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# PROJECT NUMBER 49754
# PARTICIPATING ADDENDUM
# FOR
# CLOUD AND SOFTWARE SOLUTIONS
# BETWEEN
# MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
# AND
# STRATEGIC COMMUNICATIONS, LLC

This Participating Addendum is entered into by Mississippi Department of Information Technology Services ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number LS5024, executed by Contractor and Utah ("Lead State") for Cloud and Software Solutions ("Master Agreement"):

Strategic Communications, LLC ("Contractor")
310 Evergreen Road
Louisville, KY 40243

**I. PARTICIPATING ADDENDUM CONTACTS.**

Contractor's contact for this Participating Addendum is:

Kathy Mills
CEO
kmills@yourstrategic.com
502-813-8018

Participating Entity's contact for this Participating Addendum is:

Craig P. Orgeron, CPM, Ph.D.
Executive Director
issprojects@its.ms.gov
601-432-8000

**II. TERM.** This Participating Addendum is effective as of the date of the last signature below or September 16, 2026, whichever is later, and will terminate on March 31, 2027.

**III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.

**IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.

**V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.

**a. Products.** All products available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.

**b. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.

**c. Contractor Partners**. All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating

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Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

**Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.** The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

**VI. ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

**VII. FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.

**VIII. ATTACHMENTS.** This Participating Addendum includes the following attachments:

**a.** Attachment A

**IX. NOTICE.** Any notice required herein shall be sent to the following:

| For Contractor: | For Participating Entity: |
|---|---|
| Kathy Mills<br>CEO<br>kmills@yourstrategic.com<br>502-813-8018 | Craig P. Orgeron, CPM, Ph.D.<br>Executive Director<br>issprojects@its.ms.gov<br>601-432-8000 |

**X. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

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**SIGNATURE**

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

**CONTRACTOR:**

DocuSigned by:
Bambi Fox
4FDE5D9F82BD4EA...

**Signature**

Bambi Fox

**Printed Name**

Senior Contract Program Manager

**Title**

September 9, 2026

**Date**

**PARTICIPATING ENTITY:**

Signed by:
F577530FD3CA425...

**Signature**

Craig Orgeron

**Printed Name**

Executive Director

**Title**

September 9, 2026

**Date**

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## ATTACHMENT A

1. **Entire Agreement.** This agreement is made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following documents and their terms and conditions, which are all expressly incorporated herein by reference:

   a. This Participating Addendum signed by the parties hereto, as amended;
   b. Any exhibits or attachments to this Participating Addendum, as amended;
   c. the NASPO ValuePoint Master Agreement for Cloud and Software Solutions (2026-2036) (NASPO Cooperative Master Agreement Contract Number LS5024), as amended;
   d. Contractor's Proposal, as accepted by Participating Entity, in response to the Master Agreement
   e. ITS Solicitation Memorandum dated September 20, 2024, as amended.
   f. Contractor's Proposal, as accepted by ITS, in response to the solicitation Memorandum dated September 20, 2024, as amended.
   g. Supplemental agreements/orders that are made pursuant to this Participating Addendum.

   The intent of the above listed documents (hereinafter collectively referred to as the "Agreement") is to include all items necessary for the identification of all obligations of the parties under this Participating Addendum and Agreement. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above-mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("a. Participating Addendum") and the lowest document is listed last ("e. Supplemental agreements/orders"). However, despite the any provision to the contrary, in the event of a conflict between the documents comprising the Agreement and any federal or state laws, regulations, specially required funding terms and conditions by the Purchaser, including any required business associate agreement, the applicable federal or state laws, regulations, specially required funding terms and conditions by the Purchaser, including any required business associate agreement, shall control over the terms comprising the Agreement. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Participating Addendum shall contain any terms or conditions other than as set forth in this Agreement, as listed in this Entire Agreement clause. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the Participating Entity, including, but not limited to any, terms and conditions provided as a link, embedded link, "click-wrap", or "browse-wrap". Any refusal by Contractor to supply any goods or services under this Agreement conditioned upon the Participating Entity submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor. Any order placed by a Purchaser 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 and the Participating Addendum.

