

# STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: (402) 471-6500  
Fax: (402) 471-2089

**CONTRACT NUMBER**  
**15916 OC**

PAGE 1 of 2	ORDER DATE 01/05/24
BUSINESS UNIT 9000	BUYER MATTHEW CADDY (AS)
VENDOR NUMBER: 3260939	
VENDOR ADDRESS:  DELL MARKETING LP SLG SALES 1 DELL WAY BLDG RR2W-2 STOP 2-2-V2 ROUND ROCK TX 78682-7000	

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

## FEBRUARY 01, 2024 THROUGH JUNE 30, 2025

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Originally awarded from NASPO ValuePoint Master Agreement No. 23026.

Contract to supply and deliver Computer Equipment (Desktop, Laptop, Tablet, Server and Storage), Peripherals and Related Services, FOB Destination, to the State of Nebraska per the following Contract Information and attached Participating Addendum.

Dell Marketing L.P. NASPO ValuePoint website: [www.dell.com/naspowsca](http://www.dell.com/naspowsca)

The Dell Marketing L.P. NASPO ValuePoint website will assist you with contact information, product and service information, product configuration, pricing, how to order, warrant support, etc.

The State Purchasing Bureau encourages agencies to contact the designated Inside Sales Representative/Account Representative to learn more about special promotions, and to obtain volume discount quotes.

**Awarded Bands:**

- Band 1, Personal Computer Devices – Windows Operating Systems: Desktops, Laptops, Tablets
- Band 2, Personal Computer Devices – Non-Windows Operating Systems: Desktops, Laptops, Tablets
- Band 3, Servers and Storage

The following configuration limits apply to this contract:

- Desktops, Laptops, Tablets: \$15,000
- Peripherals: \$10,000
- Servers and Storage: \$1,000,000

The dollar limits identified above are based on a SINGLE computer/system configuration. This is NOT a restriction on the purchase of multiple configurations (e.g., an entity could purchase 10 laptops at \$15,000 each, for a total purchase price of \$150,000).

All Purchase Orders must include the State of Nebraska NASPO ValuePoint Contract #15916 OC and the Dell Marketing L.P. NASPO ValuePoint Master Agreement No. 23026.

DS  
RT  
1/9/2024

DocuSigned by:  
Matthew Caddy 1/9/2024  
BUYER

DocuSigned by:  
Amara Block  
1/9/2024  
MATERIEL ADMINISTRATOR

# STATE OF NEBRASKA CONTRACT AWARD

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PAGE 2 of 2		ORDER DATE 01/05/24	
BUSINESS UNIT 9000		BUYER MATTHEW CADDY (AS)	
VENDOR NUMBER: 3260939			

(For the File - This RFP and Contract are bid and awarded by the State of Minnesota. All backup bids, etc. are retained by the State of Minnesota, Department of Administration, Office of State Procurement).

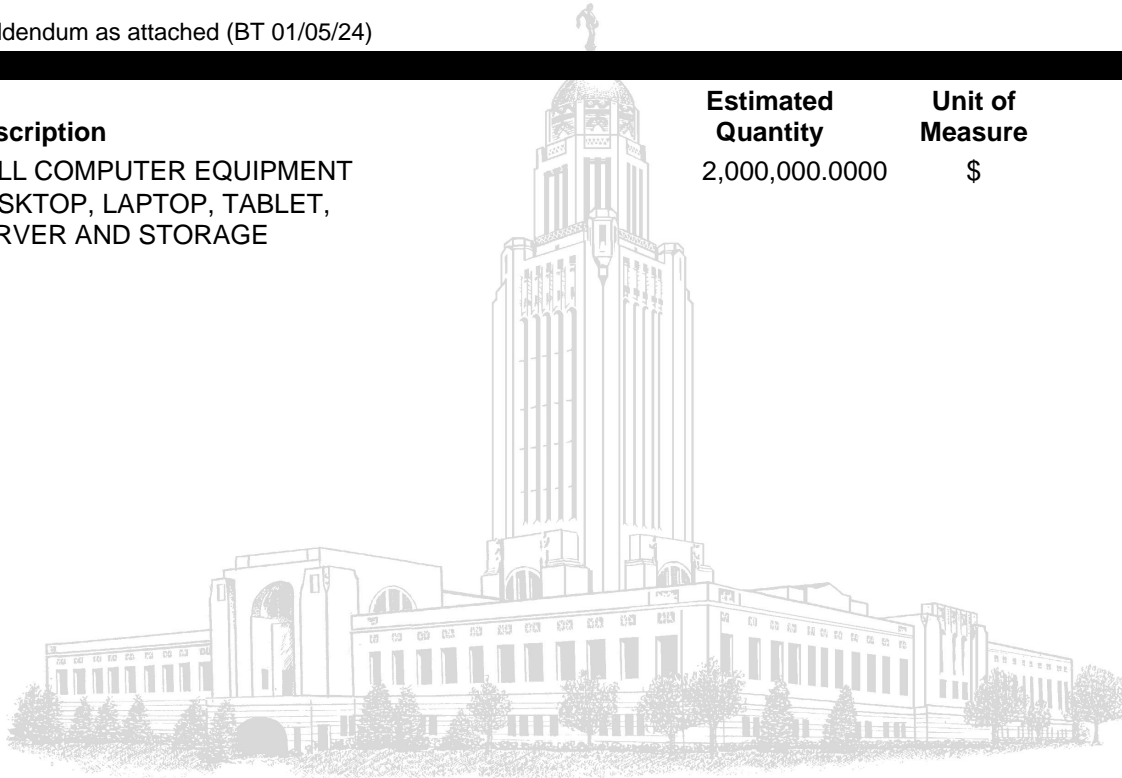
(For the File: The NASPO ValuePoint/Dell Marketing L.P. contract period was effective July 14, 2023. The NASPO ValuePoint/Dell Marketing L.P. Participating Addendum for the State of Nebraska became effective on February 1, 2024).

