreement. .
- u. "Solicitation" means an invitation for bids, request for proposals, notice of sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
- v. "State Data" means all Confidential Information and Non-Public Data that is created, controlled, maintained, owned, or in any way originating with the State of Utah or Eligible User regardless of where such data or output is stored or maintained.
- w. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

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"Subcontractors" includes contractors, manufacturers, distributors, suppliers, or consultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, including a person or entity that is, or will be, providing goods or performing services pursuant to this Contract.

2. ESSENTIAL PROVISIONS:

- a. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed solely by the laws of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Exclusive venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- b. **LAWS:** Contractor and all Goods and Services delivered under this Contract will comply with all applicable federal and state of Utah laws, including applicable licensure and certification requirements.
- c. **SOVEREIGN IMMUNITY:** The Division and the State of Utah do not waive any protection, right, defense or immunity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 to 904, as amended, the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.
- d. **PUBLIC INFORMATION:** This Contract and any purchase orders, invoices, pricing lists, and the Response are public records available for disclosure in accordance with the State of Utah's Government Records Access and Management Act (GRAMA, Utah Code 63G-2-101 et seq.), except to the extent classified as protected in accordance with UCA 63G-2-309. GRAMA takes precedence over any statements of confidentiality or similar notations. The Division, the Eligible User and/or the State of Utah will inform Contractor of any request for a copy of this Contract, including any purchase orders, invoices, pricing lists, or the Response.
- e. **CREDITING THE DIVISION IN PUBLICITY:** Any publicity given to this Contract shall identify the Division as the managing agency and shall not be released without prior written approval from the Division.
- f. **SALES TAX EXEMPTION:** Goods, Custom Deliverables, and Services purchased by some Eligible Users are being paid from that Eligible User's funds and used in the exercise of that Eligible User's essential functions as a State of Utah governmental entity. Any such Eligible Users will provide Contractor with a copy of its sales tax exemption number upon order.
- g. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- h. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract, is within the scope/purpose of the Solicitation, and is attached and made part of this Contract. Automatic renewals of this Contract are prohibited and are deemed void even if listed elsewhere in this Contract.
- i. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred,

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suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any government department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity.

j. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:**

This Contract may be terminated in whole or in part at the sole discretion of the Division or Eligible User upon thirty days written notice, if the Division or Eligible User determines that (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects the Division or Eligible User's ability to pay under this Contract. A change of available funds includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or an order of the President, the Governor, or Executive Director.

The Division or Eligible User, as applicable, will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Division and Eligible User are not liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of the notice.

- k. **ENTIRE AGREEMENT:** This Contract is the entire agreement between the parties, and supersedes any prior and contemporaneous agreements and understandings between the parties, regarding participation in Master Agreement #: CTR060024, whether oral or written.
- l. **WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract. The Eligible User's approval, acceptance, or payment for any Goods or Services required under this Contract shall not be construed to operate as a waiver by the Eligible User of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract.
- m. **CHANGES IN SCOPE:** Any changes in the scope of work to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of work unless otherwise specified in Master Agreement #: CTR060024.
- n. **TRAVEL COSTS:** If agreed to in a written statement of work, all travel costs associated with the delivery of Services will be paid in accordance with the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the

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Contractor for correction

3. **AUDIT:** In the event of any audit, inspections, or testing, notwithstanding any conflicting terms in the Master Agreement, Contractor agrees, for a period of six (6) years from the Effective Date 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.
4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - 1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - 2) Contractor shall take commercially reasonable efforts to ensure that subcontractors certify that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws.
 - 3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless written disclosure has been made to the Division.
6. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor, and not an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor has no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings, and shall not perform any acts as an agent for the Division, the Eligible users, or the State of Utah. Contractor is responsible for all applicable federal, state, and local taxes and FICA contributions.
7. **CRIMINAL BACKGROUND SCREENING:** Contractor affirms that in the United States, to the extent permitted by state, Federal and local law, a background check and drug screening

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is normally performed on each Contractor potential new hire, based on Contractor's specifications. The background check includes, to the extent permitted by law, criminal county searches, federal searches and verification of personally identifying information. Results of background checks and drug screenings are confidential and may not be disclosed to Eligible User. In addition, Contractor affirms that, the extent permitted by state, Federal and local law, Contractor requires its contractors and subcontractors to subject their employees, who will be present on a property leased and/or controlled by Contractor or a Contractor customer, to conduct background checks similar to those outlined above.

