

NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



**CLOUD SOLUTIONS 2016-2026**  
Led by the State of Utah

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Master Agreement #: AR3099

Contractor: **ENSONO, LLC**

Participating Entity: **STATE OF SOUTH DAKOTA – CONTRACT 17705**

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 of South Dakota** authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the **State of South Dakota**. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

For internal use by the State: Political subdivisions (cities, counties, public schools, state universities, etc.) of the State of South Dakota may purchase directly from the Contractor according to their own procurement procedures. Any IT related purchase by state executive branch agencies is subject to the authority and prior approval of the Bureau of Information and Telecommunications. The Contractor will not be responsible to ensure compliance of this requirement.

The Contractor may, at the Contractor's discretion, extend pricing from this agreement to Indian tribal governments and non-profit organizations in **South Dakota**. Any sales made to Indian tribes and non-profit organizations from this agreement shall be included in any required reports and shall be subject to the NASPO VALUEPOINT administrative fee.

3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.

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4. **Order of Priority:** The Contract created by this Participating Addendum is comprised of the documents described below, and will be interpreted in the following order:
- a. This Participating Addendum – First Priority, unless expressly modified by a Statement of Work
  - b. Statement of Work – Second Priority
  - c. NASPO Master Agreement #AR3099: – Third Priority
5. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Clint Dean
Address:	3333 Finley Road, Downers Grove, IL 60515
Telephone:	630-944-2311
Fax:	
Email:	clint.dean@ensono.com

Participating Entity

Name:	Lisa Hubbard
Address:	Office of Procurement Management 523 East Capitol Avenue Pierre, SD 57501
Telephone:	605-773-4580
Fax:	605-773-4840
Email:	<a href="mailto:lisa.hubbard@state.sd.us">lisa.hubbard@state.sd.us</a>

**6. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**

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

**South Dakota's state specific contract terms set forth in Attachment A are incorporated by reference into this Participating Addendum. Any terms in the Master Agreement not expressly modified herein remain in full force and effect.**

7. **Subcontractors:** All contractors, dealers, and resellers authorized in the **State of South Dakota**, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. For avoidance of doubt, third-party hardware and software providers shall not be considered contractors, dealers, or resellers under this Participating Addendum.

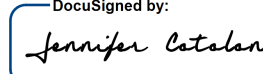
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8. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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

Participating Entity: <b>State of South Dakota</b>	Contractor: <b>ENSONO, LLC</b>
Signature:	Signature: DocuSigned by:  <small>75B3B3D10100402...</small>
Name: <b>Steven L. Berg</b>	Name: <b>Jennifer Catalan</b>
Title: <b>Director of Procurement Management</b>	Title: <b>Sr. Corporate Counsel</b>
Date:	Date: 01 September 2023

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

## Attachment A

### State of South Dakota Terms and Conditions

1. It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of this contract into which this attachment is incorporated; unless a statement of work or the like expressly states that a provision therein amends or overrides the terms and conditions of the Master Agreement or this Participating Addendum.
2. All contractual agreements are subject to, governed by, and construed in accordance with the laws of the State of South Dakota. Any action, suit, or other proceeding under, pursuant to, or governed by this contract shall be brought and maintained in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
3. The Contractor agrees that the continuation of this Participating Addendum is dependent on receipt of an appropriation from the South Dakota Legislature. In the event that the Legislature does not provide an appropriation of funds for any fiscal year, or if funds become unavailable because of federal funds reduction, then and in that event, this Participating Addendum shall be null and void and shall expire at the end of the last fiscal year in which funding shall be available for this Participating Addendum to the State and the State agency involved. Contractor agrees that a termination for lack of funds pursuant to this paragraph shall not result in a claim against the State, nor against any State agency, agent, officer, or employee.
4. Neither the State of South Dakota, nor any State agency, agent, officer, or employee shall hold harmless or indemnify any Contractor for any loss or damage beyond the amounts provided for tort claims against the State by South Dakota law. Neither the State, nor any State agency, agent, officer, or employee shall assume liability to any third person by means of a contract or agreement. The State has not, and shall not, waive or give up any immunity or protection afforded to the State of South Dakota by the Eleventh Amendment to the Constitution of the United States, and no provision of this agreement shall be interpreted as, or be deemed as, a waiver of such Amendment, nor of any immunity afforded by it to the State of South Dakota.
5. Contractor agrees to comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to Contractor in providing services pursuant to this Participating Addendum and applicable statement of work or the like, and Contractor will be solely responsible for obtaining current information about such requirements.
6. Notwithstanding any language to the contrary, no interpretation shall be allowed that would find the State of South Dakota or any State agency has agreed to any binding arbitration. The State of South Dakota does not and shall not agree to pay any attorneys' fees or late charges in excess of those provided for in the South Dakota Prompt Payment Act, SDCL chapter 5-26.
7. This contract shall not require the State of South Dakota to purchase any insurance,

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### State of South Dakota Terms and Conditions

nor shall the State of South Dakota be obligated to provide for any self-insurance beyond that required by South Dakota law relating to tort claims. Contractor shall be required to provide adequate insurance for: (1) Commercial General Liability; (2) Professional Liability; (3) Business Automobile Liability; and (4) Workers' Compensation, all as required by South Dakota Law, as otherwise set out in this Agreement, or adequate to cover all risks of performance under this agreement.

8. Contractor hereby agrees to indemnify and hold the State of South Dakota, and its agents, agencies, officers, and employees, harmless from and against third-party actions, suits, damages, liability, or other proceedings that may arise as the result of for (i) personal injuries, death or damage to tangible personal or real property caused by Contractor's breach of this Participating Addendum or (ii) the fraud, negligence or willful misconduct of Contractor. This provision does not require Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its agents, agencies, officers, or employees.
9. Contractor hereby agrees to defend the State of South Dakota, its agents, agencies, officers and employees, harmless from third party claims alleging a Contractor-branded deliverable provided under this Participating Addendum infringes of any copyright, trade secret, patent, or other intellectual property right. Contractor's obligations hereunder shall not extend to the combination of any deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or **(b)** specified by Contractor to work with the deliverables.
10. Compliance with SDCL ch 5-18A:

Contractor certifies and agrees that the following information is correct:

The Contractor is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the Contractor on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful Contractor further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination

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### State of South Dakota Terms and Conditions

and would be cause to suspend and debar a business under SDCL § 5-18D-12.

11. Pursuant to Executive Order 2020-01, for contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000.00) or more, by signing this Participating Addendum Contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Participating Addendum. Contractor further agrees to provide immediate written notice to the State if during the term of this Participating Addendum if it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Participating Addendum.
12. Pursuant to Executive Order 2023-13, the Contractor (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Contractor hereby certifies that to the best of its knowledge, this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.
13. Contractor will not knowingly provide to the State any computer or telecommunication hardware or video surveillance hardware, or any components thereof, or any software that was manufactured, provided, or developed by a covered entity. As used in this paragraph, "covered entity" means the following entities and any subsidiary, affiliate, or successor entity and any entity that controls, is controlled by, or is under common control with such entity: Kaspersky Lab, Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any entity that has been identified as owned or controlled by, or otherwise connected to, People's Republic of China. Contractor will immediately notify the State if Contractor becomes aware of credible information that any hardware, component, or software was manufactured, provided, or developed by a covered entity.
14. If applicable, the state's technical terms and Business Associate Agreement shall be delineated in separate documents.