

PARTICIPATING ADDENDUM

NASPO ValuePoint

Public Safety Communication Equipment 06913

Lead by the State of Washington (hereinafter "Lead State")

MASTER AGREEMENT

E.F. Johnson, Inc.

(hereinafter "Contractor")

And

State of Colorado

(hereinafter "Participating State" or "State")

1. Scope:

- i. This Participating Addendum ("Addendum") is made between the **State of Colorado**, acting by and through the **State Purchasing and Contracts Office, Colorado Department of Personnel and Administration** (the "Participating State" or "State" as the case may be) and **E.F. Johnson, Inc.** ("Contractor"). This Addendum between Contractor and Participating State (the "Parties") modifies and amends the Contract, NASPO ValuePoint Master Agreement No. **06913** ("Master Agreement"), between the State of **Washington** ("Lead State"), and Contractor for **Public Safety Communication Equipment**, for use by State Agencies and other entities located in the Participating State and authorized by that State's statutes to utilize NASPO ValuePoint Contracts with the prior approval of the State's Chief Procurement Official.
- ii. Contractor has been awarded the following category:
 - a) Radios:
 - 1) Portable, Dual-Band
 - 2) Portable, Single-Band tier I
 - 3) Portable, Single-Band tier II
 - 4) Portable, Single-Band tier III
 - 5) Mobile, Single-Band tier I
 - 6) Mobile, Single-Band tier II
 - 7) Desktop, Single-Band tier I
 - 8) Desktop, Single-Band tier II
 - b) Base Station/Repeaters
 - 1) Single-Band tier II

2. Terms and Conditions:

This Addendum and the Master Agreement, together with their respective exhibits, set forth the entire agreement between the Parties, superseding all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary to, or in addition to, the terms and conditions of this Addendum and the Master Agreement, together with their exhibits, shall not be added to or incorporated into this Addendum and its exhibits by any subsequent Purchase Order and any such attempts to add or incorporate such terms and conditions are void. The terms and conditions of this Addendum and the Master Agreement shall prevail and govern in the case of any such inconsistent or additional terms, as applied to the Participating State.

3. Effective Date and Notice of Non-liability:

This Addendum shall not be effective or enforceable until the date on which it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). Neither the State nor any Ordering Entity, as defined herein, shall be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred by Contractor, or be bound by any provision

hereof, prior to the Effective Date.

4. Participation:

- i. Use of specific NASPO ValuePoint cooperative Contracts by agencies, Political Subdivisions, registered Non-Profit Organizations, and other entities (including cooperatives) authorized by Participating State's statutes to use State of Colorado Contracts is subject to the prior approval of the applicable State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
- ii. Individual Customer: Each Participating State's agency, Political Subdivision, and registered Non-Profit Organization is an Ordering Entity, as defined in §2, **Definitions, of Exhibit A** to this Addendum, and will be treated as if it is an individual customer. Except to the extent modified by this Addendum, each agency, Political Subdivision and registered Non-Profit Organization will be responsible to follow the terms and conditions of the Master Agreement; and each will have the same rights and responsibilities for its purchases as Participating State has under the Contract. Termination for Non-appropriation provision in the NASPO ValuePoint Master Agreement # 06913 will not apply to private, non-profit users of the Addendum. Each agency, Political Subdivision and registered Non-Profit Organization will be responsible for its own charges, fees, and liabilities. Each agency, Political Subdivision and registered Non-Profit Organization will have the same rights to any indemnity or to recover any costs allowed in the Contract for its purchases. The Contractor will apply such charges to each Ordering Entity individually and the Participating State shall not be liable for any other Ordering Entity's charges.

5. Subcontractors:

- i. The Contractor may use Subcontractors to perform some of its duties and obligations under this Addendum; however, only dealers and re-sellers that have been approved by the State may be deployed. The Contractor will be responsible for any Agreements with such Subcontractors. The State of Colorado is not agreeing to, and is not responsible for, any terms and conditions with Subcontractors. Contractor shall remain the primary Contractor fully accountable to the State for ensuring that its Subcontractors comply with the terms of this Participating Addendum.
- ii. All E.F. Johnson, Inc. dealers and re-sellers, who provide Goods and/or Services under this Addendum, shall be found on the dedicated Colorado Price Agreement website, as of the Effective Date of this Addendum, and shall be Contractor's Subcontractors and agents, for placing Orders with, and providing sales and service support to, participants in the NASPO ValuePoint Master Agreement. The Contractor's duties and obligations will be in accordance with the terms and conditions set forth in the Master Agreement regardless of Contractor's use of Subcontractors.
- iii. Contractor shall provide written notice to the Participating State with respect to any changes to their authorized list of dealers and re-sellers in Colorado, and shall obtain written approval from the Participating State, which shall not be unreasonably withheld, prior to adding additional dealers and re-sellers to the authorized list of providers.

6. Orders:

- i. An Ordering Entity may purchase equipment under this Addendum.
- ii. Any Order placed by a Participating State or Ordering Entity for a Good and/or Service available under the Master Agreement, shall be deemed to be a sale under and governed by the prices and other terms and conditions of the Master Agreement, unless the Parties to the Order agree in writing that another Contract or agreement applies to such Order. Additional requirements for Orders are set forth in §4, **Statement of Work, of Exhibit A** to this Addendum.
- iii. All Orders issued by Ordering Entities as defined in this Addendum shall state the Addendum Number: **2016-163** and the Master Agreement Number: **06913**.
- iv. Contractor's pricing sheets shall be located on the dedicated Colorado Price Agreement website.

7. Participating State Modifications or Additions to Master Agreement:

The following changes shall be made to the Master Agreement with respect to Contractor's performance

pursuant to this Addendum:

- i. **Paragraph 5 of §6.3, Payment, Invoicing and Discounts, of the Master Agreement, shall be deleted in its entirety, and replaced with §5(C)(iv), Taxes and Payments to Contractor, Invoicing/Billing, Payment by State Ordering Entities; Interest of Exhibit A.**
- ii. **§6.4, Taxes, Fees and Licenses, of the Master Agreement, shall be deleted in its entirety, with the exception of Fees/Licenses and Customs/Brokerage Fees, and replaced with §5(A), Taxes and Payments to Contractor, Taxes and Tax Exemption Status, of Exhibit A.**
- iii. **§6.5, Overpayments to Contractor, of the Master Agreement, shall be deleted in its entirety, and replaced with §5(C)(ix) Taxes and Payments to Contractor, Invoicing/Billing, Erroneous Payments of Exhibit A.**
- iv. **§7.7, Training, of the Master Agreement, shall be deleted in its entirety, and replaced with §4(D)(vi), Statement of Work, Performance, Training, of Exhibit A.**
- v. **§8.2, Retention of Records, of the Master Agreement, shall be deleted in its entirety, and replaced with §7, Contractor Records, of Exhibit A.**
- vi. **§8.4, Protection of Confidential and Personal Information, of the Master Agreement, shall be deleted in its entirety, and replaced with §8, Confidential Information – State Records and Ordering Entity Records, of Exhibit A.**
- vii. **§9.2 Governing Law/Venue of the Master Agreement, shall be deleted in its entirety and replaced with §19(G), General Provisions, Jurisdiction and Venue.**
- viii. **§9.5, Independent Status of Contractor, of the Master Agreement, shall be deleted in its entirety, and replaced with §21(D), Colorado Special Provisions, Independent Contractor, of Exhibit A.**
- ix. **§9.6, Gifts and Gratuities, of the Master Agreement, shall be deleted in its entirety.**
- x. **§9.11, Waiver, of the Master Agreement, shall be deleted in its entirety, and replaced with §19(M), General Provisions, Waiver, of Exhibit A.**
- xi. **§10.1, Problem Resolution and Disputes, of the Master Agreement, shall be deleted in its entirety, and replaced with §4(D)(iii), Statement of Work, Performance, Resolution of Performance Issues, of Exhibit A.**
- xii. **§10.6, Limitation of Liability of the Master Agreement, shall be deleted in its entirety, and replaced with §19(F), General Provisions, Indemnification. Any Contractor claim of limitation of liability shall apply only in excess of any insurance to be maintained under §13, Remedies, of Exhibit A, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.**
- xiii. **§10.7, Federal Funding and §10.8, Federal Debarment and Suspension, of the Master Agreement, shall be deleted in its entirety, and replaced with §20, Federal Funding Accountability and Transparency Act of 2004 (“FFATA”), of Exhibit A.**
- xiv. **§11, Contract Termination, of the Master Agreement, shall be deleted in its entirety, and replaced with §12, Breach and §13, Remedies, of Exhibit A.**
- xv. **§18, Confidentiality, Non-Disclosure, and Injunctive Relief, of Appendix C, of the Master Agreement, shall be deleted in its entirety, and replaced with §8, Confidential Information – State Records and Ordering Entity Records, of Exhibit A.**
- xvi. **§10, Defaults and Remedies, of Appendix C, of the Master Agreement, shall be deleted in its entirety, and replaced with §12, Breach and §13, Remedies, of Exhibit A.**
- xvii. **§14(b), Indemnification – Intellectual Property, of Appendix C, of the Master Agreement, shall be deleted in its entirety and replaced with §19(F)(ii), General Provisions, Indemnification, Intellectual Property, of Exhibit A.**
- xviii. **§17, Insurance, of Appendix C, of the Master Agreement, shall be deleted in its entirety and replaced with §11, Insurance, of Exhibit A.**
- xix. **§19, License of Pre-Existing Intellectual Property, of Appendix C, of the Master Agreement, shall be deleted in its entirety and replaced with §16, Rights in Data, Documents and Computer Software, of Exhibit A.**