8. **WARRANTY:** Contractor warrants that the Goods and Services will perform substantially in a manner consistent with the corresponding standard documentation issued by the applicable Publisher.
9. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to the Eligible User in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the Contract, when the Eligible User makes technical support or maintenance requests.
11. **PHYSICAL DELIVERY:** All non-electronic deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User. Invoices listing freight charges that were not identified in the quote will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will pass to the Eligible User at delivery.
12. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to the Eligible User or provide any Good and Custom Deliverable for download from the Internet. Contractor shall use commercially reasonable efforts to ensure the confidentiality of electronic deliveries in transit.
13. **SECURE PROTECTION AND HANDLING OF STATE DATA:** 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, Contractor will reasonably cooperate with the Participating Entity and the Software Publishers as appropriate.
14. **CONFIDENTIALITY:** This section does not apply to records where disclosure is regulated under Federal or State laws.

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GRAMA applies only to records, therefore if information (other than Non-Public Data, Public Health Information, or State Data) is disclosed orally by either party which either party wishes to remain confidential, then each party shall adhere to the following:

Each party will: (a) limit disclosure of any confidential information to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the information and of the obligations set forth in this Contract and require such Authorized Persons to keep the information confidential; (c) shall keep all information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any such information received by it to any third parties, except as otherwise agreed to in writing by the disclosing party. Each party will notify the other of any misuse or misappropriation of such information that comes to said party's attention.

This duty of confidentiality shall be from the date of disclosure until three years thereafter.

15. Reserved

16. OWNERSHIP IN INTELLECTUAL PROPERTY: The Parties recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name, logo, or intellectual property owned or licensed by the other. The Parties shall not, without the prior written consent of the other or as authorized in this Contract, use the name, logo, or intellectual property owned or licensed by the other.

1. **OWNERSHIP IN CUSTOM DELIVERABLES:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Custom Deliverable. Contractor conveys the ownership in Custom Deliverables as defined in this Attachment A (if any) to the Eligible User

. All intellectual property rights, title and interest in the Custom Deliverables shall transfer to the Eligible User, subject to the following:

- a. Contractor has received payment for the Custom Deliverables,
- b. Each party will retain all rights to Background IP, even if embedded in the Custom Deliverables.
- c. Custom Deliverables, excluding Contractor's Background IP may not be marketed or distributed without written approval by the Eligible User.

Contractor shall grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP as defined above, solely for the Eligible User to use the Custom Deliverables.

LICENSE FOR GOODS: For the Goods delivered that include Dell's scripts and are not considered Custom Deliverables, Dell grants the Eligible User as to such scripts a non-exclusive, non-transferable, right to use, copy, and, without the right to sublicense, for the Eligible User's internal business operation under this Contract.

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OWNERSHIP, PROTECTION, AND USE OF RECORDS: The Eligible User shall own exclusive title to all information and data gathered, reports developed, and conclusions reached by the Eligible User in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached by the Eligible User in performance of this Contract without the express written consent of the Eligible User.

17. OWNERSHIP, PROTECTION, AND USE OF DATA: The Eligible User shall own and retain unlimited rights to use, disclose, or duplicate all of Eligible User's information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use any Eligible User's Non-Public Data without prior written permission from the Eligible User.

18. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor shall hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.

19. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION: State Data and Non-Public Data must be delivered to the Eligible User within thirty (30) working days after termination or expiration of this Contract if requested in writing by the Eligible User, and without restriction or limitation to their future use. Any State Data returned under this section must either be in the format as originally provided, in a format that is readily usable by the Eligible User, or formatted in a way that it can be used. The costs for returning documents and data to the Eligible User are included in this Contract. Contractor may retain archived electronic back-up files

20. ORDERING AND INVOICING: For State of Utah Executive Branch Agencies, a purchase order must be sent to the Contractor by DTS prior to any work being initiated, product shipped, or invoices cut under this contract. All orders will be shipped promptly in accordance with the delivery schedule. Use of purchasing-card is at time of order placement only, and not permitted for payment of invoices issued by Contractor. Contractor will promptly submit invoices to the appropriate Eligible User. The contract number shall be listed on all invoices. The prices paid by the Eligible User shall not exceed prices listed in this Contract. The Eligible User shall adjust or return any invoice reflecting incorrect pricing.

21. PAYMENT AND NOTICE:

a. Payments will be made within thirty (30) days from the date of invoice. After sixty

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(60) days from the date of invoice, the Contractor may assess interest on overdue, undisputed account charges up to the interest rate paid by the IRS on refund claims, plus two percent, computed in accordance with Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended.

- b. The contract costs may be changed only by written amendment. All payments to Contractor will be remitted by electronic funds transfer..
- c. Any written protest of the final contract payment must be filed with the Eligible User within sixty (60) working days of receipt of final payment. If no protest is received, the Eligible User, the Division, and the State of Utah are released from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
- d. Overpayment: If during or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible User to Contractor, then Contractor shall, upon written request, promptly refund to the Eligible User any such overpayments.

22. CONTRACTOR'S INSURANCE RESPONSIBILITY: The Contractor shall maintain the following insurance coverage:

- e. Workers' compensation insurance during the term of this Contract for all its employees. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
- f. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) aggregate.
- g. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- h. Other insurance policies specified in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

Contractor's failure to maintain this insurance requirement for the Contract Period will be grounds for immediate termination.

