



AGREEMENT COVER PAGE

**PARTICIPATING ADDENDUM NUMBER GSS177930-CLOUD_SOL
NASPO VALUEPOINT CONTRACT NUMBER AR3099 ("MASTER CONTRACT")
BETWEEN
STATE OF DELAWARE**

AND

ENSONO, LLC

CLOUD SOLUTIONS

Department Contact:	Lacey Hutchison IT Procurement Officer
Service Owner:	Chris Carlin Mainframe Services Manager
Section:	Data Center & Operations
Firm Primary Contact:	Clint Dean Vice President, State & Local Government, North America
Firm Executive Contact:	Chris Garcia VP, Deputy General Counsel

PARTICIPATING ADDENDUM NUMBER GSS177930-CLOUD_SOL
for
CLOUD SOLUTIONS
Between
The State of Delaware and Ensono, LLC
NASPO Valuepoint Contract Number AR3099 (“Master Contract”)

1. SCOPE

- a. This Participating Addendum is made between the State of Delaware Department of Technology and Information (DTI) and Ensono, LLC (Contractor), for Cloud Solutions and is effective as of upon execution of this Participating Addendum.
- b. Under Delaware Code, Title 29 §6933 and §6987, The State of Delaware is authorized to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of materiel or nonprofessional services, or professional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.
- c. The requirements herein are in addition to those in the executed NASPO Valuepoint Contract Number AR3099 and shall continue through September 15, 2026. At the sole discretion of DTI, this Participating Addendum may further be extended to include any extensions as mutually agreed to, by and between NASPO Valuepoint and Ensono, LLC.

2. CHANGES

a. MANDATORY INSURANCE REQUIREMENTS (29 Del. C. § 6929)

Contractor must obtain at its own cost and expense and keep in force and effect during the term of this Participating Addendum, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. Contractor must carry the following coverage depending on the type of service or product being delivered.

- a. Worker’s Compensation in accordance with applicable law. Employers Liability - \$1,000,000 bodily injury by accident, \$1,000,000 bodily injury by disease (Each Employee) and \$1,000,000 bodily injury by disease.
- b. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate. The amounts of insurance required in this section may be satisfied by multiple policies which, when combined together, provide the total limits of insurance specified.
- c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Contractor pursuant to this Participating Addendum as well as all units

used by Contractor, regardless of the identity of the registered owner, used by Contractor for completing the Work required by this Participating Addendum to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:

1. \$1,000,000 combined single limit each accident, for bodily injury and property damage;
2. Intentionally omitted;
3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
4. Intentionally omitted; and
5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

The Contractor must carry at least one of the following depending on the scope of work being performed.

- a. Intentionally omitted.
- b. Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- c. Intentionally omitted.

Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

Before any work is done pursuant to this Participating Addendum, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Department of Technology and Information
Contract Number: GSS177930-CLOUD_SOL
801 Silver Lake Blvd
Dover, DE 19904

Nothing contained herein shall restrict or limit the Contractor's right to procure insurance coverage in amounts higher than those required by this Participating

Addendum. To the extent that the Contractor procures insurance coverage in amounts higher than the amounts required by this Participating Addendum, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Contractor has complied with the terms of this Participating Addendum and has procured insurance coverage for all vehicles Leased and/or operated by Contractor as part of this Participating Addendum, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the State of Delaware be named as an additional insured on any policy required under this Participating Addendum.

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

b. ELECTRONIC CATALOG

At the discretion of DTI, the Contractor may be required to submit its items list in an electronic format designated by the State.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with Master Contract specific pricing,
- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

c. SEVERABILITY

If any term or provision of this Participating Addendum is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Participating Addendum, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

d. PERMITS AND LICENSES

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Contractor at its own expense.

e. INTELLECTUAL PROPERTY, PATENTED DEVICES, MATERIAL AND PROCESSES

Nothing in this Agreement or applicable Purchase Order, or statement of work, or the performance thereof, will convey, license or otherwise transfer any right, title or interest in any intellectual property or other proprietary rights held by either party or its licensors to the other party.