2. **Purchasing Process.** Orders under this Agreement must be made in accordance with ITS's published Instructions for Use and this Participating Addendum. The Participating Entity does

not guarantee that it will purchase any certain amount under this Participating Addendum. When a Purchasing Entity decides to acquire any products and/or services from Contractor pursuant to this Participating Addendum, the Purchaser shall either execute a supplemental agreement, containing any additional required terms for the order, as necessary, to be signed by an authorized representative of the Contractor and an authorized representative of the Purchaser and/or issue a purchase order. The supplemental agreement and/or the purchase order shall set forth the products and/or services to be procured; the prices for same; any warranty period, and the specific details of the transaction. All supplemental agreements and/or purchase orders made pursuant to this Participating Addendum shall be governed by, and must incorporate by reference, the terms and conditions of this Participating Addendum. Any additional terms and conditions provided in a supplemental agreement and/or purchase order shall only apply as between the Contractor and the applicable Purchaser to the extent additional terms and conditions are permitted in accordance with the Master Agreement and this Participating Addendum.

3. **Included Parties.** Contractor will accept orders from and furnish the products and services under this Agreement to any governmental agency, governing authority, or educational institution of the State of Mississippi that is authorized to use this Participating Addendum, in line with ITS policies and procedures, including, but not limited to, ITS's published Instructions for Use.

4. **No Guarantee of Amount to be Purchased.** There is no guarantee that a minimum amount of goods or services will be purchased under the Participating Addendum. Any estimated quantities are for solicitation purposes only and are not to be construed as a guarantee.

5. **Statutory Authority.** By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the Executive Director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software, and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Purchaser's or Contractor's contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Purchaser's funding source. Notwithstanding the above, the parties understand and agree that where ITS itself acts as a Purchaser it is responsible for its actions or inactions under this Agreement. Contractor acknowledges that the individual executing the contract on behalf of ITS is doing so only in his/her official capacity, and to the extent that any provision contained in the contract exceeds his/her authority, Contractor agrees that it will not look to that individual in his/her personal capacity or otherwise seek to hold him/her individually liable for exceeding such authority.

6. **Authority, Assignment and Subcontracts**

   a. In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Contractor represents all contractors, third parties, and/or subcontractors Contractor has assembled for this Agreement. The Participating Entity is required to negotiate only with Contractor, as Contractor's commitments are binding on all proposed contractors, third parties, and subcontractors. To reiterate for the purposes of this Participating Addendum, the term "subcontractor" means any organization, whether designated as a subcontractor, fulfillment partner, reseller, etc., that will assist an Offeror to provide an Offering under the Master Agreement and this Participating Addendum.

b. Professional services do not require pre-approval from the State, which may be performed using subcontractors or software publisher resources. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Participating Addendum and Agreement. Professional Services include but are not limited to consulting, extended warranty service by manufacturers, or other services as described generally in this Agreement as more particular described in a supplement or purchase order performed by the Contractor or its subcontractor or sold by the Contractor as a distributor or sales agent or its subcontractors.

c. Neither party may assign or otherwise transfer this Participating Addendum or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Participating Addendum shall be binding upon the parties' respective successors and assigns.

d. Contractor must obtain the written approval of Participating Entity before subcontracting any portion of this Participating Addendum. No such approval by Participating Entity of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Participating Entity in addition to the total fixed price agreed upon in this Participating Addendum. All subcontracts shall incorporate the terms of this Participating Addendum and shall be subject to the terms and conditions of this Participating Addendum and to any conditions of approval that Participating Entity may deem necessary.

e. Contractor represents and warrants that any subcontract agreement Contractor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that the Contractor is solely liable for any and all payments which may be due to the subcontractor pursuant to its agreement with the Contractor. The Contractor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's failure to pay any and all amounts due by Contractor to any subcontractor, materialman, laborer or the like.

f. All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Contractor and the Participating Entity, where such dispute affects the subcontract.

g. Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall it be construed to create an employer-employee relationship or a joint venture relationship between the Parties or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

7. **Conflicts of Interest**: Contractor represents and warrants that no official or employee of the State of Mississippi or of Purchasing Entity and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Participating Addendum. The Contractor warrants that it has removed any material conflict of interest prior to the signing of this Participating Addendum, and that it shall not acquire any interest, direct or

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indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Participating Addendum. The Contractor also warrants that in the performance of the Participating Addendum no person having any such known interests shall be employed. Further, the Contractor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from the Participating Addendum. No individual employed by the State of Mississippi shall be admitted to any share or part of the Participating Addendum or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Participating Addendum if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Contractor to any officer or employee of the State of Mississippi with a view toward securing the Participating Addendum, or any supplement or purchase order issued under the Participating Addendum, or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event the Participating Addendum is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Contractor as it would pursue in the event of a breach of contract by the Contractor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

8. **Artificial Intelligence.** Contractor shall disclose to ITS any products and/or services that utilize artificial intelligence ("AI") and shall not employ any products and/or services that utilize AI without authorization of the State and applicable safeguards in providing the products and/or services under this Agreement.

