

STATE OF VERMONT PARTICIPATING ADDENDUM #37989
FOR NASPO VALUEPOINT PURCHASING PROGRAM: CLOUD SOLUTIONS
Led by the State of Utah
Master Agreement #AR3115

Contractor: ViON Corporation

Contractor's NASPO ValuePoint Webpage: <https://www.naspovaluepoint.org/portfolios/portfolio-contractor/676/>

1. **Parties.** This Participating Addendum is a contract between the State of Vermont, through its Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter "State" or "Vermont"), and the Contractor identified above. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** This Participating Addendum authorizes the purchase of Cloud Solutions from Contractor pursuant to the Master Agreement identified above, which is hereby incorporated by reference. Contractor's awarded categories are:
 - a. **Platform as a Service (PaaS):** As used in the Participation Addendum is defined as the capability provided to the consumer to deploy onto the cloud infrastructure consumer created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services, and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
 - b. **Infrastructure as a Service (IaaS):** As used in the Participation Addendum is defined the capability provided to the consumer to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited control of select networking components (e.g., host firewalls).
 - c. **Software as a Service (SaaS):** As used in this Participation Addendum is defined as the capability provided to the consumer to use the Contractor's applications running on a Contractor's infrastructure (commonly referred to as 'cloud infrastructure'). The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
3. **Definitions.** Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement between the Lead State and the Contractor.
4. **Purchasing Entities.** This Participating Addendum may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a "State Purchaser") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the State of Vermont and any institution of higher education

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chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an “Additional Purchaser”). Issues concerning interpretation and eligibility for participation are solely within the authority of the State of Vermont Chief Procurement Officer. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Participating Addendum and the Master Agreement are consistent with its procurement policies and regulations.

5. ***Contract Term.*** The period of Contractor’s performance shall begin on April 15, 2019 and end upon expiration of the Master Agreement, unless terminated earlier in accordance with the terms of this Participating Addendum or the Master Agreement. An amendment to this Participating Addendum shall not be necessary in the event of the renewal or extension of the Master Agreement.
6. ***Available Products and Services.*** All products, services and accessories listed on the Contractor’s NASPO ValuePoint Webpage may be purchased under this Participating Addendum.
7. ***No Lease Agreements.*** Contractor is prohibited from leasing to State Purchasers under this Participating Addendum. Additional Purchasers are not subject to this prohibition and may negotiate lease agreements with Contractor if the terms of the Master Agreement permit leasing.
8. ***Requirements for Ordering.***
 - a. Orders made under this Participating Addendum must include a specifically-negotiated Statement of Work or Service Level Agreement terms as necessary for the Product and/or Service to meet the Purchasing Entity’s requirements. Orders funded by federal funds may include additional terms as necessary to comply with federal requirements.
 - i. Prior to entering into Statement of Work or Service Level Agreement with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine whether the Contractor will hold, store, or process High Risk Data, Moderate Risk Data and/or Low Risk Data. The Contractor must document the Data Categorization in the SLA or Statement of Work.
 - b. State Purchasers must follow the ordering procedures of the State Contract Administrator to execute orders against this Participating Addendum, which shall include, as applicable, obtaining approval from the State CIO and/or Attorney General’s Office prior to making purchases under this Participating Addendum.
 - c. The State’s Agency of Digital Services Procurement Office is the only entity authorized to place orders on behalf of State Purchasers. Contractor agrees that it will not accept or fulfill orders placed on behalf of State Purchasers from any other source. Contractor’s failure to meet this requirement may result in suspension or termination of this Participating Addendum.
 - d. All orders placed under this Participating Addendum must include the Participating Addendum Number on the Purchase Order.
9. ***Payment Provisions and Invoicing.***

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- a. Product offerings and complete details of product pricing, including discounts, applicable to this Participating Addendum are set forth in the Price Schedule maintained on-line at Contractor's NASPO ValuePoint Webpage listed above.
- b. Purchasing Entities may solicit the Contractor or Fulfillment Partner/Authorized Reseller for deeper discounts than the minimum contract pricing as set forth in the Price Schedule (e.g., additional volume pricing, incremental discounts, firm fixed pricing or other incentives).
- c. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.
- d. In the discretion of the Purchasing Entity, retainage may be specified in a Purchase Order, in an amount mutually agreeable to the parties.
- e. Payment terms are Net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. Invoices shall itemize all work performed during the invoice period, including, as applicable, the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment. As applicable, a copy of the notice(s) of acceptance shall accompany invoices submitted for payment.
- f. Invoices shall be sent to the address identified on the Purchasing Entity's Purchase Order and shall specify the address to which payments will be sent. The State of Vermont Participating Addendum Number and Purchasing Entity's Purchase Order Number shall appear on each invoice for all purchases placed under this Participating Addendum.
- g. Reimbursement of expenses is not authorized. All rates set forth in a Purchase Order shall be inclusive of any and all Contractor fees and expenses.
- h. Unopened Products can be returned with no restocking fee up to 30 days from the date of receipt.
- i. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.

