

Contract #: 234889

Entry Date: 10/5/2023 9:52:40 PM

Department: Wyoming Department of Administration and Information; General Services, Procurement

Agency Contact: Raff, Jamie (General Services, Procurement)

Phone: 307-7776721

Other Agency Contact:

Client Comments:

Contractor/Vendor Name: Dell Marketing L.P. (Dell Marketing Limited Partnership)

Contract Title: A&I All Agency Contract

Contract Type: IT Contract (routes to OCIO first)

Contract Amount: 0.0000

Contract Effective Date: 10/1/2023 12:00:00 AM

Contract Expiration Date: 6/30/2025 12:00:00 AM

Status: AG Approved as to Form

RETURN VIA: Ink Signature - Inter-agency Mail

Assigned Attorney: Tyler Renner

WYOMING ATTORNEY
GENERAL'S OFFICE

DEC 08 2023

Tyler M. Renner
APPROVED AS TO FORM

WYOMING ATTORNEY
GENERAL'S OFFICE

JAN 25 2024

Tyler M. Renner
APPROVED AS TO FORM

Participating Addendum Number 23004
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
State of Wyoming
and
Dell Marketing L.P.

This Participating Addendum is entered into by the State of Wyoming ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 23004, executed by Contractor and the State of Minnesota for Computer Equipment, Peripherals & Related Services ("Master Agreement"):

Dell Marketing L.P. ("Contractor")
One Dell Way
Round Rock, TX 78682

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Participating Entity's contact for this Participating Addendum is:

Ashley Salinas
SLED Contract Program Manager
A.Salinas@dell.com
Dell_Legal_Notices@Dell.com
512-542-1237

Jamie Raff
Buyer
Jamie.raff1@wyo.gov
307-777-6721

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below, 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 (each, a "Purchasing Entity"). Participating Entity has sole authority to determine which entities it deems 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, including the terms of Exhibit E of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities.
- a. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.

Contractor Partners. All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum. Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor within thirty (30) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto. Any

**Participating Addendum Number 23004 for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES**

**Between Wyoming and
Dell Marketing L.P.**

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

- VI. ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.
- VII. 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 in writing by both parties, Contractor agrees to comply with the requirements set forth therein.
- VIII. MODIFICATION OR ADDITIONS TO MASTER AGREEMENT.** This Participating Addendum includes the following attachments:
- a. This Participating Addendum, consisting of three (3) pages, and Attachment A, Wyoming General Conditions, consisting of six (6) pages, are added to the NASPO Master Agreement #23004 (the "Master Agreement"). In the event of any conflict or inconsistency between this Participating Addendum, Attachment A, Wyoming General Conditions, and the Master Agreement, as amended, the following order of precedence will govern as between the Participating Entity and the Contractor: (1) Attachment A, Wyoming General Conditions, (2) this Participating Addendum, and (3) the Master Agreement, as amended, and then any other document incorporated by reference.
- IX. NOTICE.** Any notice required herein shall be sent to the following:
- | | |
|--|--|
| For Contractor: | For Participating Entity: |
| Ashley Salinas | Jamie Raff |
| SLED Contract Program Manager | Buyer |
| A.Salinas@dell.com | Jamie.raff1@wyo.gov |
| Dell_Legal_Notices@Dell.com | 307-777-6721 |
| 512-542-1237 | |
- X. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

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**Participating Addendum Number 23004 for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES**

Between **Wyoming 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:

Katherine Castillo

Signature

Ashley Salinas Katherine Castillo

Printed Name

Paralegal Advisor

Title

01/26/2024

Date

PARTICIPATING ENTITY:

DocuSigned by:

Jamie Raff

747D872F9CC8435...

Signature

Jamie Raff

Printed Name

Buyer

Title

January 26, 2024

Date

**WYOMING ATTORNEY GENERAL APPROVAL
AS TO FORM:**

Tyler M. Renner # 234889

Signature

Tyler M. Renner

Printed Name

Senior Assistant Attorney General

Title

01-25-2024

Date

**WYOMING DEPARTMENT OF ADMINISTRATION
AND INFORMATION**

DocuSigned by:

Patricia L. Bach

6F4BEF2B8DF5404...

Signature

Patricia L. Bach

Printed Name

Director

Title

January 30, 2024

Date

Attachment A Wyoming General Conditions

This Attachment A, Wyoming General Conditions, is incorporated into the Participating Addendum. Together, those documents (the “Wyoming Documents”) supplement and replace terms and conditions contained in State of Minnesota NASPO ValuePoint Master Agreement 23004, dated July 14, 2023, (the “Master Agreement”), as between Dell Marketing L.P. (“Contractor”) and the State of Wyoming (referred to in this Attachment A as “State”). In the event of any conflict or inconsistency between the terms and conditions contained in the Master Agreement and the Wyoming Documents, the terms and conditions in the Wyoming Documents shall control, and shall supersede and replace the terms contained in the Master Agreement as between the Contractor and State.

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

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

2. **General Provisions.**

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

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

C. Assignment Prohibited and Participating Addendum Shall Not Be Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Participating Addendum without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, (i) the Contractor may use affiliates or other qualified subcontractors to perform its obligations under this Participating Addendum; and (ii) either party may assign rights to payments arising under any order without consent of the other party. The Contractor shall not use this

Participating Addendum, or any portion thereof, for collateral for any financial obligation without the prior written permission of the State.

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

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

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

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

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

I. Force Majeure. Neither party shall be liable for failure to perform under this Participating Addendum if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such

causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

J. Reserved.

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

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

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

N. Notices. All notices arising out of, or from, the provisions of this Participating Addendum shall be in writing and given to the parties at the

addresses provided under this Participating Addendum, either by regular mail, email (ai-procurement@wyo.gov and A.Salinas@dell.com and Dell_Legal_Notices@Dell.com) or delivery in person.

O. Notice of Sale or Transfer. The Contractor shall provide the State with commercially reasonable notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Participating Addendum and, when possible and lawful, in advance of the transaction. If the State determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Participating Addendum, then the State may, at its discretion, terminate or renegotiate the Participating Addendum.

P. Reserved.

Q. Prior Approval. This Participating Addendum shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Participating Addendum has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information Procurement Division, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-3204(b)(iv).

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

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

T. Sovereign Immunity and Limitations. Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and each Purchasing Entity that is an instrumentality of the State of Wyoming expressly reserve sovereign immunity by entering into this Participating Addendum and any purchase order, and each Purchasing Entity constituting a governmental entity expressly reserves governmental immunity. All of them specifically retain all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions

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

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

V. Termination of Participating Addendum. This Participating Addendum may be terminated, without cause, by either party upon ninety (90) days written notice. This Participating Addendum may be terminated for cause if the Contractor fails to perform in accordance with the terms of this Participating Addendum after notice and a reasonable cure period.

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

X. Reserved.

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

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

AA. Counterparts. This Participating Addendum may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Participating Addendum. Delivery by the Contractor of an originally signed counterpart of this Participating Addendum by facsimile or PDF shall be followed up upon request by delivery of the originally signed counterpart to the State.

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