9. **Delivery, Risk of Loss, Installation and Acceptance.**

   a. Contractor shall provide the products and/or services as specified by Purchaser and pursuant to the delivery schedule set forth by Purchaser.

   b. Contractor shall assume and shall bear the entire risk of loss and damage to the products from any cause whatsoever while in transit and at all times throughout its possession thereof. Risk of loss to the products will pass to Purchaser upon delivery to and acceptance by the Purchaser.

   c. If installation by the Contractor is required, Contractor shall be responsible for installing all Products and materials in accordance with all state, federal and industry standards for such items. Further, Contractor acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

   d. If installation by Contractor is required, Contractor shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the parties. Contractor warrants that all products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines set forth by Purchaser as the site is deemed ready for installation.

   e. Contractor shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of Purchaser. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original

construction in type and quality.

f. Unless a different acceptance period is agreed upon by the Purchaser and Contractor and specified in the supplement/purchase order, Purchaser shall have a ten (10) working day testing period during which time Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without defects. Purchaser may be deemed to have accepted the Product at the end of the ten (10) working day testing period, unless Purchaser notifies Contractor that the product fails to perform as stated herein.

g. In the event the Product fails to perform as stated above, Purchaser shall notify Contractor. Unless a different period of time is agreed upon by the Contractor and Purchaser and specified in the supplement/purchase order, Contractor shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Contractor neither corrects the defect nor replaces the defective product, Purchaser reserves the right to return the Product to Contractor at the Contractor's expense; and to cancel the purchase order.

h. Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 8(f) herein, in which to reevaluate/retest such Product.

i. If, after Contractor has tendered to Purchaser Contractor's attempt to correct the product, Purchaser again determines the product to have a defect, Purchaser may take such actions as it deems appropriate, including but not limited to, either (i) notifying Contractor that it has elected to keep the Product despite such defects; (ii) returning the product to Contractor and providing Contractor with an opportunity to provide a substitute product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the product to Contractor at Contractor's expense and canceling the purchase order. Purchaser may also pursue any remedy available to it in law or in equity.

j. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

10. **Administrative Fees.** Contractor shall pay to ITS an administrative fee of one percent (1%) on the purchase price for all net sales to the State ("Administrative Fee"). The Administrative Fee must be rolled into Contractor's current pricing and not be shown as a separate line item on any invoice. ITS will invoice Contractor quarterly based on Contractor's sales to the State reported by Contractor per Article 55 herein and Contractor shall remit payment within forty-five (45) days. Contractor's failure to accurately and timely report total net sales, to submit usage reports, or remit payment of the Administrative Fee may be cause for suspension or termination of the Participating Addendum or the exercise of any other remedies as provided by law.

11. **Timely Payments for Purchases by Public Bodies.** Any references to the payment of invoices and the imposition of late fees or interest within a specified time frame less than that allowed to a state agency for payment of invoices under Mississippi law (Section 31-7-1 *et seq*., of the Mississippi Code and other relevant statutes) are hereby deleted. Contractor shall submit invoices with the appropriate documentation to Purchaser as services are rendered. Contractor shall submit invoices and supporting documentation electronically during the term of the contract using the processes and procedures identified by Purchaser. Purchaser agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, *et seq.* of the 1972 Mississippi Code

Annotated, as amended, which generally provides for payment of undisputed amounts by Purchaser within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Contractor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Contractor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

12. **Taxes.** The Contractor is liable for all taxes. Sections 27-65-1, et seq., and 27-67-1, et seq., of the Mississippi Code exempt ITS and other State institutions from State sales and use taxes. Likewise Participating Entity will not pay excise or personal property taxes and if the Contractor is liable for these they should be taken into consideration in formulating pricing. It is the Contractor's responsibility to contact local taxing authorities in the state and county where equipment will be located to determine possible taxing liabilities in connection therewith.

13. **Availability of Funds.** It is expressly understood and agreed that the obligation of Purchaser to proceed under this Participating Addendum is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Participating Addendum. If the funds anticipated for the fulfillment of this Participating Addendum are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Participating Addendum, Purchaser shall have the right to immediately terminate this Participating Addendum, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Participating Addendum. In the event of termination, Contractor shall be paid for services rendered by Contractor in connection with this Participating Addendum as of the effective date of termination.