- xx. **§21, Ordering, of Appendix C, of the Master Agreement, shall be deleted in its entirety and replaced with §4(E), Statement of Work, Orders, of Exhibit A.**
- xxi. **§22(a),(b), and (c), Participants, of Appendix C, of the Master Agreement, shall be deleted in their entirety and replaced with §4, Participation, of the Participating Addendum.**
- xxii. **§23, Payment, of Appendix C, of the Master Agreement, shall be deleted in its entirety and replaced with §5(C)(iv), Taxes and Payments to Contractor, Invoicing/Billing, Payment by State Ordering Entities; Interest, of Exhibit A.**
- xxiii. **§25, Records Administration and Audit, of Appendix C, of the Master Agreement, shall be deleted in its entirety and replaced with §7, Contractor Records, of Exhibit A.**
- xxiv. **§28, Standard of Performance and Acceptance, of Appendix C, of the Master Agreement, shall be deleted in its entirety and replaced with §4(D)(iii), Statement of Work, Performance, Resolution of Performance Issues, of Exhibit A.**

Provisions set forth in **Exhibit A** to this Addendum are incorporated herein and attached hereto.

8. Primary Contacts:

Contractor: E.F. Johnson, Inc.

Name	Ryan Wray
Address	1440 Corporate Drive, Irving, TX 75038
Telephone	(972) 819-0700
E-mail	bids@efji.com



Participating State: State of Colorado

Name	Nikki Kalen, Strategic Sourcing Specialist
Address	1525 Sherman Street, 3 rd Floor, Denver, Co 80203
Telephone	303-866-5671
E-mail	nikki.kalen@state.co.us

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THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM

*Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Participating State is relying on their representations to that effect.

Participating State: State of Colorado, Governor's Office of Information Technology	Contractor: E.F. Johnson, Inc.
By: (Signature) 	By: (Signature) 
Name: <input type="checkbox"/> Brenda Berlin, Deputy Chief Information Officer and Chief Financial Officer <input checked="" type="checkbox"/> Steven Sizemore, OIT Contracts Director	Name: Duane Anderson
Date: 6/13/16	Title: CFO Date: May 2, 2016

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Addendum is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.



Participating State: State of Colorado, Department of Personnel & Administration, State Purchasing and Contracts Office	Participating State: State of Colorado, Department of Personnel & Administration, State Controller's Office
By: (Signature) 	By: (Signature) 
Name: Cindy Lombardi, State Purchasing and Contracts Director	Name: Robert Jaros, CPA, MBA, JD, State Controller (or Delegate) <input checked="" type="checkbox"/> Clark Bolser, Controller Delegate <input type="checkbox"/> Greg Garner, Controller Delegate <input type="checkbox"/> Floy Jeffares, Controller Delegate <input type="checkbox"/> Joe Weber, Controller Delegate <input type="checkbox"/> Challon Winer, Controller Delegate
Date: 5/16/16	Date: 6/2/16

EXHIBIT A
To Participating Addendum
between
STATE OF COLORADO, State Purchasing and Contracts Office
and
E.F. Johnson, Inc.

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1. RECITALS

- A. Authority, Appropriation, and Approval.** Authority to enter into this Addendum exists in **CRS §24-102-202**, and Colorado Procurement Code **R-24-102-202-01**. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies of the Participating State.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Addendum.

C. Purpose

- i. Contractor is authorized to provide **Public Safety Communication Equipment** under this Addendum. This Addendum authorizes the purchase of such Goods and/or Services, in accordance with the terms of Orders issued pursuant to this Agreement by eligible Ordering Entities within the State of Colorado. The State Purchasing and Contracts Office has entered into this Addendum pursuant to the award issued Contractor as a result of Solicitation # **06913** to establish the price and terms for purchase of Goods and/or Services within the State of Colorado by State Agencies, Institutions of Higher Education, Political Subdivisions, eligible Non-Profit Organizations, and other eligible entities (including cooperatives, collectively referred to as the "Ordering Entities," defined in **§2, Definitions** below).
 - ii. Except with respect to any Orders placed by it under this Addendum, the State Department of Personnel & Administration shall not be liable to the Contractor as a signatory to this Addendum for any breach by an Ordering Entity of any payment or other obligation herein or under any Order or contract for Goods and/or Services under this Addendum, and the State shall not be liable to Contractor for any payment or other obligation owed by any Political Subdivision or Non-Profit Organization or other non-State Ordering Entity.
- D. **Participation.** Use of this Addendum by Ordering Entities that are authorized by Colorado statutes to use this Addendum, are subject to the prior approval of the State Purchasing and Contracts Office. Determination of eligibility for participation in this Addendum is solely within the discretion of the Chief Procurement Official.
- E. **References.** All references in this Addendum to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are contained herein or incorporated as a part hereof, unless otherwise noted.

2. DEFINITIONS

Capitalized terms used herein shall be construed and interpreted as follows:

- A. **Ceiling Pricing.** "Ceiling Pricing" means the maximum price Contractor is allowed to charge for Goods and/or Services.
- B. **Chief Procurement Official.** "Chief Procurement Official" means the Director of the State Purchasing and Contracts Office, Colorado Department of Personnel and Administration.
- C. **Contract.** "Contract" is synonymous with "Addendum" and means this agreement consisting of attachments and any Orders issued in connection therewith, and any future modifying agreements, exhibits, attachments or references incorporated herein, pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.
- D. **Contract Funds.** "Contract Funds" means funds available for payment by the State to Contractor pursuant to this Addendum for Orders placed by State Ordering Entities (State Agencies, Institutions of Higher Education and Other State Departments).
- E. **Criminal Justice Information (CJI) Data.** "Criminal Justice Information (CJI) Data" means information collected by criminal justice agencies that is needed for the performance of their legally authorized, required function, which includes, but is not limited to, wanted person information; missing person information; unidentified person information; stolen property information; criminal history information; information compiled in the course of investigation of crimes that are known or believed on reasonable grounds to have occurred, including information on identifiable individuals; and information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity.
- F. **Deliverable.** "Deliverable" means the outcome to be achieved or output to be provided, in the form of a tangible or intangible object that is produced as a result of Contractor's Work that is intended to be delivered to the Ordering Entity by Contractor. Examples of Deliverables include, but are not limited to, report(s), document(s), server upgrade(s), software license(s), and may be composed of multiple smaller Deliverables.