f. STATE OF DELAWARE BUSINESS LICENSE

Prior to commence performance under this agreement, the Contractor shall either furnish Government Support Services with proof of State of Delaware Business Licensure or initiate the process of application, where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P. O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone: 302-577-8778. <http://revenue.delaware.gov/services/BusServices.shtml>

Information regarding the State of Delaware's decision to enter into this participating addendum will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

g. EMERGENCY TERMINATION OF PARTICIPATING ADDENDUM

- 1.** Due to restrictions which may be established by the United States Government on material, or work, this Participating Addendum may be terminated by the cancellation of all or portions of this Participating Addendum by either party.
- 2.** In the event the Contractor is unable to obtain the material required to complete the items of work included in this Participating Addendum or related Purchase Order(s) because of restrictions established by the United States Government and if, in the reasonable opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed for a period of sixty days or greater, the incomplete portions of the work may be cancelled, or this Participating Addendum and/or related Purchase Order(s) may be terminated. Contractor shall not be liable for any failure to perform hereunder to the extent such failure is caused by circumstances reasonably beyond its control.

h. INDEMNIFICATION AND LIMITATION LIABILITY

1. General Indemnification

The Contractor will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of third-party claims for (i) personal injuries, death or damage to tangible personal or real property caused by Contractor's breach of this Participating Addendum or applicable statement of work, (ii) the fraud, gross negligence or willful misconduct of Contractor, (iii) Contractor's breach of confidentiality obligations as stated in this Participating Addendum, (iv) Contractor's violation of applicable laws, and (v) third party claims asserted by Contractor's employees, affiliates, subcontractors or any third parties engaged by Contractor in connection with the Services.

2. Proprietary Rights Indemnification

To the best of its knowledge, Contractor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the Contractor in writing, and Contractor shall defend such claim, suit or action at Contractor's expense, and Contractor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, litigation costs, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the Contractor (collectively "Products") is or in Contractor's reasonable judgment is likely to be, held to constitute an infringing product, Contractor shall at its expense and option either:

- a.** Procure the right for the State of Delaware to continue using the Product(s); Replace the product with a non-infringing equivalent that satisfies all the requirements of this Participating Addendum; or
- b.** Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of this Participating Addendum, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

3. Limitation of Liability

- a.** Neither party shall be liable for any indirect, incidental, special, reliance, punitive for any indirect, incidental, special, reliance, punitive or consequential damages, or any lost or imputed profits or revenues, regardless of the legal theory under which such liability is asserted, and regardless of whether a party had been advised of the possibility of such liability.
- b.** Except for the State of Delaware or purchasing agency's payment obligations and damages to the extent resulting from either party's gross negligence or willful misconduct, the total aggregate liability of each party arising from or related to this agreement shall be limited to twenty-four (24) times the monthly recurring charge paid or payable in the month immediately preceding the date in which the claim arises.
- c.** Notwithstanding 3(a) and 3(b) contractor's total aggregate liability for any damages resulting from a data breach, unauthorized access to State of Delaware data, data loss, and/or data corruption caused by or related to contractor and its responsibilities related to this agreement, shall be limited to ten (10) million dollars.

i. NON-PERFORMANCE

In the event the Contractor does not fulfill its obligations under the terms and conditions of this Participating Addendum and fails to cure any non-performance after 30 days' written notice ("Cure Period"), in addition to proceeding with termination of this Participating Addendum (as set forth in Section aa(1) below), the ordering agency may purchase equivalent product after undertaking all commercially reasonable and good faith efforts to source from a competitive bid. Any difference in cost between the contract prices herein and the price of open market product shall be split evenly between the purchasing agency and the Contractor. Under no circumstances shall monies be due the Contractor in the event open market products can be obtained below contract price. Any monies charged to the Contractor may be deducted from an open invoice.

j. REQUIRED REPORTS

One of the primary goals in administering this Participating Addendum is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of this Participating Addendum and to establish proper bonding levels, if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The Contractor will be required to accurately report on the participation by Diversity Suppliers which includes minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this Participating Addendum. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment A.