14. **Warranties.**

    a. Contractor represents and warrants that Contractor has the right to resell or provide the products and/or services provided under this Participating Addendum.

    b. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Agreement.

    c. Contractor represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the licensor of software or the manufacturer of the products and/or services provided.

    d. If the products do not function accordingly, Contractor shall, at no cost to Purchaser, repair and/or replace the software or refund the fees paid for the software and for any services that directly relate to the defective products.

    e. Contractor agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step

which would in any manner interfere with Purchaser's use of the products and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Contractor at its expense shall, within five (5) working days after receipt of notification of the breach, deliver products to Purchaser that are free of such disabling code, lockup program or device.

f. Contractor represents and warrants that its services hereunder shall be performed by qualified and competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Purchaser, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Purchaser the fees paid to Contractor for the unsatisfactory services.

g. Contractor grants a license to the State to use all software provided under this Agreement in the course of the State's business and purposes.

h. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

i. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

j. Any provisions disclaiming implied warranties shall be null and void. The Contractor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose. Any references to Participating Entity limiting or waiving any common law warranty are deleted. Further, Participating Entity does not make any warranty.

15. **Governing Law.** This Participating Addendum shall be construed and governed in accordance with the laws of the State of Mississippi, and venue for any dispute shall be in Hinds County, Jackson, Mississippi. Contractor expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

16. **Statute of Limitations.** Any references to a statute of limitations running against Participating Entity or any limitation of time for the State to pursue legal action are hereby deleted. See Section 104 of the Mississippi Constitution and Section 15-1-51 of the Mississippi Code of 1972, as amended.

17. **Sovereign Immunity.** By entering into this Participating Addendum with Contractor, the Participating Entity does in no way waive its sovereign immunities or defenses as provided by law, and any references limiting or waiving Participating Entities' sovereign immunities, defenses, and remedies, including common law warranties, are hereby deleted. Further, the State cannot agree to mediation or binding arbitration under Mississippi law. Therefore, any references to mediation or to binding arbitration or to Licensee waiving its rights to a trial by jury are hereby deleted and shall be null and void.

18. **Mississippi Employment Protection Act.** If applicable, Contractor represents that it will to the extent applicable, ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, et seq. and any breach of Mississippi Employment Protection Act

may subject Contractor to the consequences set forth under Miss. Code Ann § 71-11-3.

19. **No Exclusivity.** Any references to granting the Contractor exclusivity are hereby deleted. Participating Entity complies with applicable state laws regarding public purchases.

20. **Right to Trial by Jury.** Any references to mediation or to binding arbitration or to Participating Entity waiving its rights to a trial by jury are hereby deleted and shall be null and void.

21. **Compliance with Laws**

    a. Contractor shall comply with, and all activities under this Participating Addendum shall be subject to, all Purchaser's policies and procedures communicated to Contractor in writing, and all applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Contractor shall not discriminate against any employee, nor shall any party be subject to discrimination in the performance of the Agreement because of race, creed, color, sex, age, national origin, or disability. Further, if applicable, Contractor shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting and notice requirements set forth therein.

    b. Contractor represents and warrants that, to the extent applicable, it will comply with the state's data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012).

    c. Contractor represents and warrants that it will comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively), the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act"), and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Agreement.

    d. Contractor shall not provide or propose to provide any prohibited technology as defined under the National Security on State Devices and Networks Act, Miss. Code Ann. Section 25-53-193.

22. **Compliance with Enterprise Security Policy.**

    a. Contractor and Purchaser understand and agree that all products and services provided by Contractor under this Participating Addendum must be and allow the Purchaser to remain in compliance with the State of Mississippi's Enterprise Security Policy. The Purchaser is responsible for confirming product and service compliance prior to submitting an order to Contractor. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Participating Addendum and require the Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

    b. To ensure compliance with the State of Mississippi Enterprise Security Program and Miss. Code Ann. § 25-53-201, Contractor shall notify ITS and applicable Purchaser(s) no later

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than the close of the next business day following the discovery of any cybersecurity incidents classified as low, medium, or high involving Purchaser information and/or information systems whether managed by the Purchaser, Contractor, or other source on behalf of Contractor. Further, the Contractor agrees to reasonably cooperate with the State and Purchaser in providing all necessary information related to the cybersecurity incident, which includes, but is not limited to, investigating, at its own cost, the source of the attack and providing the State with a briefing of the details of the occurrence, all steps taken to mitigate damage or breach from the occurrence, if any, and estimates of suspected and/or known damage and/or breach. “Cybersecurity incident” and incident classifications (low, medium, and/or high) that require reporting shall have the same meanings as provided in the “Enterprise Cybersecurity Incident Reporting Guidelines” which can be found on the ITS website.