23. ADDITIONAL INSURANCE REQUIREMENTS:

- i. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.

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- j. Any other insurance policies described or referenced in the Solicitation for this Contract.
- k. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, Utah, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
- l. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

24. TERMINATION: This Contract may be terminated for cause by either party upon written notice being given by the other party. The party in violation will be given thirty (30) calendar days, or as otherwise agreed upon in writing, after notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below.

This Contract may also be terminated without cause (for convenience) by either party, upon forty-five (45) calendar days written termination notice being given to the other party. The Division and the Contractor may agree to terminate this Contract, in whole or in part, at any time by mutual written agreement. A termination of this Contract shall not affect any previously placed Orders. Termination or expiration of this Contract shall not affect the obligation of the Division to pay all amounts due hereunder.

Contractor shall be compensated for the Services performed and goods provided pursuant to this Contract up to the effective date of termination as stated in the notice. Purchasing Entity agrees that in the event of termination for cause or without cause, Contractor is entitled to payment for all work performed as authorized under this Contract up to the date of termination, and any reasonable pro-rated monies that may be owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract, after receipt and verification of documented evidence of those terminated contracts.

25. TERMINATION UPON DEFAULT: In the event this Contract is terminated for default by Contractor, the Division may procure Goods, Custom Deliverables, or Services similar to those terminated.

- a. **SUSPENSION OF WORK:** The Division may suspend Contractor's responsibilities under this Contract without terminating this Contract by issuing a written notice. Contractor's responsibilities may then be reinstated upon written notice from the Division.
- b. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract for nonperformance of contractual requirements or a material breach of any term or condition of this Contract. The Division will issue a written notice of default and may provide a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the

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default remains, after Contractor has been provided the opportunity to cure, the Division may exercise any remedy provided by law; terminate the relevant Order and any related contracts or portions thereof; suspend or debar Contractor from receiving future solicitations.

- 26. SURVIVORSHIP:** The contractual provisions that will remain in effect after expiration or termination of this Contract are (as applicable): (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of State Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes, including residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration, completion, or termination of this contract.

27. RELEVANT STATE AND FEDERAL LAWS

- a. **Conflict of Interest with State Employees:** Contractor shall comply and cooperate in good faith with all applicable conflict of interest and ethic laws, including Section 63G-6a-2404, Utah Procurement Code, as amended.
- b. **Procurement Ethics:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Procurement Code, as amended).
- c. **Contact Information:** Per Utah Code §§63G-6a-110 and 35A-2-203, the State shall make Contractor's contact information available to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may post information regarding Contractor's job vacancies on its website.
- d. **Employment Practices:** Contractor shall abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the work place. Contractor shall abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's

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PARTICIPATING ADDENDUM**SOFTWARE VALUE ADDED****RESELLERS**

Led by the State of Arizona

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employees.

28. TIME OF PERFORMANCE: The Contractor shall use commercially reasonable efforts to ensure that Services shall be completed, and Goods and Custom Deliverables delivered by any applicable deadline stated in this Contract.

STANDARD OF CARE: For Services of Contractor which require licenses and certifications, such Services shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.

29. LARGE VOLUME DISCOUNT PRICING: Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.

30. ELIGIBLE USER PARTICIPATION: Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.

31. INDIVIDUAL CUSTOMERS: Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.

32. QUANTITY ESTIMATES: The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.

33. ORDERING: Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

34. REPORTS AND FEES:

- a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee is one half of one percent (0.5%) and will apply to all purchases (net of any returns, credits, or adjustments) made under this contract. Administrative fees are paid based off invoice date and are not contingent on customer approval. Contractor is not obligated to pay fees for transactions booked under any contract other than this Contract.
- b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>. Reports will be sent via email to the Participating Entity Contact listed above at

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Section 8. Reporting is based on invoiced/shipped date and Contractor contract code.

- c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

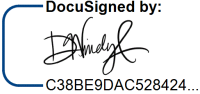
<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

- d. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within Forty-five (45) days from receipt of invoice.

35. Timely Reports and Fees: If the quarterly administrative fee is not paid by Forty-five (45) days of receipt of invoice then Contractor will be in material breach of this Contract.