- G. Environmentally Preferable.** “Environmentally Preferable” means products or Services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or Services that serve the same purpose (**CRS §24-103-207.5, May 21, 2007**).
- H. Evaluation.** “Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in §4, this Addendum, and its Exhibits.
- I. Executive Director.** “Executive Director” means the Executive Director of the Colorado Department of Personnel and Administration.
- J. Exhibits and other Attachments.** The following documents are attached hereto and incorporated by reference herein: **Exhibit 1 (Sample Option Letter), Exhibit 2 (Sample Summary Contractor Volume Report), Exhibit 3 (Sample Contractor Performance Evaluation), Exhibit 4 (Form of Contractor Notification Statement), Exhibit 5 (Confidentiality of Taxpayer Information Certification).**
- K. Federal Tax Information (FTI) Data.** “Federal Tax Information (FTI) Data” means federal or state tax returns, return information, and such other tax-related information as may be protected by State and federal law.
- L. Fiscal Year.** “Fiscal Year” means the Participating State’s fiscal year, which begins on July 1 of each calendar year and ends on June 30 of the following calendar year.
- M. Force Majeure.** “Force Majeure” means failures or delays in performance by a Party due to causes beyond its reasonable control, including war, strikes, lockouts, fire, flood, storm, or other acts of God. Both Parties agree to use their best efforts to minimize the effects of such failures or delays.
- N. Goods.** “Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with Services the Contractor renders.
- O. Incident.** “Incident” means an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources of the State pursuant to **CRS §24-37.5-401 et seq.** Incidents include, but are not limited to (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- P. Initial Term.** “Initial Term” means the Initial Term of this Addendum as provided in §3.A.
- Q. Institution of Higher Education.** “Institution of Higher Education” means a university or college located in the State of Colorado, which is supported by the Participating State.
- R. Licensed Software.** “Licensed Software” means software that is licensed by Contractor to the Ordering Entity through the execution of a separate license agreement that contains terms and conditions that are acceptable to the Ordering Entity.
- S. Non-Profit Organization.** “Non-Profit Organization” means entities that have 501(c)(3) status under the US Internal Revenue Code, are recognized as “in good standing” by the Colorado Secretary of State office, and receive funding from federal, state, or local governmental sources with which to make purchases. A Non-Profit Organization must submit an annual application and be approved by the State Purchasing and Contracts Office to make purchases from Master Agreement Contractors (as defined in the NASPO ValuePoint Master Agreement).
- T. Open Source.** “Open Source” means software for which the original source code is made freely available and may be redistributed and modified without permission from Contractor or any other individual or entity.
- U. Order.** “Order” means any purchase order, delivery order, contract, or other authorized commitment voucher used by an Ordering Entity to order the Goods or Services priced in the

Addendum. An Order amended consistent with the requirements of any Ordering Entity shall also be governed by the same terms and conditions presented in this Addendum.

- V. Ordering Entity.** "Ordering Entity" means a Colorado State Agency in the Executive Branch of Colorado State government; an Other State Department; an Institution of Higher Education, a Political Subdivision, an eligible Non-Profit Organization, and any other entity (including a cooperative) authorized by Colorado statutes and the SPCO to place Orders with Contractor.
- W. Ordering Entity Confidential Information.** "Ordering Entity Confidential Information" means all information, data, records, and documentary materials which are of a sensitive nature and belong to an Ordering Entity regardless of physical form or characteristics, including but not limited to any non-public Ordering Entity records, sensitive Ordering Entity data, protected Ordering Entity data, Ordering Entity personnel records, PII, FTI, PCI, and other information or data concerning individuals, which has been communicated, furnished, or disclosed by an Ordering Entity to Contractor. Notwithstanding the foregoing, Ordering Entity Confidential Information shall not include Ordering Entity Records.
- X. Ordering Entity Information.** "Ordering Entity Information" means the combination of Ordering Entity Confidential Information and Ordering Entity Records.
- Y. Ordering Entity Records.** "Ordering Entity Records" means all information, data, records, and documentary materials which are not sensitive and belong to an Ordering Entity regardless of physical form or characteristics, including but not limited to any public Ordering Entity records, non-sensitive Ordering Entity data, and other information or data concerning individuals that is not deemed confidential but nevertheless belongs to an Ordering Entity, which has been communicated, furnished or disclosed by an Ordering Entity to Contractor which (i) is subject to disclosure pursuant to the Colorado Open Records Act, **CRS §24-72-200.1, et seq.**; (ii) is already known to Contractor without restrictions at the time of its disclosure by Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to an Ordering Entity; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any Ordering Entity Confidential Information. Notwithstanding the foregoing, Ordering Entity Records shall not include Ordering Entity Confidential Information.
- Z. Other State Departments.** "Other State Departments" means the Department of Law, the State Treasurer, the Judicial Department, the Secretary of State, and the State Legislature.
- AA. Party or Parties.** "Party" means the Participating State or Contractor, and "Parties" means both the State and Contractor.
- BB. Payment Card Information (PCI) Data.** "Payment Card Information (PCI) Data" means any data related to card holders' names, credit card numbers, or other credit card information as may be protected by State and federal law.
- CC. Personally Identifiable Information (PII) Data.** "Personally Identifiable Information (PII) Data" means information about an individual collected by the State, an Ordering Entity, or any other governmental entity that could reasonably be used to identify such individual as defined in CRS § 24-72-501(2) and includes, but is not limited to, any combination of (i) first and last name, (ii) first name or first initial and last name, (iii) residence or other physical address, (iv) electronic mail address, (v) telephone number, (vi) birth date, (vii) credit card information, (viii) social security number, (ix) driver's license number, (x) identification card number, or (xi) any other information that identifies an individual personally.
- DD. Political Subdivision.** "Political Subdivision" means any non-State governmental entity such as cities, towns, counties, and special districts such as school, fire, water, transportation, etc. operating within the State of Colorado.
- EE. Renewal Term.** "Renewal Term" means the extension of the Initial Term pursuant to an Option Letter as provided in **§3.C.**