23. **Compliance with Enterprise Cloud and Offsite Hosting Security.** If applicable, Contractor and Purchaser understand and agree that all products and services provided by the Contractor under this Participating Addendum must be and remain in compliance with the State of Mississippi’s Enterprise Cloud and Offsite Hosting Security Policy. The Purchaser is responsible for confirming product and service compliance prior to submitting an order to Contractor. The parties understand and agree that the State’s Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution and augments the Enterprise Security Policy. The State reserves the right to introduce a new policy during the term of this Participating Addendum and require the Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

24. **Data Ownership.** The State shall own all right, title and interest in all its data used by, resulting from, and collected using the services provided (“State Data”). Contractor shall not access State User accounts, or State Data, except (i) in the course of data center operation related to this solution; (ii) response to service or technical issues; (iii) as required by the express terms of this service; or (iv) at State’s written request.

25. **Data Protection.** Protection of personal privacy and sensitive data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of State information at any time. To this end, Contractor shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions: a) All information obtained by Contractor under this contract shall become and remain property of the State. b) At no time shall any data or processes which either belongs to or are intended for the use of State or its officers, agents, or employees be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction that does not include the State.

26. **Data Location:** Contractor shall not store or transfer State Data outside of the United States. This includes backup data and Disaster Recovery locations. Contractor will permit its personnel and contractors to access State Data remotely only as required to provide technical support.

27. **Encryption.** a) Contractor shall encrypt all non-public data in transit regardless of the transit mechanism. b) For engagements where Contractor stores non-public data, the data shall be encrypted at rest. The key location and other key management details will be discussed and negotiated by both parties. Where encryption of data at rest is not possible, Contractor must describe existing security measures that provide a similar level of protection. Additionally, when Contractor cannot offer encryption at rest, it must maintain, for the duration of the

Agreement, cyber security liability insurance coverage for any loss resulting from a data breach. The policy shall comply with the following requirements:

- The policy shall be issued by an insurance company acceptable to the State and valid for the entire term of the contract, inclusive of any term extension(s).
- Contractor and the State shall reach agreement on the level of liability insurance coverage required.
- The policy shall include, but not be limited to, coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, and liability assumed under an insured contract.
- At a minimum, the policy shall include third party coverage for credit monitoring. notification costs to data breach victims; and regulatory penalties and fines.
- The policy shall apply separately to each insured against whom claim is made or suit is brought subject to Contractor's limit of liability.
- The policy shall include a provision requiring that the policy cannot be cancelled without thirty (30) days written notice.
- Contractor shall be responsible for any deductible or self-insured retention contained in the insurance policy.
- The coverage under the policy shall be primary and not in excess to any other insurance carried by Contractor.
- In the event Contractor fails to keep in effect at all times the insurance coverage required by this provision, the State may, in addition to any other remedies it may have, terminate the contract upon the occurrence of such event, subject to the provisions of the contract.

28. **Breach Notification and Recovery.** Unauthorized access or disclosure of non-public data is considered to be a security breach. Contractor will provide immediate notification and all communication shall be coordinated with the State. When Contractor or their subcontractors are liable for the loss, Contractor shall bear all costs associated with the investigation, response and recovery from the breach including but not limited to credit monitoring services with a term of at least 3 years, mailing costs, website, and toll free telephone call center services. The State shall not agree to any limitation on liability that relieves a Contractor from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Contractor harmless, and therefore any such provisions in the Agreement shall be null and void.

29. **Notification of Legal Requests.** Contractor shall contact the State 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. Contractor shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying the State unless prohibited by law from providing such notice.

30. **Termination and Suspension of Service.** In the event of termination of the contract, Contractor shall implement an orderly return of State data in CSV or XML or another mutually agreeable format. Contractor shall guarantee the subsequent secure disposal of State data.

    a. Suspension of services. During any period of suspension of this Agreement, for whatever reason, Contractor shall not take any action to intentionally erase any State data. Termination of any services or agreement in entirety. In the event of termination of any services or of the agreement in its entirety, Contractor shall maintain the existing level of security as stipulated in the agreement and shall not take any action to intentionally erase any State data for a period of 90 days after the effective date of the termination. After such 90 day period, Contractor shall have no obligation to maintain or provide any State

data and shall thereafter, unless legally prohibited, dispose of all State data in its systems or otherwise in its possession or under its control as specified in section 36 (c) below. Within this 90 day timeframe, Contractor will continue to secure and back up State data covered under the contract.

b. Post-Termination Assistance. The State 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.

c. Secure Data Disposal. When requested by the State, the provider shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to the State.

31. **Background Checks.** Contractor shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the Agreement who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for a minimum of one (1) year is an authorized penalty. Contractor shall promote and maintain an awareness of the importance of securing the State's information among Contractor's employees and agents.