Accurate 2nd Tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at dti_vendorservices@delaware.gov or the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if this Participating Addendum has expired by the report due date.

k. DELAWARE ECONOMIC IMPACT

If applicable, Contractor shall provide an annual report of the economic impact of their operations in Delaware. This report shall be submitted by February 15th of each calendar year and shall report on the immediately prior one full calendar year of operations.

The following basic information is required under this Participating Addendum:

- # of Delaware Locations
- # of Delaware Employees
- Annual Taxes, licenses & Fees Paid to Delaware
 - This may be payroll, franchise, service taxes, etc.
- Major Delaware Investments/ Partnerships
 - Amount paid to Major partners or Suppliers in Delaware
 - Highlight of Delaware MWBE, Veteran, Small Business (SBA criteria) and Disabled Veteran partnerships/ supply chain
 - Rent to Delaware Locations or value of Delaware real property
 - Utility Expenses paid to Delaware utilities

The report or a statement that Contractor has no information to report shall be submitted to DTI_vendorservices@delaware.gov.

I. INDEPENDENT CONTRACTORS

The Contractor is an independent contractor to one another, and nothing herein shall be deemed to cause this Participating Addendum to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

m. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED

Contractor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Contractor for all purposes including any required compliance with the Affordable Care Act by the Contractor. Contractor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Contractor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third-party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Contractor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Contractor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware.

n. WORK PERFORMED IN A STATE BUILDING

Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those

employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees. At the present time these include, but not limited to, wearing a mask in all State buildings and the policy for State employees regarding vaccination. The vaccination policy is located at <https://dhr.delaware.gov/policies/documents/covid19-vaccination-and-test-policy.pdf> . For clarity, State buildings are those owned or leased by the State.

o. FAIR BACKGROUND CHECK PRACTICES

Pursuant to 29 *Del. C.* [§ 6909B](#), the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Contractors doing business with the State are encouraged to adopt fair background check practices. Contractors can refer to 19 *Del. C.* [§ 711\(g\)](#) for applicable established provisions.

p. CONTRACTOR BACKGROUND CHECK REQUIREMENTS

If Contractor has access state property or will come in contact with vulnerable populations, including children and youth, it shall complete background checks, to include fingerprinting, on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of one of the following registry:

- The National Sex Offender Public Website at:
<https://www.nsopw.gov/>
- Delaware Sex Offender Central Registry at:
<https://sexoffender.dsp.delaware.gov/>

Individuals that are listed in the registry shall be prevented from direct contact in the service of this Participating Addendum but may provide support or off-site premises service for contract contractors. Should an individual be identified, and the Contractor believes its employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Contractor shall provide a list of all employees serving this Participating Addendum and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of this Participating Addendum. A violation of this condition represents a violation of the terms and conditions

of this Participating Addendum, and may subject the Contractor to penalty, including cancellation for cause of this Participating Addendum.

Individual Purchase Orders may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Contractor shall be responsible for the background check requirements of any authorized Subcontractor providing service to an agency pursuant to this Participating Addendum.

q. SERVICING SUBCONTRACTORS

- 1.** Contractor may use State-approved Subcontractors or Distributors under this Participating Addendum for sales and service functions as defined herein.
- 2.** Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions under this Participating Addendum, even if work is performed _____ by _____ Servicing Subcontractors.
- 3.** Contractor will be the sole point of contact with regard to Participating Addendum contractual matters, reporting and administrative requirements.
- 4.** For the avoidance of doubt, third-party hardware and software providers shall not be considered "Subcontractors" for purposes of this Agreement.
- 5.** For the purposes of this Participating Addendum, Servicing Subcontractors are classified as follows:
 - a.** "Authorized Reseller"
 - i.** Intentionally omitted.
 - b.** "Agent"
 - i.** Agents are only authorized to provide quotes, sales assistance, configuration guidance and ordering support for products and associated services offered under this Participating Addendum.
 - ii.** Agents are not authorized to accept orders or payments.
- 6.** Subject to the approval of the State, Servicing Subcontractors may be added or deleted during this Participating Addendum term.
- 7.** Proposed Servicing Subcontractors, as well as the Contractor, must complete the registration process at <http://esupplier.erp.delaware.gov>.
- 8.** State-approved Servicing Subcontractors will be posted on the [State's Contracting website](#).