- FF. Review.** "Review" means examining Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §4, this Addendum, its Exhibits, and in any Order.
- GG. Services.** "Services" means the labor required to be performed by Contractor pursuant to this Addendum and an Order.
- HH. State Agency/Agencies.** "State Agency" and "State Agencies" means the departments, divisions, commissions, boards, bureaus and institutions in the executive branch of Colorado State government (which do not include the Judicial Department, Department of Law, the Secretary of State, the State Treasurer, the State Legislature, State-supported Institutions of Higher Education which are not governed by the State Procurement Code; Colorado Political Subdivisions or Non-Profit Organizations, or other non-State Ordering Entities).
- II. State Confidential Information.** "State Confidential Information" means all information, data, records, and documentary materials which are of a sensitive nature and belong to the State regardless of physical form or characteristics, including but not limited to any non-public State records, sensitive State data, protected State data, State personnel records, PII, FTI, PCI, and other information or data concerning individuals, which has been communicated, furnished, or disclosed by the State to Contractor. Notwithstanding the foregoing, State Confidential Information shall not include State Records.
- JJ. State Information.** "State Information" means the combination of State Confidential Information and State Records.
- KK. State Records.** "State Records" means all information, data, records, and documentary materials which are not sensitive and belong to the State regardless of physical form or characteristics, including but not limited to any public State records, non-sensitive State data, and other information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to the Colorado Open Records Act, **CRS §24-72-200.1, et seq.**; (ii) is already known to Contractor without restrictions at the time of its disclosure by Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information. Notwithstanding the foregoing, State Records shall not include State Confidential Information.
- LL. State Ordering Entities.** "State Ordering Entities" means State Agencies, Institutions of Higher Education and Other State Departments.
- MM. State Purchasing and Contracts Office (SPCO).** "State Purchasing and Contracts Office" means the Colorado State Purchasing and Contracts Office, a unit of the Colorado Department of Personnel & Administration.
- NN. Subcontractor.** "Subcontractor" means, in the event subcontracting by the Contractor is authorized, a third party, if any, engaged by Contractor to aid in performance of its obligations under this Addendum.
- OO. User Equipment.** "User Equipment" means any hardware, software, equipment, or other products available under this Addendum.
- PP. Work.** "Work" means the Goods and associated Services Contractor is required to provide to fulfill its obligations under this Addendum, its Exhibits, and each Order, including the performance of the Services and delivery of the Goods.
- QQ. Work Product.** "Work Product" means the tangible or intangible results of Contractor's Work, including but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

3. TERM

- A. Initial Term - Work Commencement.** The Parties' respective performances under this Participating Addendum shall commence on the Effective Date. This Participating Addendum shall terminate on June 30, 2018, unless terminated sooner or extended further as specified elsewhere herein.
- B. Order Terms.** Orders shall be placed consistent with the terms of this Participating Addendum during the term specified above. Orders must be placed pursuant to this Participating Addendum prior to the termination date hereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Participating Addendum. Notwithstanding the expiration or termination of this Participating Addendum, the Contractor agrees to perform in accordance with the terms of any Orders outstanding at the time of such expiration or termination. Participating Addendum provisions required to implement and govern Order performance shall survive Participating Addendum termination until all outstanding Orders have been completed or terminated in accordance with this Participating Addendum.
- C. State's Option to Extend**
- i. The Participating State shall have the option to unilaterally require continued performance of the Contractor for a period of up to four (4) consecutive, one (1) year additional terms, at the same rates and same terms specified in the Participating Addendum or as amended. If the Participating State exercises its option(s), it shall provide written notice to Contractor prior to the end of the current Contract term in a form substantially equivalent to **Exhibit 1 (Sample Option Letter)**. If exercised, the provisions of the Option Letter shall become part of, and be incorporated into, this Addendum. The total duration of this Addendum, including the exercise of any options under this clause, shall not exceed **five (5) years**, unless authorized in writing by the State Purchasing Director.
 - ii. Continuation of this Participating Addendum beyond the Initial Term or Renewal Term is a Participating State option and not a right of the Contractor. The Participating State shall exercise this option only when such continuation is clearly in the best interest of the State.
 - iii. If the NASPO ValuePoint Master Agreement is extended beyond the original five (5) year term, the Participating State, upon authorization from the State Purchasing Director, may choose to extend co-terminously in a form substantially equivalent to **Exhibit 1 (Sample Option Letter)**.

4. STATEMENT OF WORK

- A. Completion.** Contractor shall complete the Work and its other obligations as described herein and in accordance with any Order issued by an Ordering Entity. The Participating State shall not be liable to compensate Contractor for any Work performed on an Order placed prior to the Effective Date or after the termination of this Addendum. Further, the State shall not be held liable to compensate Contractor for any Work performed on an Order placed by a non-State Ordering Entity.
- B. Employees.** All persons employed by Contractor or Subcontractor to perform Work under this Addendum shall be Contractor's or Subcontractor's employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Addendum.
- C. Pricing and Price Changes**
- i. The SPCO reserves the right to publish any pricing on the State Price Agreements web location, for use by Ordering Entities.
 - ii. Pricing that is listed in the State Price Agreement is Ceiling Pricing. Contractor may offer lower pricing to Ordering Entities; likewise, Ordering Entities shall have the option to negotiate lower pricing with Contractor.
- D. Performance.** Contractor shall become familiar with individual Ordering Entity rules and regulations, as identified by Ordering Entities regarding procurement and fiscal rules, delivery requirements, and other relevant procedures, and shall comply with any Executive Orders of the Governor of the State, and any other judicial or administrative decisions regarding the State of Colorado.

- i. **Customer Service Representatives.** Contractor shall provide each Ordering Entity utilizing the Addendum with contact information for customer service representatives assigned to handle questions and resolve all problems that arise with any Orders. Service representatives shall be available, at a minimum, from 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday (State holidays excepted). Contractor shall also provide a list of customer service contacts to the Participating State's principal representative identified in §8 of the Addendum or successor, and shall provide notice when any updates are made to this list. Customer service representatives shall be available by phone (via local or toll free number), fax, or email during the required times. Contractor shall also provide an emergency number and contact for after hours use. All customer service representatives shall have online access to account information and be able to provide a timely response to inquiries concerning the status of Orders (shipped or pending), delivery, back-orders, Addendum pricing, category discounts, product availability, product information, account and billing questions, and Addendum compliance requirements.
- ii. **Subcontracting.** Contractor may subcontract to Subcontractors the performance of Services and supply of Goods, however Contractor shall remain the primary Contractor fully accountable to the Participating State for assuring that its Subcontractors comply with the terms of this Addendum.
- iii. **Resolution of Performance Issues.** Ordering Entities have the authority and discretion to resolve performance issues with Contractor. Contractor is required to first meet with the Ordering Entity and its purchasing office to resolve issues once an Ordering Entity has given notice of a performance issue. If resolution cannot be reached, then Contractor and the Ordering Entity should contact the SPCO in writing to request assistance in reaching resolution to the satisfaction of all Parties involved. Contractor's failure to provide satisfactory performance after receiving notice of a performance issue may be sufficient cause for Ordering Entities to give notice of breach to Contractor and to terminate Orders they have placed. Contractor shall convey any notice of breach it receives to the SPCO via email within five (5) business days of receipt thereof.
- iv. **Marketing Notices.** Prior to any distribution, Contractor must submit to SPCO for advance written approval all Contractor marketing notices and literature intended for distribution to Ordering Entities utilizing the Addendum. Maintenance of mailing lists and the production and distribution of pre-approved marketing notices and literature is the Contractor's responsibility and shall be at Contractor's expense.
- v. **HIPAA**
 - a) The Health Insurance Portability and Accountability Act of 1996 (HIPAA) **Public Law 104-191** governs the exchange of certain health data and the privacy and security of certain health information. All Work performed by Contractor and any Subcontractors must be in compliance with the Health Insurance Portability and Accountability Act of 1996.
 - b) The Ordering Entity is responsible for notifying the Contractor in writing when placing a HIPAA-related Order. HIPAA Standards/Final Rules are posted on the Department of Health and Human Services (DHHS) website.
- vi. **Training.** Contractor shall provide to Ordering Entities at no additional cost all necessary training on all aspects of ordering, online ordering, product delivery, product returns, and customer service processes. Further, Contractor shall provide Ordering Entities, as applicable, training and information on the use of products, including their energy efficiency; new features; opportunities for manufacturer/certified set up and training; green "EPP"; and other services that are offered or available.
- vii. **Procurement Card.** Contractor shall have the capability to accept procurement "credit" cards. Contractor shall have industry standard security protocol including storage of data, ordering security, and data file security.
- viii. **Contract Management.** Contractor shall provide contract management and sales support to the Participating State and to each Ordering Entity. Contractor shall designate a

representative(s) who shall have primary responsibility for management of this Addendum. Contractor shall notify the State's principal representative identified in **§8 of the Addendum** or successor of any change in designated representative(s).