36. ANTI-BOYCOTT ACTIONS: In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: The State of Utah	Contractor: Dell Marketing L.P.
Signature: 	Signature: 
Name: D windy Aphayrath	Name: Ana Pitti
Title: Chief Procurement Officer	Title: Paralegal Senior Analyst
Date: 10/30/2023	Date: 10/26/2023

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PARTICIPATING ADDENDUM

SOFTWARE VALUE ADDED

RESELLERS

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*Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.*

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESELLER (SVAR)
STATE OF ARIZONA SOLICITATION #BPM002338
MANDATORY COST PROPOSAL FORM FOR ALL PUBLISHERS EXCEPT MICROSOFT AND ORACLE

	PUBLISHERS	MAXIMUM MARKUP ON RESELLER'S INVOICED COST
	Tier I Publishers (Key Itemized Publishers)	
1	ADOBE	1.20%
2	CA TECHNOLOGIES	2.70%
3	CISCO	1.50%
4	COMMVAULT	1.50%
5	IBM	1.50%
6	RED HAT	2.70%
7	SPLUNK	1.50%
8	TABLEAU	1.50%
9	VEEAM	1.50%
10	VMWARE	3.50%
	Tier II Publishers (Other Itemized Publishers)	
11	AUTODESK	2.70%
12	BARRACUDA NETWORKS	2.70%
13	BMC SOFTWARE	2.70%
14	CHECK POINT SOFTWARE	1.50%
15	CHERWELL	1.50%
16	CITRIX	2.70%
17	CPI	1.50%
18	CROWDSTRIKE	1.50%
19	DELL	3.50%
20	DELPHIX	1.50%
21	DOCUSIGN	1.50%
22	DYNATRACE	1.50%
23	FORCEPOINT	1.50%
24	FORTINET	1.50%
25	GOOGLE	2.70%
26	INFORMATICA	1.50%
27	IVANTI	1.50%
28	KNOWBE4	1.50%
29	MCAFEE	2.70%
30	MICRO FOCUS	1.50%
31	MULESOFT	1.50%
32	NETMOTION	1.50%
33	OKTA	1.50%
34	OPENTEXT	1.50%
35	PROGRESS SOFTWARE	1.50%
36	PROOFPOINT	1.50%

37	QUEST SOFTWARE	2.70%
38	RAPID7	1.50%
39	RSA SECURITY	1.50%
40	SALESFORCE	1.50%
41	SAP	1.50%
42	SOLARWINDS	1.50%
43	SOPHOS	1.50%
44	SPILLMAN	1.50%
45	SYMANTEC	2.70%
46	TENABLE	1.50%
47	TREND MICRO	1.50%
48	VARONIS	1.50%
49	VERITAS	1.50%
50	ZOHO	1.50%
	Non-itemized Publishers	
51	All other publishers	2.50%
		HOURLY RATE
52	Reseller Services	
53	- Asset management	\$300.00
54	- Solutions architect	\$284.00
55	- Senior solutions architect	\$300.00
56	- Program engagement manager	\$372.00
57	- Project leader	\$330.00
58	- Project manager	\$273.00
59	- Senior project manager	\$301.00

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESELLER (SVAR)
STATE OF ARIZONA SOLICITATION #BPM002338
OPTIONAL SERVICES COST PROPOSAL FORM FOR ALL PUBLISHERS EXCEPT MICROSOFT AND ORACLE

OPTIONAL SERVICES		HOURLY RATE
	VMware-specific services rates	
6	Senior Architect	\$328.00
7	Enterprise Architect	\$359.88
8	Inside Project Manager	\$177.13
9	Program Manager	\$297.13
10	Associate Consultant	\$147.25
11	Consultant	\$223.25
12	Senior Consultant	\$249.25
13	Consulting Architect	\$307.25

NASPO VALUEPOINT SOFTWARE VALUE-ADDED RESELLER (SVAR)
STATE OF ARIZONA SOLICITATION #BPM002338
MANDATORY COST PROPOSAL FORM FOR MICROSOFT ONLY

	SUBCATEGORY	MAXIMUM MARKUP ON RESELLER'S INVOICED COST (may be negative if sold at loss)
	Itemized Microsoft Offerings	
1	EMS E5	0.38%
2	G1	0.38%
3	G2	0.38%
4	G3	0.38%
5	G5	0.38%
6	Govt E4	0.38%
7	Advanced Threat Protection	0.38%
8	Power BI	0.38%
9	Exchange Online	0.38%
10	Kiosk F3 Now	0.38%
11	Dynamics	0.38%
12	PowerApps	0.38%
13	Project Online	0.38%
14	Azure	0.38%
	All Other Microsoft Offerings	
15	SaaS	0.38%
16	On-Premise	0.38%
	Resold In-scope Professional Services	
17	- Ongoing maintenance & support services not included in software license agreement	0.00%
18	- Deployment services	0.00%
19	- Architectural design services	0.00%
20	- Training deployment services	0.00%
21	All other resold in-scope professional services	0.00%
		HOURLY RATE
	In-scope Reseller Services	
22	- Asset management	\$300.00
23	- Solutions architect	\$284.00
24	- Senior solutions architect	\$300.00
25	- Program engagement manager	\$372.00
26	- Project leader	\$330.00
27	- Project manager	\$273.00
28	- Senior project manager	\$301.00