r. ORDERING PROCEDURE

Contractor is required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Depending on the nature and scope of the event, each State agency or other governmental entity shall be responsible for contacting the Contractor directly for all required resources. All consumables delivered by the Contractor and received by a State agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by executing a written Purchase Order or statement of work. All Purchase Orders **must** include the State's contract number.

s. BILLING

The Contractor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number. Per *Del. C. § 6516 (d) (4)*, the Contractor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this Participating Addendum.

t. METHOD OF PAYMENT

1. For each P.O. issued as part of this Participating Addendum, the State will pay Contractor monthly, within thirty (30) days of receipt of the Contractor's billing or invoice, the amount which is owed for Services received.

Intentionally omitted.

2. The agencies or school districts using this Participating Addendum will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State reserves, at its discretion, the right to pay by ACH/ ACI.

u. FORMAL CONTRACT AND/OR PURCHASE ORDER

No employee of the Contractor is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, email, telephone, fax or State of Delaware's credit card shall serve as the authorization to proceed with work in accordance with the work specifications and the special instructions, once it is received by the Contractor.

v. MINIMUM WAGE RATES

If applicable, work performed under this solicitation may fall under the [State of Delaware Minimum Wage Rates](http://dia.delawareworks.com/labor-law/prevailing-wage.php) or the Delaware Prevailing Wage rates. Prior to issuing a purchase order, the ordering agencies must obtain from the Department of Labor a determination if prevailing wage applies to the project and, if appropriate, what the applicable prevailing wage rates would be for the work to be performed. No work shall proceed without a determination by the Department of Labor. Request for prevailing wage certification can be found at: <http://dia.delawareworks.com/labor-law/prevailing-wage.php>

w. DISPUTE RESOLUTION

At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Participating Addendum promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Participating Addendum. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. Each party must exhaust the negotiation or mediation remedies outlined in this Participating Addendum before proceeding to arbitration or litigation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

x. REMEDIES

Except as otherwise provided in this solicitation, including but not limited to Section bb above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

y. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

As a central contract, this Participating Addendum shall include individual orders from state agencies and other entities authorized by law to procure from this Participating Addendum. The individual orders may be terminated as follows:

1. Termination for Cause

If, for any reasons, or through any cause, either party fails to fulfill in a timely and proper manner its obligations, or violates any of the covenants, agreements, or stipulations of this Participating Addendum, the non-breaching party shall have the right to terminate the P.O. after the Cure Period elapses and by giving written notice to the breaching party of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor exclusively in the performance of the P.O. shall, at the option of the Agency, become its property. If the Agency is the non-breaching party, the Contractor shall be entitled to receive just and equitable compensation for any Services or work completed on such documents and other materials. If Contractor is the non-breaching party, the Agency shall pay any applicable early termination charges stated in the applicable Purchase Order or statement of work.

2. Termination for Convenience

The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination and paying any applicable early termination charges stated in the applicable Purchase Order or statement of work. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials created exclusively for the Agency shall, at the option of the department, become its property.

3. Termination for Non-appropriation

In the event that neither the Delaware General Assembly nor the Federal Government fail to appropriate the specific funds necessary to enter into or continue the Purchase Order, in whole or part, the Purchase Order shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such. Contractor shall be

entitled to receive compensation for any Services or work completed up until the date of termination for non-appropriation.

z. TERMINATION OF PARTICIPATING ADDENDUM

As a central contract, this Participating Addendum may be terminated as follows by the State.

1. Termination for Cause

If, for any reasons, or through any cause, either party fails to fulfill in a timely and proper manner its obligations under this Participating Addendum, or if the either party violates any of the covenants, agreements, or stipulations of this Participating Addendum, the non-breaching party shall thereupon have the right to terminate this Participating Addendum after the Cure Period elapses and by giving written notice to the breaching party of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor exclusively under this Participating Addendum shall, at the option of the State, become its property. If the State is the non-breaching party, the Contractor shall be entitled to receive just and equitable compensation for any Services or work completed on such documents and other materials. If the Contractor is the non-breaching party, the State shall pay any applicable early termination charges stated in the Purchase Order(s) or statements of work associated with this Participating Addendum.