- E. Orders.** Ordering Entities shall place Orders with Contractor for Goods and/or Services on an "as-needed" basis. Orders shall be placed consistent with the terms of this Addendum during the term specified in **§3 (Term)**. Each Ordering Entity shall identify and utilize its own appropriate purchasing procedure and documentation. Contractor shall not begin Work without a valid Order number. State Agencies, State-funded Institutions of Higher Education and Other State Departments shall ensure that no Orders are placed before a valid delivery order or contract is in place and shall comply with the purchasing requirements described in **State Fiscal Rule 2-2-4** (Orders for Services in excess of \$100,000 shall utilize a State contract and encumbrance of Contract Funds), unless exempt or waived by the State Controller's Office. The State of Colorado shall not be liable for payment of Orders placed by non-State Ordering Entities and Contractor shall not seek compensation from the State of Colorado for such Orders. Contractor shall furnish all communications concerning administration of Orders solely to the purchasing officer within the relevant Ordering Entity's purchasing office, or to such other individual identified in writing in the Order. All Orders for Goods and/or Services issued pursuant to this Addendum, at a minimum, shall include:
- i. Order date, when the Order is being placed by the Ordering Entity,
 - ii. A brief description of the Goods and/or Services being purchased, including line item descriptions, item numbers, quantity ordered; quantity to be included in shipments, unit costs, rates (when applicable), and totals,
 - iii. The location (delivery address) and requested time of delivery or performance,
 - iv. The billing address,
 - v. The complete name of the Ordering Entity, including the name, phone number, and address of the Ordering Entity's purchasing officer or representative,
 - vi. The State of Colorado Addendum Number: **2016-163**, and
 - vii. The NASPO ValuePoint Master Agreement Number: **06913**.
- F. Delivery.** Unless otherwise agreed in writing, any Goods and/or Services ordered pursuant to this Addendum shall be delivered free on board (F.O.B.) destination to the location specified in the Order. The Ordering Entity shall not be deemed to have accepted any Goods and/or Services until such has been inspected in accordance with the Order specifications and are accepted by the Ordering Entity. Title to Goods shall pass to the Ordering Entity or the leasing company in the case of a lease upon acceptance of delivered items.
- G. Forced Substitutions.** Forced substitutions are not allowed. If an ordered Good is out of stock, the Contractor shall notify the Ordering Entity and request prior approval before substituting for the out-of-stock item. Contractor's request to substitute must explain how the substituted Good compares with the out-of-stock item. If a Good is discontinued, Contractor must provide a written substitution policy and notify the Participating State's principal representative identified in **§8 of the Addendum** or successor of the policy and change. Any substitution offered must remain within the scope of this Addendum.
- H. Termination of an Order by Ordering Entities.** An Ordering Entity through its designated procurement officer or other authorized representative, may terminate an Order for default, which shall not terminate this Addendum without additional notice of termination from the State. Such termination shall be governed by this **§4.H**.
- i. Default**
- a) If Contractor refuses or fails to perform any of its obligations under the provisions of an Order, with such diligence as will ensure its completion within the time specified in the Order, the Ordering Entity's procurement officer may notify Contractor in writing of the non-performance.

- b) If such breach is not corrected within thirty (30) days of issuance of notice, or if, due to Contractor's actions or inactions, performance would be of no value to the Ordering Entity, the procurement officer may terminate Contractor's right to proceed with the Order or such part of the Order as to which there has been such delay or a failure to properly perform. Contractor shall continue performance of the Order to the extent it is not terminated.
- ii. **Contractor's Duties.** Notwithstanding termination of the Order, and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the Ordering Entity has an interest (if any).
- iii. **Compensation.** The Ordering Entity may withhold amounts due to Contractor as the procurement officer deems necessary to protect the Ordering Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Ordering Entity for the extra costs incurred in procuring substitute Goods and/or Services.
- iv. **Erroneous Termination for Default by a State Ordering Entity.** If after notice of termination of Contractor's right to proceed under the provisions of this §4.H, it is determined for any reason that Contractor was not in breach under the provisions of this section, or that the delay was excusable, the rights and obligations of the State Ordering Entity and the Contractor shall be the same as if the notice of termination had been issued pursuant to termination for the public interest §4.H.v. below.
- v. **Termination of an Order for the Public Interest.** Unless otherwise agreed, a State Ordering Entity procurement officer, when the interests of the Participating State so require, may terminate any Order, in whole or in part, for the public interest of the State, provided only that such termination will not relieve the State Ordering Entity from its obligations with respect to any Goods and/or Services already delivered to or used by such Ordering Entity. The procurement officer shall give at least thirty (30) days prior written notice of the termination to Contractor, specifying the part of the Order terminated and when termination becomes effective. Termination for the public interest of all or any portion of an Order shall not constitute a breach of this Addendum by an Ordering Entity or the Participating State.
 - a) **Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated Order on or after the date set in the notice of termination. Contractor will stop Work to the extent specified. Contractor must still complete and deliver to the State Ordering Entity the portion of the Order not terminated (if any) by the notice of termination.
 - b) **Compensation.** Upon termination of an Order by a State Ordering Entity, Contractor shall be entitled to compensation as follows:
 - 1. Contractor shall submit a termination claim specifying the amounts due because of the termination for the public interest together with cost or pricing data bearing on such claim.
 - 2. The Ordering Entity shall pay Contractor an amount which bears the same ratio to the total reimbursement under the Order as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in the Order, less payments previously made. Additionally, if a terminated Order is less than sixty (60) percent completed, the State Ordering Entity may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under such Order) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor under such Order.
- I. **Internet Ordering, E-Commerce and Web Catalog, Electronic Data Storage, and Catalogs** Maintenance of its internet, e-commerce and web catalog, electronic data storage, and catalogs is the Contractor's responsibility and shall be at Contractor's expense.

- i. **Internet Ordering.** As applicable, Contractor shall provide internet catalogs accessible to all Ordering Entities, provide a URL link and Colorado "splash" page or landing page with link to the SPCO State Price Agreement web location, designate market basket items in its on-line catalogs for ease of ordering, identify a symbol or marking used to identify market basket items, and designate all environmental preferable products (EPP) in their on-line catalogs and identify the symbol used to mark these EPP products.
- ii. **Electronic Data Storage.** Contractor must have the capability of electronic data storage and a back-up system in the unlikely event that the main information storehouse becomes unusable. Contractor shall have industry standard security protocol including storage of data, ordering security, and data file security.
- iii. **Catalogs.** Contractor must provide paper and/or computer media catalogs to any Ordering Entity, upon request for the duration of this Contract.

5. TAXES and PAYMENTS TO CONTRACTOR

A. Taxes and Tax Exemption Status

- i. The State and State Ordering Entities are exempt from all federal excise taxes under the United States of America Internal Revenue Code (**IRC**) **Chapter 32 (No. 84-730123K)** and from all Colorado State and local government sales and use taxes under **CRS §§39-26-101 and 201 et seq.** Such exemptions apply when Goods are purchased or Services are rendered to benefit the State. Contractor is hereby notified that when products or services are purchased for the benefit of State Ordering Entities, some Political Subdivisions (e.g., City and County of Denver) may require payment of sales or use taxes even though the product or service is provided to the State or a State Ordering Entity. These sales or use taxes will not be reimbursed by the State Ordering Entity, nor will any prices or rates in this Contract be adjusted on account of such taxes.
- ii. For the purpose of establishing this Addendum, the SPCO's FEIN is 84-0644739, however different Ordering Entities may have their own Federal Employer Identification Numbers. The Participating State's tax exemption number is 98-02565-0000, however, different Ordering Entities may have their own tax exemption numbers as well. The Contractor shall be responsible for requesting and obtaining each Ordering Entity's FEIN and tax exemption number and documentation at the time an Order is placed or upon Contractor's request. The Participating State is not liable for any taxes assessed against Contractor for franchise or licensing, or related to the income of the Contractor. No taxes of any kind shall be charged to the Participating State.