10. *Fulfillment Partners/Authorized Resellers.*

- a. Resellers (or Fulfillment Partners) are available for this Participating Addendum if and to the extent approved by the State Chief Procurement Officer (each an "Authorized Reseller"). Any Authorized Resellers will be listed on the Contractor's NASPO ValuePoint Webpage listed above.
 - i. The State does not intend to approve resellers or fulfillment partners for this Participating Addendum except as required to provide services for certain Products (e.g., where a Product requires a managed service provider or other such services that Contractor is unable to provide without engaging a third party). Contractor shall notify the State when a Product requested by a Vermont Purchasing Entity will require

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- engagement of a third party. The State Chief Procurement Officer may, in its discretion, approve the third-party engagement on a limited basis, for the specific purchase only, or on a general basis, for whenever such Product is purchased under this Participating Addendum.
- ii. A reseller or fulfillment partner approved by the State for this Participating Addendum is expressly not authorized to invoice State Purchasers directly. This provision shall not apply to Additional Purchasers.
- b. All State policies, guidelines and requirements shall apply to Authorized Resellers.
 - c. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions set forth by this Participating Addendum. Contractor acknowledges that each and all of the promises it makes as "Contractor" in the Master Agreement and in this Participating Addendum will apply to all Products and Services provided hereunder, regardless of who is providing or licensing the Product or performing the work.
 - i. Contractor promises that Purchasing Entities will not be required to affirmatively accept additional terms and conditions to use or access any Product or Service purchased under this Participating Addendum, whether by electronic means (e.g., click-through) or otherwise.
 - ii. Contractor promises that each of the third parties whose Products and/or Services are available for purchase under this Participating Addendum understand and agree that the terms and conditions applicable to their Products and/or Services are as set forth in the Master Agreement, as amended, and are subordinate to the terms of this Participating Addendum and the NASPO ValuePoint Master Agreement Terms & Conditions and associated service model Exhibits.
11. **Reporting.** Contractor shall submit quarterly reports electronically in the same format as set forth under the Master Agreement, detailing the purchasing of all items under this Participating Addendum. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.
- a. The reports shall be an excel spreadsheet transmitted electronically to SOV.ThePathForward@vermont.gov.
 - b. Reports are due for each quarter as follows:

Reporting Period	Report Due
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

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- c. Failure to meet these reporting requirements may result in suspension or termination of this Participating Addendum.
12. **Prior Approvals.** In accordance with current State law, bulletins, and interpretations, this Participating Addendum shall not be binding until it has been approved by the Vermont Attorney General's Office, the Secretary of Administration, and the State's Chief Information Officer.
13. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Participating Addendum shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
14. **Termination.** This Participating Addendum may be terminated by the State at any time upon 30 days prior written notice to the Contractor. Upon termination or expiration of this Participating Addendum, each party will assist the other in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any order executed prior to the effective date of termination or other expiration of this Participating Addendum.
15. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Participating Addendum. The primary contacts for this this Participating Addendum are as follows:

a. **For the Contractor:**

Name: John Pyne
Phone: (571) 353-6120
Email: john.pyne@ViON.com

b. **For the State:**

Name: State of Vermont, Stephen Fazekas
Address: 109 State Street, Montpelier, VT 05633-3001
Phone: 802/828-2210
Fax: 802/828-2222
Email: Stephen.fazekas@vermont.gov

16. Additional Terms and Conditions.

- a. Notwithstanding any contrary language anywhere, in no event shall the terms of this contract or any document furnished by Contractor in connection with performance under this contract obligate the State to (1) defend or indemnify Contractor or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of Contractor or any third party.
- b. If required by an order made by a State Purchaser under this Participating Addendum, the terms and conditions of the State of Vermont Business Associate Agreement, revised July 7, 2017 (the six-page document available online at: <https://bgs.vermont.gov/sites/bgs/files/files/purchasing->

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contracting/contracts/Attachment E BAA HIPAA 071717REV.doc) shall be incorporated by reference and apply to the order. This provision shall not apply to Additional Purchasers.

- c. Contractor is required at all times to comply with all applicable federal and state laws and regulations pertaining to information security and privacy.
- d. **Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Contractor in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. Contractor irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. Contractor agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Contractor agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- e. **Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
- f. **False Claims Act:** Contractor acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* Contractor's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Contractor's liability.
- g. **Whistleblower Protections:** Contractor shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, Contractor shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to Contractor or its agents prior to reporting to any governmental entity and/or the public.
- h. **Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Contractor under this Agreement.
- i. **Set Off:** The State may set off any sums which Contractor owes the State against any sums due Contractor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures set forth in 32 V.S.A. § 3113.

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- j. **Taxes Due to the State:** Contractor certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- k. **Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.
- l. **Certification Regarding Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Contractor further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>
- m. **Confidentiality:** Contractor acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
- n. **Marketing:** Contractor shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
- o. **Non-Appropriation:** If an order made under this Participating Addendum extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support the order, the State Purchaser may cancel the order at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. If the order is funded in whole or in part by Federal funds, and those Federal funds become unavailable or reduced, the State Purchaser may suspend or cancel the order immediately and shall have no obligation to pay from State revenues.
- p. **Continuity of Performance:** In the event of a dispute between Contractor and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.
- q. **State Facilities:** If the State makes space available to Contractor in any State facility during the term of this Agreement for purposes of Contractor's performance under this Agreement, Contractor shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.
- r. **SOV Cybersecurity Standard 19-01:** All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-

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line at the following URL: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

By signing below Contractor agrees to offer the products and services on the Master Agreement at prices equal to or lower than the prices listed on the Master Agreement.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

E-SIGNED by Chris Cole
Date: on 2019-04-22 19:29:08 UTC

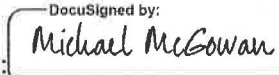
Signature: _____

Name: Christopher Cole

Title: BGS Commissioner

By ViON Corporation

Date: 4/15/2019

Signature: 
16AC49479BEC4E6...

Name: Michael McGowan

Title: CHRO/Executive Vice President