On receipt of this Participating Addendum cancellation notice from the State, the Contractor shall have not less than thirty (30) days to provide a written response and may identify a method(s) to resolve the violation(s). If the State does accept the Contractor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Contractor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Contractor successfully rectifies the original violation(s).

2. Termination for Convenience

The State may terminate this Participating Addendum at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination and paying any applicable early termination charges stated in all Purchase Order(s) or statements of work associated with this Participating Addendum. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs,

reports, supplies, and other materials created exclusively for the using Agency shall, at the option of the State, become its property.

3. Termination for Non-Appropriations

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue this Participating Addendum, in whole or part, this Participating Addendum shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such. Contractor shall be entitled to receive compensation for any Services or work completed up until the date of termination for non-appropriation.

aa. PUBLICATION, REPRODUCTION AND USE OF MATERIAL

No material produced in whole or part under this Participating Addendum shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Participating Addendum; provided, however, that the State agrees not to use any design or engineering plans prepared by the Contractor for anything other than their intended purpose under this Participating Addendum. The Contractor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State's support shall be given in the publication.

bb. RIGHTS AND OBLIGATIONS

The rights and obligations of each party to this Participating Addendum shall not be effective, and no party shall be bound by the term of this Participating Addendum, unless and until a valid executed purchase order has been approved by the State of Delaware Secretary of Finance, and all reasonable procedures of the State of Delaware Department of Finance have been complied with. A separate purchase order shall be issued for every project or order.

cc. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this Participating Addendum. Upon either the State's or the Contractor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of

Delaware, the State and Contractor shall meet and confer about coordination of representation in such action.

dd. AUDIT ACCESS TO RECORDS

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Participating Addendum to the extent and in such detail as shall adequately reflect performance hereunder. Unless otherwise required under applicable law, the Contractor agrees to preserve and make available to the State, upon at least 14 days' prior written request, such records for a period of six (6) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. Subject to reasonable confidential requirements, the Contractor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under this Participating Addendum. Upon at least 14 days' prior writing notice given to the Contractor or unless a shorter notice period is permitted under applicable law, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Participating Addendum. The cost of any audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the State for disallowances shall be drawn from the Contractor's own resources and not charged to this Participating Addendum or Purchase Order cost or cost pools indirectly charging costs.

ee. IRS 1075 Publication

1. Performance

In performance of this Participating Addendum, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.

The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this

Participating Addendum. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Participating Addendum. Inspection by or disclosure to anyone other than an officer, authorized subcontractor, or employee of the Contractor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under this Participating Addendum will be subcontracted without prior written approval of the IRS.

The Contractor will maintain a list of employees authorized access. Upon request, such list will be provided to the Agency and, upon request, to the IRS reviewing office.

Upon written notice, the Agency will have the right to void this Participating Addendum if the Contractor fails to provide the safeguards described above.

The Contractor shall comply with agency incident response policies and procedures for reporting unauthorized disclosures of agency data.

Except for any conduct on the part of Contractor that causes DTI non-compliance with legal and regulatory requirements and guidelines (unless such conduct was due to the direction given by DTI or applicable purchasing agency), notwithstanding anything to the contrary, DTI and the any using Agency acknowledges and agree that, while Contractor may provide certain security services under an applicable Purchase Order or statement of work, Contractor is not responsible for DTI's or the using Agency's compliance with legal and regulatory requirements and guidelines, including but not limited to IRS Publication 1075 (Tax Information Security Guidelines for Federal, State and Local Agencies). Any such regulatory or standard-based compliance remains the obligation of DTI or the using Agency. Contractor is solely responsible for providing the Services as described in the applicable Purchase Order or statement or work.

2. Criminal/Civil Sanctions

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Participating Addendum. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Participating Addendum. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the Contractor to inform its 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 to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of Contractor, 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 so 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.

