

CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

Master Agreement #: AR2489

North Dakota Agreement #: 088

Contractor: **SMARTRONIX, INC.**

Participating Entity: **STATE OF NORTH DAKOTA**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers **Cloud Solutions** led by the State of *Utah* for use by state agencies and other entities located in the Participating State [*or State Entity*] authorized by that State's statutes to utilize State contracts with the prior approval of the State's Procurement Manager or designated Procurement Officer in the North Dakota State Procurement Office.
2. **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 *North Dakota*. Issues of interpretation and eligibility for participation are solely within the authority of the State Procurement Office.
3. **Department of Technology Services Approval:** State executive branch agencies who are subject to the authority and prior approval of the Department of Information Technology Services (ITD) must obtain such approval prior to making purchases under this Addendum.
4. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Joel M. Parris
Address:	12950 Worldgate Drive, Suite 450, Herndon, VA 20170
Telephone:	317-485-5134
Fax:	301-373-7176
Email:	jmparris@smartronix.com

Participating Entity

Name:	Angie Scherbenske
Address:	14 th Floor Capitol Tower, 600 E Boulevard Ave Dept. 012, Bismarck, ND 58505-0310
Telephone:	701.328.2779
Fax:	701.328.1615
Email:	ankscherben@nd.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

6. Cooperative Contract: This Contract is a cooperative purchasing contract established pursuant to North Dakota Century Code (NDCC) sections [54-44.4-13](#). This Contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C [chapter 39-04.2](#), and the International Peace Garden. Participation in this open-ended Contract is not mandated; therefore, the estimated volume of this Contract is not known.
7. Term of Contract: - This Participating Addendum begins on the date of the last signature and is coterminous with the Master Agreement with the State of Utah, Contract #AR2489
8. Subcontractors, Partners, Resellers: Contractor must ensure that any subcontractor, fulfillment partner, dealer, or reseller who makes sales under this Participating Addendum complies with the terms of the Master Agreement and this Participating Addendum. Contractor must maintain on a website accessible to eligible users a list of subcontractors, partners, resellers, or fulfillment partners who are authorized by Contractor to sell under this Participating Addendum in the State of North Dakota.
9. 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.
10. Spend Reports: The Contractor shall submit annual reports to the Participating Entity showing the quantities and dollar volume of purchases by each agency.
11. Taxes: Participating Entity is not responsible for and will not pay local, state, or federal taxes. Participating Entity sales tax exemption number is E-2001. Participating Entity will furnish certificates of exemption upon request by Contractor.

12. Purchasing Card: Participating Entity may make a payment using a government credit card. Contractor will accept a government credit card without passing the processing fees for the government credit card back to Participating Entity.
13. Confidentiality: Contractor shall not use or disclose any information it receives from Participating Entity under this Contract that Participating Entity has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by Participating Entity. Participating Entity shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating Entity determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. ch. 44-04](#). The duty of Participating Entity and Contractor to maintain confidentiality of information under this section continues beyond the term of this Contract.
14. Compliance with Public Records Laws: Contractor understands that, in accordance with this Addendum's Confidentiality clause (section 13), Participating Entity must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records obtained or generated by Contractor under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Contractor agrees to contact Participating Entity promptly upon receiving a request for information under the public records law and to comply with Participating Entity's instructions on how to respond to the request.
15. Injunctive Relief: Contractor shall immediately report to Participating Entity any and all unauthorized disclosures or uses of Participating Entity's Confidential Information or Proprietary Information of which Contractor or its staff is aware or has knowledge. Contractor acknowledges that any unauthorized publication or disclosure of Participating Entity's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Participating Entity. If Contractor should publish or disclose such Confidential Information or Proprietary Information without authorization, Participating Entity shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify, defend, and hold harmless Participating Entity from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Contractor's unauthorized use or disclosure of Participating Entity's Confidential Information or Proprietary Information. As a condition to these indemnity obligations, Participating Entity will provide Contractor with prompt notice of any claim of which Participating Entity is aware and for which indemnification shall be sought under this Contract and shall cooperate in all reasonable respects with Contractor in connection with any such claim.
16. Indemnity: Attachment A, Section 13 Amended to include the following: In addition to any indemnity obligations found within the Master Agreement, Contractor agrees that any

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attorney appointed to represent the STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.

17. Cyber Liability and Security Insurance: In the event Contractor will host data, or provide for the hosting of data through a third-party entity, Contractor shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000 and first party limits of not less than \$1,000,000, that will provide, without cost to the Contractor or Participating Entity, an immediate response in the event of a data breach, including meeting all notification obligations of Contractor and Participating Entity and in the event the data breach involves personal information as defined by N.D.C.C. § 51-30-1(4), available free credit monitoring for any affected individual for a minimum period of one year. Contractor shall defend, indemnify, save and hold harmless, the Participating Entity, its officers, agents and employees from liability of any nature or kind, including costs and expenses, for or on account of any and all suits, claims, or damages of any character whatsoever, resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this Addendum, arising or resulting in whole or in part from the fault, negligence, wrongful act or omission of the Contractor, or any subcontractor, or their employees or agents.

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

19. Termination
 - a. Termination by Mutual Agreement
This Addendum may be terminated by mutual consent of both parties executed in writing.

 - b. Early Termination in the Public Interest
Participating Entity is entering into this Addendum for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly and Courts. If this Addendum ceases to further the public policy of the State of North Dakota, Participating Entity, in its sole discretion, by written notice to Contractor, may terminate this Addendum in whole or in part.

 - c. Termination for Lack of Funding or Authority
Participating Entity, by written notice to Contractor, may terminate the whole or any part of this Addendum under any of the following conditions:
 - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

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

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

d. Termination for Cause.

Participating Entity may terminate this Addendum effective upon delivery of written notice to Contractor, or any later date stated in the notice:

- 1) If Contractor fails to provide services required by this Addendum within the time specified or any extension agreed to by Participating Entity; or
- 2) If Contractor fails to perform any of the other provisions of this Addendum, or so fails to pursue the work as to endanger performance of this Addendum in accordance with its terms.

The rights and remedies of Participating Entity provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Addendum.

20. Applicable Law and Venue: This Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

21. Alternative Dispute resolution – Jury Trial: Participating Entity does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial.


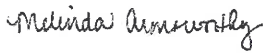
22. Attorney Fees and Costs: In the event a lawsuit is instituted by Participating Entity to obtain performance under this Addendum, and Participating Entity is the prevailing party, Contractor shall, except when prohibited by [N.D.C.C. § 28-26-04](#), pay Participating Entity's reasonable attorney fees and costs in connection with the lawsuit.

23. State Audit: All records, regardless of physical form, and the accounting practices and procedures of Contractor relevant to this Addendum are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Contractor shall maintain all of these records for at least three (3) years following completion of this Addendum and be able to provide them at any reasonable time. Participating Entity, State Auditor, or Auditor's designee shall provide reasonable notice to Contractor prior to conducting examination



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

Participating Entity: <i>State of North Dakota – ND State Procurement Office</i>	Contractor: <i>Smartronix, Inc.</i>
Signature: 	Signature: 
Name: <i>Angie Scherbenske</i>	Name: Melinda Armsworthy
Title: <i>Procurement Officer II</i>	Title: Contracts Lead
Date: <i>7-18-17</i>	Date: 7/17/17

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

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