32. **Security Logs and Reports.** Contractor shall allow the State access to system security logs that affect this engagement, its data, and/or processes. This includes the ability to request a report of the activities that a specific user or administrator accessed over a specified period of time as well as the ability for an agency customer to request reports of activities of a specific user associated with that agency. These mechanisms should be defined up front and be available for the entire length of the agreement with Contractor.

33. **Contract Audit.** Contractor shall allow the State to audit conformance including Agreement terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State’s expense.

34. **Sub-contractor Disclosure:** Contractor shall identify all of its strategic business partners related to services provided under this Agreement, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with Contractor, who will be involved in any application development and/or operations.

35. **Sub-contractor Compliance.** Contractor must ensure that any agent, including Contractor or subcontractor, to whom Contractor provides access agrees to the same restrictions and conditions that apply through this Agreement.

36. **Processes and Procedures.** Contractor shall disclose its non-proprietary security processes and technical limitations to the State so that the State can determine if and how adequate protection and flexibility can be attained between the State and Contractor. For example: virus checking and port sniffing — the State and Contractor shall understand each other’s roles and responsibilities.

37. **Operational Metrics.** Contractor and the Purchaser shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. Contractor shall provide Purchaser with a service level agreement(s) that meets, at a minimum, generally accepted industry standards for the applicable products and services Contractor provides to Purchaser under any supplemental agreement and/or purchase order. Applicable services level

agreements negotiated and/or agreed to by the Purchaser and Contractor shall be incorporated in the supplemental agreement and/or purchase order. At a minimum the SLA shall include:

a) Advance notice and change control for major upgrades and system changes

b) System availability/uptime guarantee/agreed-upon maintenance downtime

c) Recovery Time Objective/Recovery Point Objective

d) Security Vulnerability Scanning.

38. **Audit Requirements.** In addition to any other auditing requirements provided herein, Contractor agrees to the following.

a. Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the applicable oversight entity, or their duly appointed representatives to perform information technology control audits of the Contractor and all subcontractors used by the Contractor. Contractor will maintain and cause its subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Agreement. Contractor will provide to the State, the applicable oversight entity, or their duly appointed representatives access to Contractor and subcontractor(s) personnel for the purpose of performing the information technology control audit.

b. The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations, or policies.

c. The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

d. For any audit issues identified, the Contractor and subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

e. Each party shall bear its own expenses incurred while conducting the information technology controls audit.

f. For any Software as a Service (SaaS), Infrastructure as a Service (IaaS), or Platform as a Service (PaaS) models provided by the Contractor where the State will use the Contractor's or subcontractor's applications or data centers to store or process State financial or other data, the Contractor and subcontractor shall be subject to an annual System and Organization Controls (SOC) 2 Type 2 examination engagement or a SOC 1 Type 2 examination engagement by a qualified and reputable CPA firm in accordance with the standards of the American Institute of Certified Public Accountants. The scope of the SOC 2 Type 2 examination for SaaS models must include the security, availability, confidentiality, and processing integrity Trust Services Criteria. The scope of the SOC 2 Type 2 examination for IaaS and PaaS models must include the security, availability, and

confidentiality Trust Services Criteria. The scope of the SOC 1 Type 2 examination must include a review of internal control over financial reporting that is relevant to the Contractor's and Subcontractor's scope of work. The Contractor shall provide a complete, unredacted version of the SOC 1 Type 2 examination report and SOC 2 Type 2 examination report to the State upon request. For any examination issues or exceptions described in the SOC 1 Type 2 examination report or SOC 2 Type 2 examination report, the Contractor shall submit corrective action plans to the State within 30 days from the issuance of the examination reports.

g. In the event the CPA firm issues a modified opinion on the SOC examination report, meaning that the opinion is qualified, adverse, or disclaimed, the Contractor will immediately advise the State in writing of its plan to correct the issues that caused the modified opinion. The Contractor must demonstrate to the State that the issues have been corrected prior to the commencement of the next scheduled SOC examination.

h. If the scope of the most recent SOC examination report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or subcontractor stating whether the Contractor or subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent SOC examination report.

39. **Confidential Information**

a. Strict standards of confidentiality of records and information shall be maintained by Contractor in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "non-public data" or "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law. Contractor shall treat all Purchaser data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Contractor receives notice that a third-party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules, and regulations. This Article shall survive the termination or completion of this Participating Addendum, shall continue in full force and effect, and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors, or any party or entity claiming an interest in this Participating Addendum on behalf of or under the rights of the Contractor following any termination or completion of this Participating Addendum.

b. The Contractor understands and agrees that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities

purchased or the services provided; the price to be paid; and the term of this Participating Addendum, and any supplemental agreement or purchase order, shall not be deemed confidential information.