Vendor Contact: Mike Vita  
 Phone: 512-542-1237  
 Email: Michael\_Vita@dell.com

Participating Addendum as attached (BT 01/05/24)



Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	DELL COMPUTER EQUIPMENT DESKTOP, LAPTOP, TABLET, SERVER AND STORAGE	2,000,000.0000	\$	1.0000



DS  
 MC

BUYER INITIALS

**Participating Addendum Number 15916 OC**  
**for**  
**COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES**  
**between**  
**State of Nebraska**  
**and**  
**Dell Marketing L.P.**

This Participating Addendum is entered into by the State of Nebraska (“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  
Mailstop RR1-33 Legal  
Round Rock, TX 78682

**I. PARTICIPATING ADDENDUM CONTACTS.**

Contractor’s contact for this Participating Addendum is:

Mike Vita  
Contract Program Manager  
[Michael.Vita@dell.com](mailto:Michael.Vita@dell.com)

Participating Entity’s contact for this Participating Addendum is:

Matthew Caddy  
Procurement Contracts Officer  
Matthew.Caddy@nebraska.gov  
402-471-1428

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or 2/1/2024, whichever is later, 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 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. Participating Entity has sole authority to determine which entities 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.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity’s laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, 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.
- VI. SERVICES.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities. All services provided will be described in one or more of the following documents:
- a. “Services Descriptions” used to describe any services purchased by an entity;
  - b. any mutually agreed upon Statement of Work (“SOW”) executed by the parties.
- VII. EQUIPMENT LEASING.** Leasing is not allowed under the terms of this Participating Addendum for State Agencies. This restriction does not apply to other Participating Purchasers. Any assignment by a Participating Entity of its purchase order to a third-party financing company (other than Dell Financial Services, LLC) must be approved in advance in writing by Contractor and shall not relieve the Purchasing Entity of its obligations hereunder.

Participating Addendum Number **15916 OC** for  
**COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES**

Between **State of Nebraska** and  
**Dell Marketing L.P.**

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- VIII. 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.
- IX. AMENDMENTS AND CONFLICTS.** 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 within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.
- Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.**
- X. 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. All term licenses, maintenance, or agreements for services entered into during the duration of this Addendum and whose performance and payment time frames extend beyond the duration of this Addendum shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement).
- XI. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Identified in Attachment A, subsections II.L through II.N.
- XII. 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.
- XIII. INFORMATION TECHNOLOGY SECURITY STANDARDS.** Identified in Attachment A, subsection II.I. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Nonnegotiable)
- XIV. ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a. Attachment A – Terms and Conditions**
- XV. NOTICE.** Any notice required herein shall be sent to the following:
- |                                                                                                                                                                                        |                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For Contractor:<br><br>Mike Vita<br>Contract Program Manager<br><a href="mailto:Michael.Vita@dell.com">Michael.Vita@dell.com</a><br>With a copy to:<br><br>Dell_Legal_Notices@Dell.com | For Participating Entity:<br><br>Matthew Caddy<br>Procurement Contracts Officer<br><a href="mailto:Matthew.Caddy@nebraska.gov">Matthew.Caddy@nebraska.gov</a><br>402-471-1428 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
- XVI. 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](mailto: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.