Granting Contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractor must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, Contractor must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. Inspection

The IRS accompanied by the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this Participating Addendum for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

ff. SUBCONTRACTS

Subcontracting is permitted under this Participating Addendum. However, every subcontractor, authorized representative shall be identified (Attachment B) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of this Participating Addendum. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The Contractor shall be responsible for compliance by the subcontractor with all security obligations and material terms, conditions and requirements of the Master Agreement and this Participating Addendum and with all local, State and Federal Laws, as may be applicable to the subcontractor and the services being provided. The Contractor shall be liable for any noncompliance by any subcontractor or reseller. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

Third-party hardware and software providers shall not be considered "Subcontractors" for purposes of this Agreement.

gg. CONTRACTOR EMERGENCY RESPONSE POINT OF CONTACT

The Contractor shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty-four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the Contractor.

In the event of a serious emergency, pandemic, or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Participating Addendum. Additional Services and Payments are subject to mutual agreement and appropriation and other payment terms.

hh. POTENTIAL CONTRACT OVERLAP

Contractors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded that overlap this Participating Addendum.

ii. SUPPLEMENTAL SOLICITATION

The State reserves the right to advertise a supplemental solicitation during the term of this Participating Addendum if deemed in the best interest of the State.

jj. CONFIDENTIALITY AND DATA INTEGRITY

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored: e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency/School District data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information; Contractor may only disclose such data as required to provide the Services in accordance with the applicable Purchase Order or statement of work.

The Contractor is required to agree to the requirements in the Confidentiality and Integrity of Data Statement; Attachment C attached and made a part of this Agreement.

kk. SECURITY

As computer, network, and information security are of paramount concern, the State wants to ensure that computer/network hardware and software does not compromise the security of its IT infrastructure. Therefore, the Contractor is guaranteeing that the systems or software used to provide the in-scope Services stated in an applicable statement of work meet or exceed CIS Critical Security controls located at <https://www.cisecurity.org/controls/cis-controls-list>.

II. TAX EXEMPTION

1. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers, and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/publications/p510>. Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to

complete the appropriate certificate. Such taxes shall not be included in prices quoted. Such taxes shall not be included in prices quoted.

2. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Contractor.

mm. EQUALITY OF EMPLOYMENT OPPORTUNITY IN PUBLIC WORKS

During the performance of any contract for public works financed in whole or in part by appropriation of the State of Delaware, the Contractor agrees as follows:

1. The Contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any employee or applicant for employment with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The Contractor agrees to post in conspicuous places, notices to be provided by the Agency setting forth the provisions of this non-discrimination clause.
2. During the performance of this Participating Addendum, the Contractor agrees as follows:
 - a. The Contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading,

demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the Agency setting forth this nondiscrimination clause.

3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin.”

a. The term "contractor for public works" means construction, reconstruction, demolition, alteration, and/or repair work, maintenance work, and paid for in whole or in part out of the funds of a public body except work performed under a vocational rehabilitation program. The manufacture or furnishing of materials, articles, supplies or equipment is not a public work within the meaning of this subsection unless conducted in connection with and at the site of the public work.

nn. DOCUMENT EXECUTION

The State of Delaware requires a new vendor to complete the registration process through the Delaware Supplier Portal at <http://esupplier.erp.delaware.gov>. Successful completion of this registration enables the creation of a State of Delaware supplier record. The Taxpayer ID (SSN or EIN) and Applicant (supplier) name are submitted to the Internal Revenue Service for "matching"/ If the Taxpayer ID and name do not match, the vendor record cannot be approved.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

Any questions about completing this registration or specific comments about the registration, please contact supplier maintenance by phone at 302-672-5000.

3. PRIMARY CONTACTS

The primary government contact individuals for this Addendum are as follows (or their named successors):

Lead State: Utah
Contact: Blake Theo Porter
Phone: (801) 957-7136
Email: btporter@utah.gov

Contractor: Ensono, LLC
Contact: Dean Johnson
Address: 3333 Finley Rd Downers, Grove, IL 60515
Phone: (404) 314-1633
Email: dean.johnson@ensono.com

Participating State: Delaware, Department of Technology and Information
Contact: Lacey Hutchison
Address: 801 Silver Lake Blvd, Dover, DE 19904
Phone: 302-739-9500
Fax: 302-739-6251
Email: DTI_Vendorservices@delaware.gov


4. CONTRACT NUMBER

The contract number for the State of Delaware is: GSS17793-CLOUD_SOL.