B. Payments to Contractor

- i. An Ordering Entity issuing a valid Order shall be bound by the terms and conditions of this Addendum, including, without limitation, the obligation to pay Contractor for Goods and/or Services in accordance with the provisions of this **§5**, using the methods set forth below.
- ii. The State of Colorado shall not be liable for payment of Orders placed by a non-State Ordering Entity nor shall the Contractor seek compensation from the State of Colorado for such Orders.

C. Invoicing/Billing

- i. **Invoices**
 - a) Contractor shall have an accounting and billing system and provide Ordering Entities with an invoice when purchases are made. Contractor shall invoice Ordering Entities for Goods and/or Services provided to and accepted by the Ordering Entity, at the prices as provided pursuant to the Master Agreement, as amended. A statement showing transactions for a period is not an invoice, though the Contractor may provide such documents as information to the Ordering Entity on a regular basis or upon the request of an Ordering Entity. Unless otherwise specified in the Order, Ordering Entities will pay Contractor based on submission of invoices to the Ordering Entity that detail the dates, quantity, and description of Goods delivered and/or Services performed, the billing rate, and the Order

number. Incorrect payments to Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments due under Orders or other contracts between the Ordering Entity and the Contractor.

- b) The terms and conditions on any invoice, statement, Contractor time sheet, or other form, including, but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the Participating State or any Ordering Entity. The Contractor's and Ordering Entities' rights and obligations shall be governed solely by the terms and conditions of this Addendum and the Master Agreement. Any Ordering Entity employee's signature on Contractor's forms shall be effective only to establish receipt of Goods or Services. The Contractor shall provide a toll free number for Ordering Entity inquiries on billing problems.
- ii. **Renewal of Agreement.** In the event of renewal of this Addendum, or any amendment of its terms (including prices), unless otherwise specified in an Order, the Contractor shall provide Goods and/or Services in accordance with the terms of the Addendum current at the time of an Order, and invoice the Ordering Entity at the pricing in effect at the time the Order was placed.
- iii. **Remittance.** Ordering Entities will remit payments by mail or via State procurement credit cards or as otherwise agreed by Contractor and such Ordering Entities. The Ordering Entities shall send payments to Contractor at the address shown on the invoice if it is the same address recorded in this Addendum or subsequently provided to SPCO in writing. Contractor must provide notice within 5 business days of a change to the SPCO in writing (email is acceptable) in the event the remittance information changes.
- iv. **Payment by State Ordering Entities; Interest.** Contractor shall allow State Ordering Entities a minimum of thirty (30) days after receipt of an invoice to pay for products or services provided by Contractor. State law and regulations provide that State payments made within forty-five (45) days are not considered delinquent, and unless otherwise agreed, State Ordering Entities will pay interest on any unpaid balance beginning on the 46th day at the rate of one (1) percent per month on any unpaid balance until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Contractor shall invoice State Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest date. (§24-30-202(24), CRS., as amended.)
- v. **Payment By Colorado Political Subdivisions, Non-Profit Organizations, or Other non-State Eligible Entities.** For Orders placed by non-State Ordering Entities (Political Subdivisions, Non-Profit Organizations, or other non-State eligible entities), terms for payment shall be specified in the written Orders. Contractor shall invoice non-State Ordering Entities directly. Ordering Entities generally remit payment in a timely manner within forty-five (45) days of invoice; however, it is the Contractor's responsibility to confirm all payment terms with each non-State Ordering Entity at the time an Order is placed.
- vi. **Maximum Amount.** State Ordering Entities shall place Orders with the Contractor using a delivery order or state contract as required by Participating State law, regulations, and the State Fiscal Rules. All non-State Ordering Entities shall place Orders with a Purchase Order or other contracting document acceptable to the Contractor. The maximum amount payable under this Addendum shall be determined by the amount of Orders placed and other contracting documents. No Contract Funds will be encumbered by the State Department of Personnel & Administration against this Addendum unless an Order is placed by that agency. Ordering Entities shall state the maximum amount available for the purchase of Goods and/or Services under each Order.
- vii. **Advance, Interim and Final Payments.** Any advance payment allowed under any Order issued by a State Agency against this Addendum shall comply with State Fiscal Rules and be made in accordance with the provisions of this Addendum and such Order. Non-State

Ordering Entities may have their own fiscal procedures regarding advance payments, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.

viii. Available Funds-Contingency-Termination

- a) State Ordering Entities are prohibited by law from making commitments beyond the term of the Participating State's current fiscal year. Therefore, Contractor's compensation beyond the Participating State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the **Colorado Special Provisions, §21** hereof. If federal funds are used to fund Work ordered by State Ordering Entities under this Addendum, in whole or in part, the Participating State's performance hereunder is contingent upon the continued availability of such Contract Funds. State Ordering Entities shall only make payments for Work ordered by a State Ordering Entity under this Addendum from available State Ordering Entity Contract Funds that have been encumbered for that Work, and the State Ordering Entity's liability for such payments shall be limited to the amount remaining of such encumbered Contract Funds. If Participating State or federal funds are not appropriated, or otherwise become unavailable to fund any Order placed by a State Ordering Entity under this Addendum, the State Ordering Entity may terminate the Order immediately, in whole or in part, without further liability in accordance with the provisions hereof.
- b) A Political Subdivision Ordering Entity may have its own fiscal requirements regarding available funds for payment of Orders, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.

ix. Erroneous Payments

- a) At the Participating State's sole discretion, State Ordering Entity payments made to the Contractor in error for any reason, including, but not limited to, omission, error, fraud, or defalcation, over payments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction (set-off) from subsequent payments under this Addendum or other contracts, grants or agreements between the Participating State and Contractor or by other appropriate methods, or collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.
 - b) Non-State Ordering Entities may have their own fiscal requirements regarding erroneous payments, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.
- x. **Discount/Delinquency Period.** Any applicable cash discount period or delinquency period shall start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable Goods or Services at the specified destination by an authorized Ordering Entity representative, whichever is later.

6. REPORTING – NOTIFICATION

Reports required under this §6 shall be in accordance with the procedures of and in such form as prescribed by the Participating State, as applicable. Contractor's failure to provide these reports shall constitute cause for cancellation of this Addendum and may disqualify Contractor from the award of future awards by the Participating State.

- A. **Performance, Progress, Personnel, and Funds.** If and as required under §15 (**Statewide Contract Management System**), State Ordering Entities shall submit a report to the Contractor upon expiration or termination of their Order(s), which shall contain an Evaluation and Review of Contractor's performance and the final status of Contractor's obligation hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in **Exhibit 3 (Sample Contract Performance Evaluation)**.
- B. **Volume Reports.** The State intends to use the centralized method of tracking volume. Contractor shall furnish the SPCO sales/volume reports within thirty (30) calendar days after the end of each

calendar quarter. The quarter periods are: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31, of any given year.