**Participating Addendum Number 15916 OC for  
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES**

Between **State of Nebraska** and  
**Dell Marketing L.P.**

**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:**

**PARTICIPATING ENTITY:**

DocuSigned by:  
*Katherine Castillo*  
Signature 89C1673B619C477...

DocuSigned by:  
*Amara Block*  
Signature 4CFF2711162A4A2...

Katherine Castillo  
Printed Name

Amara Block  
Printed Name

Paralegal Advisor  
Title

Chief Procurement Officer  
Title

1/9/2024  
Date

1/9/2024  
Date

## Attachment A

### I. TERMS AND CONDITIONS

#### A. GOVERNING LAW (Nonnegotiable)

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

#### B. BEGINNING OF WORK & SUSPENSION OF SERVICES

For professional services that require a Statement of Work, the contractor shall not commence any billable work until a valid Statement of Work has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

The State may, at any time and with at least 60 days' notice, require the Contractor to suspend any or all performance or deliverables provided under this Contract. In the event of such suspension, the Contract Manager or POC, or their designee, will issue a written order to stop work. The written order will specify which activities are to be immediately suspended and the reason(s) for the suspension. The suspended performance or deliverables may only resume when the State provides the Contractor with written notice that such performance or deliverables may resume, in whole or in part. Should the State issue any such stop order, Contractor will be relieved of any schedule, milestone, or financial commitments associated with the services and deliverables affected by such order.

#### C. CHANGE ORDERS OR SUBSTITUTIONS

The State and the Contractor, upon the written agreement, may make changes to a Statement of Work within the general scope of the Master Agreement. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations.

No change shall be implemented by the Contractor until approved by the State, and the Statement of Work is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

#### D. RECORD OF VENDOR PERFORMANCE

The State may document the vendor's performance, which may include, but is not limited to, the customer service provided by the vendor, the ability of the vendor, the skill of the vendor, and any instance(s) of products or services delivered or performed which fail to meet the terms of the purchase order, contract, and/or participating addendum specifications. In addition to other remedies and options available to the State, the State may issue one or more notices to the vendor outlining any issues the State has regarding the vendor's performance for a specific contract ("Vendor Performance Notice"). The State may also document the Vendor's performance in a report, which may or may not be provided to the vendor ("Vendor Improvement Request"). The Vendor shall respond to any Vendor Performance Notice or Vendor Improvement Request in accordance with such notice or request. At the sole discretion of the State, such Vendor Performance Notices

## Attachment A

and Vendor Improvement Requests may be placed in the State's records regarding the vendor and may be considered by the State and held against the vendor in any future contract or award opportunity.

### E. NOTICE OF POTENTIAL BREACH

If either party breaches the contract or anticipates breaching the contract, the breaching party shall immediately give written notice to the non-breaching party. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The non-breaching party may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the non-breaching party does not forfeit any rights or remedies to which the non-breaching party is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

### F. BREACH

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by email to the breaching party's point of contact with acknowledgement from the recipient, Certified Mail - Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

### G. NON-WAIVER OF BREACH

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

### H. SEVERABILITY

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

### I. INDEMNIFICATION

#### 1. GENERAL

The Contractor agrees to defend and indemnify the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, damages, liability, actions, causes of action, losses, judgments, costs, and expenses, including reasonable attorney fees and expenses ("the claims"), sustained or asserted against the State for personal bodily injury, death, or property loss or damage, directly arising out of or resulting from the willful misconduct or gross negligence of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which contributed to the claims.

#### 2. PERSONNEL

The Contractor shall, at its expense, indemnify the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of Contractor's personnel, including subcontractors and their employees, to the extent such claims directly relate to services provided under this contract.

#### 3. SELF-INSURANCE

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01. If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,239.01 to 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Neb. Rev. Stat. § 81-8,294), Tort (Neb. Rev. Stat. § 81-8,209), and Contract Claim Acts (Neb. Rev. Stat. § 81-8,302), as outlined in state law and accepts liability under this agreement only to the extent provided by law.

## Attachment A

The State agrees to cooperate with and use its best efforts to encourage the Attorney General for the State of Nebraska to grant Contractor sole control of the defense and all related settlement negotiations. If the Nebraska Attorney General controls the defense, Contractor will have the immediate right to participate in the defense and any settlement negotiations. Unless Contractor refuses to participate in settlement negotiations, it is agreed that the State will not agree to any settlement without Contractor's participation in the settlement negotiations and written consent.

