

ADDENDUM TO NFINA TECHNOLOGIES INC. CONTRACTUAL TERMS

The City of Kingsport seeks to procure various goods and services from Nfina Technologies, Inc. which is a participating dealer pursuant to the TD Synnex Corporation NCPA contract No. 01-170. This Addendum (herein "Addendum") amends the TD Synnex Corporation NCPA contract No. 01-170, Quote # AAAQ6467 or any subsequent Quotes from Nfina Technologies, Inc., Nfina Terms and Conditions (<https://nfina.com/terms-and-conditions/> (last accessed March 7, 2025)), Nfina Cloud Hosting Agreement, Acceptable Use Policy, and any and all other terms and conditions as well as attachments, exhibits, any physical or virtual documents or writings, referenced therein, and any click through, clickwrap, shrink-wrap, or other such virtual agreement, *etc.* (all of which are herein "Agreement") between Nfina Technologies, Inc., an Alabama corporation, its affiliates and subsidiaries (herein "Vendor") and City of Kingsport, Tennessee (herein "City"). In consideration of using Vendor's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

1. **Precedence.** Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the express intent and agreement of the parties that this Addendum shall control. Notwithstanding, the actual order of execution of any documents by the parties it is expressly acknowledged and agreed that this addendum shall be deemed to have been the last executed by the parties. In the event of a conflict between this Addendum and the provisions of the Agreement, the provisions of this Addendum shall, to the extent of such conflict take precedence unless such document expressly states that it is amending this Addendum.
2. **Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. Any indemnity, hold harmless, or limitation of remedy, provision contained in the Agreement requiring City to indemnify, hold harmless, or limit its remedies against Vendor or any other person or entity and any limitation of liability in favor of Vendor is enforceable only to the extent permitted by Tennessee law, provided City's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.* No provision of this Agreement shall act or be deemed a waiver by City of any immunity, including its rights or privileges or of any provision of the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.*
3. **Liability During Shipment.** All items shall be shipped at Vendor's risk.
4. **No Liability of Officials and Employees.** No official, employee or volunteer, whether disclosed or undisclosed, of City shall be personally liable to Vendor or any other person or entity, including a third party beneficiary, in the event any provision of the Agreement is unenforceable; there is any default or breach by City; for any amount which may become due under the Agreement ;or on any obligations under the terms of the Agreement and Vendor and any other person or entity, including a third party beneficiary, shall to look solely to City for the satisfaction of any liability of City hereunder.
5. **No Responsibility for Third – Party Users.** Except as provided in the Tennessee Governmental Tort Liability Act City is not responsible for liability of any acts of its employees or third party.
6. **Warranty.** Vendor warrants that the products and services purchased pursuant hereto when used in accordance with the documentation shall operate in all material respects in conformity with the written representations of Vendor. If performance is not as warranted, Vendor shall use commercially reasonable efforts to correct the products and services to provide conformity in all material respects with the written representations of Vendor. Any disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law, and City reserves all rights afforded to local governments under law for all general and implied warranties.
7. **Accessibility.** Vendor warrants that the service conforms to the accessibility guidelines, including, but not limited to, supporting assistive software or devices such as large-print interfaces, text-to-speech output, refreshable braille displays, voice-activated input, and alternate keyboard or pointer interfaces, etc., established by the World Wide Web Consortium's Web Content Accessibility Guidelines 2.2 (WCAG 2.2), and the accessibility guidelines established by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and implementing regulations set forth in 36 C.F.R. Part 1194. Vendor further agrees to indemnify and hold harmless City from any claims arising out of

Vendor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of the Agreement. Notwithstanding the foregoing, City acknowledges and understands the legal and practical distinction between 'software' and 'content,' and further agrees that City, not Vendor, shall have sole responsibility for WCAG 2.2 and Section 508 compliance as it relates to content.

8. **Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in Tenn. Code Ann. §10-7-503 *et seq.*, are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, City must, upon proper request, release public documents and records as defined by Tenn. Code Ann. §10-7-503 *et seq.*, including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order. City does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This Section 8 serves to meet such burden and authorization of disclosure.
9. **Termination for Convenience.** The Agreement may be terminated by City upon 30 days written notice to Vendor. Such termination will not be deemed a breach of contract by either party. Should City exercise this provision, City will compensate Vendor for all satisfactory and authorized services completed as of the termination date, and Vendor will refund to City any funds paid by City in excess of such amount. Upon such termination, Vendor will not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
10. **Non-Appropriation.** Vendor acknowledges that City is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event City fails to appropriate funds or make monies available for any fiscal year covered by the term of the Agreement for the services to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to City, and such termination shall not be a breach of the Agreement, and any unused payment made to Vendor shall be returned to City.
11. **Renewal.** Any renewal of the agreement shall be by written document executed by Vendor and City.
12. **Name and Logo.** Vendor shall not use City's name, its marks, or any of City logos, including Kingsport City Schools, in marketing or publicity materials or for marketing or publicity purposes without prior written authorization from City.
13. **Authority to Bind.** No employee of City or any other person, without authorization of the board of mayor and aldermen can bind City to any contract or agreement and anything contrary contained in the Agreement is void as it applies to Client.
14. **Liens and Security Interests.** City does not have the authority to grant a security interest in its property or authorize a lien on its property, such being against the public policy of the state of Tennessee, therefore Vendor acknowledges and agrees any provision granting Vendor a security interest or authorizing the securing of a lien against City's property is waived as to City.
15. **Governing Law, Selection of Jurisdiction, Waiver of Jury Trial, Venue, Service of Process.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles. Pursuant to the Constitution and Laws of the State of Tennessee, City is a sovereign entity subject only to those courts with jurisdiction over City. If a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state courts in Kingsport, Tennessee or the Federal court for the Eastern District of Tennessee, Northeastern Division. Such claim may be brought within the applicable time allowed by Tennessee law and the parties expressly agree that no provision of the Agreement which limits the timeframe in which any cause of action may be brought shall apply. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. The parties hereby consent to the mandatory and exclusive venue and jurisdiction of the state court located in Kingsport, Tennessee or the Federal court for the Eastern District of Tennessee and waive any objection thereto. Service of process shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and City does not agree to any other service of process procedure.

- 16. Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney's fees. In the event of litigation between City and Vendor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure. Discretionary cost may be awarded by a court as permitted by Tennessee law, provided City does not waive its governmental immunity.
- 17. No Taxes.** As a tax-exempt entity, City shall not be responsible for sales or use taxes incurred for products or services. City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of City's tax exemption certificate and Vendor shall assume liability for such applicable Sales and Use Taxes, if any, that should be incurred.
- 18. Amendment.** Unilateral modification or amendment of the Agreement by Vendor is prohibited and any provision permitting such by Vendor is not applicable to City. Any amendment or modification of the Agreement or this Addendum is binding only if it is in writing and properly executed by the signatures of authorized representatives of the parties hereto, including attestation by City's city recorder and approved as to form by City's city attorney.
- 19. Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.
- 20. No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.
- 21. Counterparts.** This Addendum may be executed in one or more counterparts by City and Vendor. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.
- 22. Effective Date.** This Addendum shall be effective immediately after the Agreement is effective.

Nfina Technologies, Inc.

City of Kingsport, Tennessee

Warren H. Nicholson, President/CEO

Paul W. Montgomery, Mayor

Date

Date

Attest:

Angela Marshall, Deputy City Recorder

Approved as to form:

Rodney B. Rowlett, III, City Attorney