- i. Contractor must provide the SPCO a report detailing its total sales to all Ordering Entities within the Participating State, each reporting period. The Volume detail report, for the quarter being reported, shall contain the following: the date of each sale, Ordering Entity name, the items purchased, quantity, unit price, extended cost (quantity x unit price), list price per unit, extended list cost (quantity x list price/unit), and savings (extended list cost minus extended list cost). Additionally, Contractor must provide a summarized report in a form substantially equivalent to **Exhibit 2 (Sample Summary Contractor Volume Report)** attached hereto and incorporated herein, and in a format requested by the SPCO such as an Excel spreadsheet. Reports shall be sent via email to the Primary Contact identified in **§8 of the Addendum** or assigned successor. Specifically, the reports must include:
 - a) **Total Sales Dollars.** Total spent by each Ordering Entity every quarter.
 - b) **Total Regular (List) Cost of Total Sales.** Total of the extended list cost by each Ordering Entity.
 - c) **Total Estimated Cost Savings.** Total estimated cost savings (total sales minus extended list cost = savings) by each Ordering Entity.
 - d) **Total Paid by Procurement Card.** Total sales made by a procurement "credit" card by each Ordering Entity.
 - e) **Total Green Sales.** Total Green sales, meaning sale of Environmentally Preferable Products, as amended, by each Ordering Entity. Environmentally Preferable Products, including applicable discount savings, are defined in the State's Environmentally Preferable Purchasing Policy. In most cases, "Green" products have been third party registered or certified as such by EPA, NFP, Energy Star, LEED, etc.
 - f) **Amount of Administration Fee:** The amount of the Administration Fee due to the State.
- ii. In the event a quarterly report submitted by the Contractor contains discrepancies, when notified by the Participating State, the Contractor shall make necessary modifications, which may include adjustments to the Ordering Entity's account profile, and resubmit reports in a timely manner.

C. Additional Reports

- i. Contractor also shall provide a comprehensive sales history at the end of each anniversary year of this Addendum, or within thirty (30) calendar days of request from the SPCO. The comprehensive sales reports shall set forth, at a minimum, the name of each Ordering Entity, the Orders placed, the quantity of Goods and/or Services purchased, a description of the Goods and/or Services, the unit price or hourly rate charged, the extended dollar amount spent, and the overall total amount spent for the period.
- ii. If requested, Contractor also shall provide detailed reports of the type described above relating to that Ordering Entity, and shall provide any additional reporting as requested.

D. Performance Outside the State of Colorado and/or the United States

[In the event Contract Funds of a State Ordering Entity subject to the Procurement Code include any federal funds, the State Ordering Entity shall notify the Contractor thereof and this clause will not be applicable]. Following the Effective Date, Contractor shall provide written notice to the Participating State, in accordance with **§8 of the Addendum** and in form substantially equivalent to **Exhibit 4 (Form of Contractor Notification Statement)**, within twenty (20) days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services for State Ordering Entities subject to the Procurement Code outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the Participating State pursuant to this **§6.D** shall be posted on the Colorado

Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this §6.D shall constitute a material breach of this Contract.

- E. Litigation Reporting.** Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Addendum or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the SPCO in writing (email is preferable) of such action and deliver copies of such pleadings to the Participating State's principal representative as identified in §8 of the Addendum. If the Participating State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the State Department of Personnel & Administration.
- F. Noncompliance.** Contractor's failure to provide reports and notify the Participating State in a timely manner in accordance with this §6 may result in the delay of payment of State funds and/or termination as provided under this Addendum.
- G. Administration Fees**
- i. The Colorado General Assembly has authorized the State Purchasing and Contracts Office to collect a fee for the administration of statewide contracts. On a quarterly basis, Contractor shall return to the Participating State, a fee of one percent (1.00%) of the total sales within the State by all Ordering Entities during that quarter, in order to assist with the cost of Contract administration by the State. The Contractor shall remit the administration fee to the Participating State within thirty (30) days of the end of each quarter.
 - ii. Fees shall be made payable to the State of Colorado via a check submitted to the State's Primary Contact identified in §8 of the Addendum or successor. The quarter periods and report/payment submission dates of any given year are as follows:
 - a) Quarter End Dates: (1) January 1 to March 31, (2) April 1 to June 30, (3) July 1 to September 30, and (4) October 1 to December 31.
 - b) Payment and Report Due Dates: (1) April 30, (2) July 30, (3) October 30, and (4) January 30.

7. CONTRACTOR RECORDS

- A. Maintenance and Record Retention Period.** Contractor shall make, keep, maintain, and allow inspection and monitoring by the Participating State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Order or the delivery of Goods and/or Services hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of three (3) years after the date this Addendum expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending Addendum matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").
- B. Inspection.** Contractor shall permit the Participating State, the federal government, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Addendum during the Record Retention Period for a period of three (3) years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The Participating State reserves the right to inspect the Work at all reasonable times and places during the term of this Addendum, including any extensions or renewals. If an Order fails to conform to the requirements of this Addendum, the Participating State and the relevant Ordering Entity may require Contractor to promptly bring such Order into conformity with Addendum requirements, at Contractor's sole expense. If the Order cannot be brought into conformance by re-performance or other corrective measures, the Participating State or the relevant Ordering Entity may require Contractor to take action necessary to ensure that future performance conforms to Addendum requirements, and may exercise the remedies available under this Addendum, at law or in equity, in lieu of or in conjunction with such corrective measures.

- C. Monitoring.** Contractor shall permit the Participating State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Addendum using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.
- D. Final Audit Report.** If an audit is performed on Contractor's records for any Fiscal Year covering a portion of the term of this Addendum, Contractor shall submit a copy of the final audit report to the Participating State's principal representative at the address specified herein. Contractor shall ensure the provisions of this paragraph apply to any subcontract related to performance under this Addendum. Contractor shall, at Contractor's sole expense, reconstruct any records not preserved or retained as required by this paragraph.

8. CONFIDENTIAL INFORMATION - STATE RECORDS AND ORDERING ENTITY RECORDS

Contractor shall comply with, and shall cause each of its Subcontractors, and any other Party performing Work under this Addendum, to comply with the provisions of this §8 if it becomes privy to State Information or Ordering Entity Information in connection with its performance hereunder.

- A. Confidentiality.** Contractor shall comply with all laws and regulations concerning confidentiality of State Confidential Information and Ordering Entity Confidential Information. Any request or demand by a third party for State Information or Ordering Entity Information in the possession of Contractor shall be immediately forwarded to the Participating State's or Ordering Entity's principal representative.
- B. Notification.** Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with State Information or Ordering Entity Information with a written explanation of the confidentiality requirements herein, to which they are subject, before permitting them to access such State Information or Ordering Entity Information.
- C. Use, Security, and Retention.** State Information or Ordering Entity Information of any kind shall be stored, processed, or transferred only in, or to, facilities located within the United States, and shall not be distributed or sold to any third party, retained in any files or otherwise, or used by Contractor or its agents in any way, except as authorized by this Addendum or approved in writing by the Participating State or the Ordering Entity, as applicable. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information and/or Ordering Entity Confidential Information wherever located. Neither Contractor nor its Subcontractors shall have any rights to use or access any OIT or other State agency data or information, except with the prior approval of the State.
- D. Protection.** Contractor is responsible for the protection and security of all State Information or Ordering Entity Information provided to it by the State or an Ordering Entity. If Contractor provides physical or logical storage, processing or transmission of, or retains, stores, or is given, State Information or Ordering Entity Information, Contractor shall, and shall cause its Subcontractors to, (i) provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Addendum or an Order; (ii) maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), and annual security testing; (iii) comply with State and federal regulations and guidelines related to overall security, confidentiality, integrity, availability, and auditing; (iv) ensure that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments; and (v) shall promptly report all Incidents, and attempted Incidents on an annual basis, to a representative of the Office of Information Security ("OIS"). Contractor shall provide the State with access, subject to Contractor's reasonable access security requirements, seven (7) days a week, twenty-four (24) hours a day, for the purpose of inspecting and monitoring access

and use of State Information or Ordering Entity Information, maintaining State or Ordering Entity systems, and evaluating physical and logical security control effectiveness.