**J. ASSIGNMENT, SALE, OR MERGER**

Either Party may assign the contract upon mutual written agreement of the other Party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**K. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUBDIVISIONS OF THE STATE**

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145(3), to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

**L. FORCE MAJEURE**

Except for payment of amounts due and owing, neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event") that was not foreseeable at the time the Contract was executed. The Party so affected shall immediately make a written request for relief to the other Party and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

**M. CONFIDENTIALITY**

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**N. EARLY TERMINATION**

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract, in whole or in part, at any time.
2. The State, in its sole discretion, may terminate the contract, in whole or in part, for any reason upon sixty (60) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. 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 State to pay all amounts due hereunder.
3. The State may terminate the contract, in whole or in part, immediately for the following reasons:
  - a. if directed to do so by statute,



## Attachment A

- b.** Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business,
- c.** a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court,
- d.** fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders,
- e.** an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor,
- f.** a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code,
- g.** Contractor intentionally discloses the State's confidential information,
- h.** Contractor has or announces it will discontinue support of the deliverable; and,
- i.** In the event funding is no longer available.

## Attachment A

### II. CONTRACTOR DUTIES

#### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling any services agreed to by the parties in a statement of work or other order listing the Contractor's responsibilities. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor and shall be qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor and/or its subcontractors agree to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding,
2. Any and all vehicles used by the Contractor's or subcontractor's employees, including all insurance required by state law,
3. Damages incurred by Contractor's or subcontractor's employees within the scope of their duties under the contract to the extent such damages are not caused by the State or the State's employees, agents, or representatives,
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law,
5. Determining the hours to be worked and the duties to be performed by the Contractor's and subcontractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor or subcontractor, its officers, agents, or subcontractors or subcontractor's employees).

#### B. EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

#### C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Nonnegotiable)

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor is responsible for the compliance of its subcontractors with this section for the applicable services subcontractor is providing under this contract.

## Attachment A

### D. COOPERATION WITH OTHER CONTRACTORS

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. To the extent agreed to in a signed Statement of Work, the Contractor shall agree to cooperate with such other contractors or individuals and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information.

### E. INSURANCE REQUIREMENTS

The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor shall ensure and be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and customary in the relevant industry. The failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within three (3) years of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and three (3) years following termination or expiration of the contract.

The Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

#### 1. WORKERS' COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain subrogation waiver language.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

#### 2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain liability waiver language.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

## Attachment A

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
Independent Contractors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000 per occurrence
<b>PROFESSIONAL LIABILITY, INCLUDING CYBER LIABILITY</b>	
All Other Professional Liability (Errors & Omissions)	\$15,000,000 Per Claim / Aggregate
<b>COMMERCIAL CRIME</b>	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$3,000,000

### 3. EVIDENCE OF COVERAGE

The Contractor shall furnish the Contract Manager, via email, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

Nebraska State Purchasing Bureau  
 Contract # 15916 OC  
 1526 K Street, Suite 130  
 Lincoln, NE 68508  
 as.materieipurchasing@nebraska.gov

These certificates or the cover sheet shall reference the 15916 OC contract number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

### 4. DEVIATIONS

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.

### F. ANTITRUST

In the event that Contractor initiates litigation for a purported antitrust violation for alleged overcharges, and as a result of such litigation, whether by final judgment or settlement of its claims, Contractor receives monetary compensation, Contractor hereby agrees to pass on to the State a portion of such compensation if, and only if, the following conditions occur: (a) the compensation is directly attributable to software, hardware, goods and/or services included within the computer products or other goods and/or services sold by Contractor to the State under this contract; (b) it was determined in the antitrust litigation (whether by judicial finding or stipulation) that the overcharge in software, hardware, goods and/or services suffered by Contractor was, in fact, passed on to the State in the computer products or other products or other goods and/or services purchased by the State under this contract during the time period referenced in the litigation; and (c) in

## Attachment A

calculating the amount of compensation which Contractor agrees to pass on to the State, Contractor may deduct its actual costs of suit, including attorney's fees, incurred in achieving the settlement or judgment.

**G. CONFLICT OF INTEREST**

By signing, contractor certifies that no relationship exists between the contractor and any person or entity which either is, or gives the appearance of, a conflict of interest related to this participating addendum.

Contractor further certifies that contractor will not employ any individual known by contractor to have a conflict of interest nor shall contractor take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its contractual obligations hereunder or which creates an actual conflict of interest.