This Participating Addendum and the Master Price Agreement, Number AR3099, (administered by the State of Utah) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Contract, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Contract and its exhibits, unless agreed to in writing by the parties. The terms and conditions of this Addendum and the Master Contract and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. In the event of a conflict between the terms, the following order of priority will govern: (1) this Participating Addendum, (2) the statement of work or Purchase Order, and (3) Master Contract AR3099.

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

State of Delaware

By: 
Name: Gerald Whisman
Title: COO, State of Delaware DTI
Date: Dec 30, 2022

Ensono

By: 
Chris Garcia (Dec 30, 2022 08:32 CST)
Name: Chris Garcia
Title: Deputy General Counsel
Date: Dec 30, 2022


Jennifer Catalan (Dec 29, 2022 15:37 CST)

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Delaware Department of Technology and Information

Attachment A

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware																			
Subcontracting (2nd tier) Quarterly Report																			
Prime Name:							Report Start Date:												
Contract Name/Number							Report End Date:												
Contact Name:							Today's Date:												
Contact Phone:							*Minimum Required			Requested detail									
Vend or Name *	Vend or TaxID*	Contra ct Name/ Numbe r*	Vend or Conta ct Name *	Vend or Conta ct Phon e*	Repo rt Start Date *	Repo rt End Date *	Amount Paid to Subcontrac tor*	Work Performed by Subcontra ctor UNSPSC	M/WB E Certifyi ng Agency	Veteran/Ser vice Disabled Veteran Certifying Agency	2nd tier Suppli er Name	2nd tier Suppli er Addre ss	2nd tier Suppli er Phone Number	2nd tier Suppli er email	Descript ion of Work Perform ed	2nd tier Suppli er Tax Id	Dat e Paid		

Note: A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Contractor.

Completed reports shall be saved in an Excel format, and submitted to the following email address:
 DTI_vendorservices@delaware.gov.

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY CONTRACTOR		
1. CONTRACT NO. Insert Contract Number	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (<i>Signature</i>)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (<i>Signature</i>)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

*** Use a separate form for each subcontractor**



DEPARTMENT OF TECHNOLOGY AND INFORMATION

William Penn Building
801 Silver Lake Boulevard
Dover, Delaware 19904-2407

CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

I/we, as an employee(s) of _____ or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions, within the scope of the Services I/we have been engaged to provide, to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law.

This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read DTI's Policy on Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

Contractor Signature _____
Title: _____
Date: _____
Contractor Name: _____

DELAWARE CLOUD SERVICES TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

XaaS Contract # _____, Appendix _____

between State of Delaware and _____ dated _____

		Public Data	Non Public Data	Cloud Services (CS) Terms
				PROVIDER must satisfy Clause CS1-A OR Clauses CS1-B and CS1-C, AND Clause CS4 for all engagements involving non-public data. Clause CS2 is mandatory for all engagements involving non-public data. Clause CS3 is only mandatory for SaaS or PaaS engagements involving non-public data.
CS1-A			✓	Security Standard Compliance Certifications: The PROVIDER shall meet, and provide proof of, one or more of the following Security Certifications. <ul style="list-style-type: none"> • CSA STAR – Cloud Security Alliance – Security, Trust & Assurance Registry (Level Two or higher) • FedRAMP - Federal Risk and Authorization Management Program
CS1-B			✓	Background Checks: The PROVIDER must warrant that they will only assign employees and subcontractors who have passed a state-approved criminal background checks. The background checks must demonstrate that staff, including subcontractors, utilized to fulfill the obligations of the contract, have no convictions, pending criminal charges, or civil suits related to any crime of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. The PROVIDER shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the contract and grounds for immediate termination and denial of further work with the State of Delaware.
CS1-C			✓	Sub-contractor Flowdown: The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.
CS2			✓	Breach Notification and Recovery: The PROVIDER must notify the State of Delaware immediately or within 24 hours of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (see CS3, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's <i>Terms and Conditions Governing Cloud Services</i> policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the

			breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless.
CS3		✓	Data Encryption: The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The PROVIDER's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware's standard in accordance with the <i>Terms and Conditions Governing Cloud Services</i> policy.
CS4	✓	✓	Notification of Legal Requests: The PROVIDER shall contact the State of Delaware upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. With regard to State of Delaware data and processes, the PROVIDER shall not respond to subpoenas, service of process, and other legal requests without first notifying the State unless prohibited by law from providing such notice.

