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PROJECT NUMBER 49802
PARTICIPATING ADDENDUM
FOR
CLOUD AND SOFTWARE SOLUTIONS
BETWEEN
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AND
XFACT INC.

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 LS5031, executed by Contractor and Utah ("Lead State") for Cloud and Software Solutions ("Master Agreement"):

xFact Inc. ("Contractor")
120 Water Street, Suite 214
North Andover, Massachusetts 01845

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Sean Hughes
xFact Inc.
sean.hughes@xfact.com
781-520-0020

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 upon termination of the Master Agreement on **September 15, 2036**, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

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 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:
Sean M. Hughes Executive Vice President sean.hughes@xfact.com 781-520-0020	Craig P. Orgeron, CPM, Ph.D. Executive Director issprojects@its.ms.gov 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:

Signed by:
05732F1525104A2...

Signature

Jeff Valentine

Printed Name

CEO

Title

September 23, 2026

Date

PARTICIPATING ENTITY:

Signed by:
F577530FD3CA425...

Signature

Craig Orgeron

Printed Name

Executive Director

Title

September 24, 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 LS5031), as amended;
   d. 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 ("d. 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 a Purchasing Entity, including any required business associate agreement, the applicable federal or state laws, regulations, specially required funding terms and conditions by a Purchasing Entity, 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 State, 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 and/or 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 Participating Addendum 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 Purchasing Entity shall

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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 Purchasing Entity 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 Purchasing Entity 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 § 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 Purchasing Entity'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 Purchasing Entity's funding source. Notwithstanding the above, the parties understand and agree that where ITS itself acts as a Purchasing Entity 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 Participating Addendum. 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

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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 Master Agreement. Professional Services include but are not limited to consulting, extended warranty service by manufacturers, or other services as described generally in this Participating Addendum 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 Purchasing Entity, and that the subcontractor acknowledges that no privity of contract exists between the Purchasing Entity 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 Participating Addendum, be construed to be an independent contractor. Nothing in this Participating Addendum 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 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, of ITS, or any 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 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. **Delivery, Risk of Loss, Installation and Acceptance.**

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

   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 Purchasing Entity upon delivery to and acceptance by the Purchasing Entity.

   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 Purchasing Entity's normal day to day operations.

   d. If installation by Contractor is required, Contractor shall provide Purchasing Entity 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 Purchasing Entity 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 Purchasing Entity. 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 Purchasing Entity and Contractor and specified in the supplement/purchase order, Purchasing Entity shall have a ten (10) working day testing period during which time Purchasing Entity shall have the opportunity to evaluate and test the Products to confirm that it performs without defects. Purchasing Entity may be deemed to have accepted the Product at the end of the ten (10) working day testing period, unless Purchasing Entity notifies Contractor that the product fails to perform as stated herein.

g. In the event the Product fails to perform as stated above, Purchasing Entity shall notify Contractor. Unless a different period of time is agreed upon by the Contractor and Purchasing Entity and specified in the supplement/purchase order, Contractor shall, within four (4) working days, correct the defects identified by Purchasing Entity or replace the defective Product. If Contractor neither corrects the defect nor replaces the defective product, Purchasing Entity 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, Purchasing Entity 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 Purchasing Entity Contractor's attempt to correct the product, Purchasing Entity again determines the product to have a defect, Purchasing Entity 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 Purchasing Entity within the time period specified by Purchasing Entity, or (iii) returning the product to Contractor at Contractor's expense and canceling the purchase order. Purchasing Entity 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.

9. **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 38 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.

10. **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 (§ 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 Purchasing Entity 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 Purchasing Entity. Purchasing Entity agrees to make payment in accordance with Mississippi law on "Timely

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Payments for Purchases by Public Bodies", § 31-7-301, *et seq.* of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Purchasing Entity 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".

11. **Taxes.** The Contractor is liable for all taxes. §s 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.

12. **Availability of Funds.** It is expressly understood and agreed that the obligation of Purchasing Entity to proceed under this Participating Addendum, including any purchase made pursuant to 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 Purchasing Entity for the payments or performance due under this Participating Addendum, Purchasing Entity shall have the right to immediately terminate the applicable purchase order, without damage, penalty, cost or expense to Purchasing Entity of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchasing Entity 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.