If there is an actual or perceived conflict of interest, contractor shall provide a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject.

**H. ADVERTISING**

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods or services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**I. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Nonnegotiable)**

1. The State of Nebraska is committed to ensuring that all information and communication technology (ICT), developed, leased, or owned by the State of Nebraska, affords equivalent access to employees, program participants and members of the public with disabilities, as it affords to employees, program participants and members of the public who are not persons with disabilities.
2. By entering into this Contract, Contractor understands and agrees that if the Contractor is providing a product or service that contains ICT, as defined in subsection II.1.3 (below) and such ICT is intended to be directly interacted with by the user or is public facing, upon request, Contractor will provide the State with the applicable VPAT to show whether such ICT provides equivalent access, or may be modified during implementation to afford equivalent access, to employees, program participants, and members of the public who have and who do not have disabilities. The Contractor may comply with this section by complying with Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing standards adopted and promulgated by the U.S. Access Board.
3. ICT means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Contractor hereby agrees ICT includes computers and peripheral equipment, information kiosks and transaction machines, telecommunications equipment, customer premises equipment, multifunction office machines, software, applications, web sites, videos, and electronic documents. For the purposes of these assurances, ICT does not include ICT that is used exclusively by a contractor.

**J. DISASTER RECOVERY/BACK UP PLAN**

The Contractor shall have a disaster recovery and back-up plan which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods and services as specified under the specifications in the contract in the event of a disaster.

**K. DRUG POLICY**

Contractor certifies it maintains a drug free workplace environment to ensure worker safety and workplace integrity.

**L. ADMINISTRATIVE FEE/REBATE**

The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State for an amount equal to one-quarter of one percent (0.25% or 0.0025) the net sales (net of any returns, credits, or adjustments) under this Addendum for the period. Payments shall be made in accordance with following schedule:

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

## Attachment A

**M. ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION**

All administrative fees/rebates will be sent to the following address:

State Purchasing Bureau  
c/o Central Finance, Administrative Services  
1526 K Street, Suite 240  
Lincoln, NE 68508

**N. REPORTS**

The Contractor agrees to provide a quarterly utilization report, reflecting new sales to the State during the previous period as listed above, less any credits. The report will be provided in secure electronic Excel format and submitted electronically to the State as listed below.

The Contractor shall provide to the State of Nebraska the reports containing at a minimum the following information pertaining to State of Nebraska agencies, boards, commissions, and political subdivisions utilization:

Ordering Entity  
Purchase order number,  
Description,  
Quantity; and  
Price.

Excel Quarterly Reports shall be emailed to:

Nebraska State Purchasing Bureau  
Contract #15916 OC  
Attn: Matthew Caddy  
Matthew.Caddy@nebraska.gov

**O. WARRANTY**

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of an applicable Statement of Work. The State must notify Contractor of any failure to perform within 10 calendar days after the performance of the applicable portion of services. Contractor's entire liability and the State's sole remedy for Contractor's failure to perform is for Contractor to, at its option: (a) correct the failure; or (b) terminate the applicable service agreement(s) and refund that portion of any fees received that correspond to the failure to perform. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages.

**P. TIME IS OF THE ESSENCE**

Time is of the essence with respect to Contractor's performance and deliverables pursuant to this Contract.

## Attachment A

### III. PAYMENT

#### A. PROHIBITION AGAINST ADVANCE PAYMENT (Nonnegotiable)

Pursuant to Neb. Rev. Stat. § 81-2403, “[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency.”

#### B. TAXES (Nonnegotiable)

The State is not required to pay taxes and assumes no such liability as a result of this participating addendum. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

#### C. INVOICES

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract. **The State shall have forty-five (45) calendar days to pay after an undisputed invoice is received by the State.**

#### D. INSPECTION AND APPROVAL

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

#### E. PAYMENT (Nonnegotiable)

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. § 81-2403). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

#### F. LATE PAYMENT (Nonnegotiable)

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

#### G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Nonnegotiable)

The State's obligation to pay amounts due on the Contract for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive full compensation for any authorized work which has been performed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

#### H. RIGHT TO AUDIT (First Paragraph is Nonnegotiable)

The State shall have the right to audit the Contractor's performance of this contract no more than once per year upon a thirty (30) days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit, and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

## **Attachment A**

The Parties shall pay their own costs of the audit. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the State for any overpayments inconsistent with the terms of this contract or underpayment of fees found as a result of the examination of the Contractor's records. The Contractor agrees to correct any material weaknesses or conditions found as a result of the audit.