40. **Federal Terms and Conditions.** Contractor understands and agrees that any supplemental agreement and/or purchase order made through this EPL Agreement may be paid in whole or in part federal funds. Therefore, Contractor, including any subcontractor at any tier, must comply with all rules and regulations governing federal awards, including, but not limited to, 2 C.F.R. Part 200, the below terms and conditions (as applicable), and any other additional funding terms and conditions provided by a Purchaser in a supplemental agreement and/or purchase order.

    a. **Equal Employment Opportunity.** As applicable, Contractor agrees to abide by the terms provided under 41 C.F.R. Part 60, including, 41 CFR Part §§ 60-1.3 & 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, §§ 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

    b. **Davis-Bacon Act, as amended (40 U.S.C. §§3141-3148).** As applicable, Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

    c. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, Contractor must include comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

    d. **Rights to Inventions Made Under a Contract or Agreement.** As applicable, Contractor must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

    e. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act**

**(33 U.S.C. 1251-1387), as amended.** Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

f. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractor certifies that it is not currently federally debarred, and further that it will not subcontract any portion of the services under this EPL Agreement or purchase order/supplement, to any party that is debarred in accordance with this provision.

g. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

h. **Procurement of Recovered Materials.** Contractor agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the. preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

i. **Prohibition on Certain Telecommunications And Video Surveillance Services or Equipment.** Contractor agrees it will comply with 2 C.F.R. 200.216 and will not obtain, provide or use covered telecommunications equipment or services in the performance of this EPL Agreement or any supplemental agreement and/or purchase order. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, Section 889.

j. **Domestic Preferences for Procurements.** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

i. For purposes of this section:

1. “Produced in the United States’’ means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. ‘‘Manufactured products’’ means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 C.F.R. Part 184.

k. **Contracting With Small And Minority Businesses, Women's Business Enterprises, And Labor Surplus Area Firms.**

i. Contractor and Purchaser (as applicable) must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

ii. Affirmative steps must include:

4. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

5. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

6. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

7. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

8. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

9. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (ii)(1) through (5) of this section.

l. **Compliance with National Defense Authorization Act.** The Contractor must provide equipment in compliance with the National Defense Authorization Act, Section 889.

m. **Federal Tax Information.** As applicable, Contractor must comply with the Internal Revenue Services (IRS) Publication 1075 in the safeguarding and handling of Federal Tax Information (FTI).

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n. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

i. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

ii. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

iii. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section ii. of this certification; and

iv. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

v. The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections i-iv.

41. **Contractor Commitment to Diversity.** The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to NASPO Cloud and Software Solutions and resulting in this Agreement. The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Agreement by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State.

42. **Ownership of Documents and Work Products**. All data, electronic or otherwise, collected by Contractor and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Contractor in connection with this Participating Addendum, whether completed or in progress, shall be the property of Purchaser upon completion of this Participating Addendum or upon termination of this Participating Addendum. Purchaser hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Participating Addendum. Contractor is prohibited from use of the above-described information and/or materials without the express written approval of Purchaser.

43. **Third Party Action Notification**: Contractor shall, unless otherwise restricted by applicable law, court order, or obligation of confidentiality, notify ITS in writing within five (5) business days of Contractor filing bankruptcy, reorganization, liquidation or receivership proceedings

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or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Contractor or State by any entity that may result in litigation related in any way to this Participating Addendum and/or which may affect the Contractor's performance under this Agreement. Failure of the Contractor to provide such written notice to ITS shall be considered a material breach of this Participating Addendum and the Purchaser may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

44. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Mississippi as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Agreement. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Agreement. In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter.

45. **Intellectual Property Indemnity.** The Contractor agrees to indemnify and hold harmless the State of Mississippi as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Mississippi in any legal matter.

46. **Indemnification and Holding Harmless by the State.** Any references to Participating Entity indemnifying or holding harmless the Contractor are deleted and shall be null and void. Participating Entity does not agree to defend or indemnify any contractor.

47. **Litigation Control.** Any provision giving Contractor exclusive control over litigation is deleted. Participating Entity does not agree that Contractor may represent, prosecute or defend legal actions in its name.

48. **Attorney's Fees and Costs.** Any reference to attorney's fees or court costs to be paid by Participating Entity is deleted and shall be null and void.

49. **Disputes.** Any dispute concerning a question of fact under this Participating Addendum which is not disposed of by agreement of the Contractor and Purchaser shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Participating Addendum or Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

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50. **Notice.** Any notice required or permitted to be given for this Participating Addendum shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. Notice shall be deemed given when received or when refused. The Contractor and ITS agree to promptly notify each other in writing of any change of address.

51. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Agreement.

52. **Soliciting/Hiring Contractor Employees.** Any provisions prohibiting the solicitation or hiring of Contractor employees by Participating Entity and assessing Participating Entity with any costs/damages shall be and hereby are deleted.

53. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.

54. **Mandatory Reports.** Contractor agrees to provide detailed quarterly utilization reports reflecting net sales to the ITS during the term of the Agreement. The reports will show the quantities and dollar volume of purchases by Purchaser(s). Contractors shall submit to ITS the following quarterly reports:

    a. Reports shall contain at a minimum the following information:
        i. Department/Agency Name
        ii. Customer type (State Agency, Local Government, Education K-12, Public University, etc.)
        iii. Date Service Begins
        iv. Product/Service Description
        v. Utilization
        vi. Unit of Measure
        vii. MSRP List Price
        viii. Discount Applied
        ix. NASPO ValuePoint Price Contracted to Department/Agency
        x. Quantity
        xi. Total Price

    b. Report modifications: contractor shall agree that ITS reserves the right to modify the format and information in the quarterly reports by providing the contractors thirty (30) calendar days written notice.

    c. Reports should be submitted electronically to naspocloud@its.ms.qov.

55. **Monitoring.** The Contractor’s activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the applicable federal entity, or their duly appointed representatives.

56. **Strict Performance.** Failure by any Party to this Agreement to require, in any one or more

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cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

57. **Termination.**

a. **Termination Upon Mutual Agreement.** A supplement and/or purchase order may be terminated in whole or in part upon the mutual written agreement of Contractor and the Purchaser.

b. **Termination Due To Bankruptcy**. Should Contractor become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may, upon the giving of thirty (30) days prior written notice, terminate a supplement and/or purchase order without the assessment of any penalties.

c. **Termination Other Than For Cause**. A Purchaser may terminate a supplement and/or purchase order, in whole or in part and without the assessment of any penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Contractor. Any payment due Contractor for services rendered by Contractor prior to termination and received by Purchaser shall be paid.

d. **Termination For Cause.** Either Purchaser or Contractor may terminate a supplement and/or purchase order without the assessment of any penalties upon a material breach by the other party upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar-day period. The non-defaulting party may also pursue any remedy available to it in law or in equity.

e. **Termination of Participating Addendum.** ITS may terminate this Participating Addendum for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Contractor, but any supplement and/or purchase order entered into prior to the termination date of this Participating Addendum shall survive the termination of the Participating Addendum for the remaining unexpired term. The terms of this Participating Addendum shall survive its termination/expiration with respect to any un-expired supplements and/or purchase orders.

f. **Refund of Unexpended Fees**. Upon termination in accordance with this Article 59, Contractor shall refund any and all applicable unexpended prorated annual service fees previously paid by the Purchaser. The provisions of this Article 59 do not limit either party's right to pursue any other remedy available at law or in equity.

g. Any termination of any supplement and/or purchase order under this Participating Addendum shall not be construed as termination of this Participating Addendum.

h. The termination provisions provided herein are in addition to any other articles addressing termination in this Participating Addendum (e.g. Article re: Availability of Funds, etc.).

58. **No Liquidated Damages or Termination Fees.** Any references to Participating Entity paying liquidated damages or any amounts other than the cost of the products or services being provided by Contractor to Participating Entity are hereby deleted. Likewise, any requirement that Participating Entity pay any sort of early termination fee is also deleted.

Participating Entity does not pay liquidated damages and termination fees.

59. **Modification, Amendment, or Renegotiation.**
This Participating Addendum may be modified only by written agreement signed by Contractor and ITS, and any attempt at oral modification shall be void and of no effect. The Contractor and ITS agree to renegotiate the Participating Addendum if federal and/or state revisions of any applicable laws or regulations make changes in this Participating Addendum necessary. Any supplemental agreement or purchase order made under this Participating Addendum between Purchaser and Contractor may be modified only by written amendment signed by the Contractor and the applicable Purchaser, and any attempt at oral modification shall be void and of no effect. The Contractor and the applicable Purchaser agree to renegotiate the pertinent supplemental agreement, if applicable, if federal and/or state revisions of any applicable laws or regulations make changes to the pertinent supplemental agreement necessary.

60. **Transparency.** In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Participating Addendum and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: https://www.transparency.ms.gov.

61. **Headings.** The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Agreement.

62. **Survival**. All articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Participating Addendum.

63. **Severability.** If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.