13. **Warranties.**
Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by 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 the Purchasing Entity, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse the Purchasing Entity all fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

14. **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 Purchasing Entity or ITS be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Participating Addendum shall affect any statutory rights Purchasing Entity may have that cannot be waived or limited by contract.

15. **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 § 15-1-51 of the Mississippi Code of 1972, as amended.

16. **Sovereign Immunity.** By entering into this Participating Addendum and/or any purchase authorized under this Participating addendum, with Contractor, the State 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 the State waiving its rights to a trial by jury are hereby deleted and shall be null and void.

17. **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.

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

19. **Compliance with Laws**

    a. Contractor shall comply with, and all activities under this Participating Addendum shall be subject to, all Purchasing Entity'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 Participating Addendum 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 § 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 Participating Addendum.

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. § 25-53-193.

20. **Compliance with Enterprise Security Policy.** As applicable, Contractor and Purchasing Entity understand and agree that all products and/or services provided by the Contractor under this Participating Addendum must allow Purchasing Entity to be and remain in compliance with the State of Mississippi's Enterprise Policies and Standards, copies of which can be found on the ITS website. Any required contract terms and conditions of these policies are expressly incorporated herein by reference. The State reserves the right to update existing policies and/or introduce a new policy during the term of this Participating Addendum. The Parties agree to work in good faith to resolve and compliance gaps identified with any new or revised policies applicable after the execution of this Participating Addendum. If, at any time during the term of the Participating Addendum, the products and/or services provided under this Participating Addendum do not allow the Purchasing Entity to be and remain in compliance with the State of Mississippi's Enterprise Policies and Standards (new, revised, and/or existing), the State shall have the right to terminate the Participating Addendum without assessment of any penalties or fees, and Contractor shall be paid for all products and/or services rendered prior to the date of termination, and Contractor shall refund any and all applicable unexpended prorated fees previously paid by Purchasing Entity.

21. **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 Purchasing Entity data and information to which it has access by its performance under this Participating Addendum as confidential and shall not disclose such data or information to a third party without specific written consent of Purchasing Entity. 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 Purchasing Entity 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.

22. **Federal Terms and Conditions.** Contractor understands and agrees that any supplemental agreement and/or purchase order made through this Participating Addendum 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.

23. **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 Purchasing Entity upon completion of this Participating Addendum or upon termination of this Participating Addendum. Purchasing Entity 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 Purchasing Entity.

24. **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 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 Participating Addendum. Failure of the Contractor to provide such written notice to ITS shall be considered a material breach of this Participating Addendum and the Purchasing Entity 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.

25. **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 Participating Addendum. 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 Participating Addendum. 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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **Disputes.** Any dispute concerning a question of fact under this Participating Addendum which is not disposed of by agreement of the Contractor and Purchasing Entity 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.

31. **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.

32. **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 Participating Addendum.

33. **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.

34. **Mandatory Reports.** Contractor agrees to provide detailed quarterly utilization reports reflecting net sales to the ITS during the term of the Participating Addendum. The reports will show the quantities and dollar volume of purchases by Purchasing Entity(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.gov.

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

36. **Strict Performance.** Failure by any Party to this Participating Addendum to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Participating Addendum shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Participating Addendum shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

37. **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 Purchasing Entity.

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 Purchasing Entity 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 Purchasing Entity 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 Purchasing Entity shall be paid.

d. **Termination For Cause.** Either Purchasing Entity 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 42, Contractor shall refund any and all applicable unexpended prorated annual service fees previously paid by the Purchasing Entity. The provisions of this Article 42 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.).

38. **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 Purchasing Entity and Contractor may be modified only by written amendment signed by the Contractor and the applicable Purchasing Entity, and any attempt at oral modification shall be void and of no effect. The Contractor and the applicable Purchasing Entity 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.

39. **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.

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

41. **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.

42. **Severability.** If any terms and conditions of this Participating Addendum 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

Participating Addendum are severable.