The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions :

FOR OFFICIAL **CS4 (Public Data)**
 USE ONLY **CS1-A and CS4 (Non-Public Data) OR** **CS1-B and CS1-C and CS4 (Non-Public Data)**
 CS2 (Non-public Data) **CS3 (SaaS, PaaS – Non-public Data)**

PROVIDER Name/Address (*print*): _____

PROVIDER Authorizing Official Name (*print*):

PROVIDER Authorizing Official Signature: _____ Date: _____

STATE OF DELAWARE
 DEPARTMENT OF TECHNOLOGY AND INFORMATION
 801 Silver Lake Blvd., Dover, Delaware 19904



DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Pu bli c Da ta	No n Pu bli c Da ta		DATA USAGE (DU) TERMS
DU 1	√	√	Data Ownership	<p>The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The PROVIDER shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware.</p>
DU 2	√	√	Data Usage	<p>PROVIDER shall comply with the following conditions. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by PROVIDER or any party related to PROVIDER for subsequent use in any transaction. The PROVIDER will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum necessary to accomplish the intended purpose under this agreement. PROVIDER may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. Protection of Personally Identifiable Information (PII, as defined in the State’s <i>Terms & Conditions Governing Cloud Services</i> policy), privacy, and sensitive data shall be an integral part of the business activities of the PROVIDER to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. The PROVIDER shall safeguard the confidentiality, integrity, and availability of State information.</p> <p>Only duly authorized PROVIDER staff will have access to the State of Delaware data and may be required to obtain security clearance from the State. No party related to the PROVIDER may retain any data for subsequent</p>

				use in any transaction that has not been expressly authorized by the State of Delaware.
DU 3	v	v	Termination and Suspension of Service	<p>In the event of termination of the contract, the PROVIDER shall implement an orderly return (in CSV or XML or another mutually agreeable format), or shall guarantee secure disposal of State of Delaware data.</p> <p><i>Suspension of services:</i> During any period of suspension or contract negotiation or disputes, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data.</p> <p><i>Termination of any services or agreement in entirety:</i> In the event of termination of any services or agreement in entirety, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data for a period of 90 days after the effective date of the termination. Within this 90-day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract. After such 90-day period, the PROVIDER shall have no obligation to maintain or provide any State of Delaware data. Thereafter, unless legally prohibited, the PROVIDER shall dispose securely of all State of Delaware data in its systems or otherwise in its possession or control, as specified herein.</p> <p>Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p>
DU 4		v	Data Disposition	<p>At the end of this engagement, PROVIDER will account for and return all State data in all of its forms, disk, CD / DVD, tape, paper, for example. At no time shall any data or processes that either belong to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the PROVIDER.</p> <p>When required by the State of Delaware, the PROVIDER shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods. The PROVIDER shall provide written certificates of destruction to the State of Delaware.</p>
DU 5		v	Data Location	<p>The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER will permit its personnel and subcontractors to access State of Delaware data remotely only as required to provide technical or call center support.</p>

DU 6		√	Breach Notification and Recovery	The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (<i>see</i> DU7, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's <i>Terms and Conditions Governing Cloud Services</i> policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless.
DU 7		√	Data Encryption	The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The PROVIDER's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware's standard in accordance with the <i>Terms and Conditions Governing Cloud Services</i> policy.

The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions [check one]:

FOR OFFICIAL USE ONLY DU 1 - DU 3 (Public Data Only) OR DU 1 - DU 7 (Non-public Data)

PROVIDER Name/Address (*print*):

PROVIDER Authorizing Official Name (*print*):

PROVIDER Authorizing Official Signature:

Date: _____