- E. Compliance.** Contractor shall review, on a semi-annual basis, all OIS policies and procedures which OIS has promulgated pursuant to **CRS §§24-37.5-401 through 406** and **8 CCR §1501-5** and posted at <http://oit.state.co.us/ois>, to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee.
- F. Background Checks.** Contractor shall perform, and shall cause its Subcontractors to perform, in a form reasonably acceptable to the State or Ordering Entity, current background checks on all of its respective employees and agents performing services or having access to State Information or Ordering Entity Information provided under this Addendum. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access to State Information or Ordering Entity Information shall be deemed to be current.
- G. Delivery and Support.** The State or Ordering Entity, in its sole discretion, may securely deliver State Information or Ordering Entity Information directly to the facility where such data is used to perform the Work. State Information or Ordering Entity Information is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes.
- H. Incident Notice.** If Contractor becomes aware of an Incident involving any State Information or Ordering Entity Information, it shall notify the State or Ordering Entity immediately and cooperate with the State or Ordering Entity regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.
- I. Incident Remediation.** Contractor shall be responsible for determining the cause of an Incident, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present its analysis and remediation plan to the State within ten (10) days of notifying the State or Ordering Entity of an Incident. The State reserves the right to adjust this plan in its sole discretion. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may elect to perform such analysis, produce a remediation plan, and Contractor shall reimburse the State for the reasonable costs thereof.
- J. Incident Liability.** Disclosure of State Information or Ordering Entity Information by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State, the Ordering Entity, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, the Ordering Entity, their employees, and their agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Contractor or its employees, agents, Subcontractors, or assignees pursuant to this §8. Notwithstanding any other provision of this Addendum, Contractor shall be liable to the State and Ordering Entities for all consequential and incidental damages arising from an Incident caused by Contractor or its Subcontractors.
- K. End-of-Agreement Data Handling.** Upon request by the State or Ordering Entity made before or within sixty (60) days after the effective date of termination of this Addendum, Contractor will make available to the State or Ordering Entity a complete and secure (i.e. encrypted and appropriately authenticated) download file of all data, including, but not limited to, all State Information or Ordering Entity Information, schema and transformation definitions, or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Parties agree that upon termination of the provision of data processing services, Contractor shall, at the choice of the State or Ordering Entity, return all State Information or Ordering Entity Information provided by the State or Ordering Entity to Contractor, and the copies thereof, to the State or Ordering Entity, or Contractor shall destroy all such State Information or Ordering Entity Information and certify to the State or Ordering Entity that it has done so. If legislation imposed Contractor prevents it from returning or destroying all or part of the State

Information or Ordering Entity Information provided by the State or Ordering Entity to Contractor, Contractor warrants that it will guarantee the confidentiality of all State Information or Ordering Entity Information provided by the State or Ordering Entity to Contractor and will not actively process such data anymore.

- L. Disposition of Data.** The State and Ordering Entities retain the right to use the established operational services to access and retrieve State Information or Ordering Entity Information stored on Contractor's infrastructure at their sole discretion. Contractor and its Subcontractors warrant that upon request of the State, Ordering Entity, or of the supervisory authority, Contractor will submit its data processing facilities for an audit of the measures referred to in §8.D in accordance with §7.C. The State and Ordering Entities reserve all right, title and interest, including all intellectual property and proprietary rights, in and to system data, State Information or Ordering Entity Information, and all related data and content.
- M. Safeguarding PII Data.** If Contractor or any of its Subcontractors will or may receive PII Data under this Addendum, Contractor shall provide for the security of such PII Data in a manner acceptable to the State or Ordering Entity, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Contractor shall take full responsibility for the security of all PII Data in its possession or in the possession of its Subcontractors, and shall hold the State and Ordering Entities harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.
- N. Safeguarding FTI Data.** If Contractor or any of its Subcontractors will or may receive FTI Data under this Addendum, Contractor shall provide for the security of the FTI Data, in a form acceptable to the State or Ordering Entity and in accordance with State and federal law and the Confidentiality of Taxpayer Information Certification which is attached hereto and incorporated herein by this reference as **Exhibit 5 (Confidentiality of Taxpayer Information Certification)**. Security safeguards shall include, without limitation, supervision by responsible employees, approval of Subcontractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of Contractor's or its Subcontractor's obligations under this Addendum, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications, and inspections. Contractor shall comply with the requirements of **IRS Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies**, revised and effective January 1, 2014, found at <http://www.irs.gov/pub/irs-pdf/p1075.pdf> and incorporated herein by this reference.
- O. Safeguarding PCI Data.** If Contractor or any of its Subcontractors will or may receive PCI Data under this Addendum, Contractor shall provide for the security of the PCI Data, in accordance with **PCI Data Security Standard (DSS) 1.1**. Security safeguards shall include, without limitation, supervision by responsible employees, approval of Subcontractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of Contractor's or its Subcontractor's obligations under this Addendum, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications, and inspections.
- P. Safeguarding CJI Data.** If Contractor or any of its Subcontractors will or may receive CJI Data under this Contract, Contractor shall provide for the security of CJI Data in accordance with the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) **Security Policy, Version 5.3, dated 8/4/2014**, found online at <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center> and incorporated herein by this reference.

9. CONFLICTS OF INTEREST

- A.** Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations

hereunder. Contractor acknowledges that with respect to this Addendum, even the appearance of a conflict of interest is harmful to the Participating State's interests.

- B. Absent the Participating State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance thereof exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Addendum.**

10. REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties for the benefit of the State and Ordering Entities on the date hereof and as of each Order's effective date, each of which was relied on by the State in entering into this Addendum, and will be relied upon by the State in entering into this Addendum and by each Ordering Entity in placing Orders with Contractors.

- A. Standard and Manner of Performance.** Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Addendum and in any Order.
- B. Legal Authority – Contractor Signatory.** Contractor warrants that it possesses the legal authority to enter into this Addendum and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Addendum, or any part thereof, and to bind Contractor to its terms. If requested by the Participating State, Contractor shall provide the State with proof of Contractor's authority to enter into this Addendum within fifteen (15) days of receiving such request.
- C. Licenses, Permits, Etc.**
- i. Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Addendum, without reimbursement by the Participating State or other adjustment in Contract Funds. Additionally, all employees and agents of Contractor delivering Orders under this Addendum shall hold all required licenses or certifications, if any, to perform their responsibilities.
 - ii. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of such licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Addendum is a material breach by Contractor and may constitute grounds for termination of this Addendum.
- D. Doing Business in Colorado.** Contractor and its Subcontractors and authorized dealer/distributors, if applicable, shall register to do business within the State of Colorado with the Colorado Secretary of State, in accordance with **CRS §7-90-801**, and must maintain such registration in "good standing" throughout the term of this Addendum. Contractor shall provide the Participating State upon the State's request a copy of Contractor's Articles of Incorporation and/or Bylaws.
- E. Federal Employer Identification Number (FEIN).** Contractor shall submit to the Participating State its FEIN and a completed W-9, Taxpayer Identification form before any Ordering Entity may issue an Order to Contractor under this Addendum.

11. INSURANCE

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this §11 at all times during the term of this Addendum. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

A. Contractor

i. Public Entities

- a) If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, **CRS §24-10-101, et seq.**, as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.
- b) Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

- ii. **Non-Public Entities.** If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Addendum insurance coverage and policies meeting the same requirements set forth in §11.B with respect to Subcontractors that are not "public entities".

B. Contractors – Subcontractors. Contractor shall require each contract with Subcontractors providing Goods or Services in connection with this Addendum, other than those that are public entities, to include insurance requirements substantially similar to the following:

- i. **Worker's Compensation.** Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor's or Subcontractor's employees acting within the course and scope of their employment.
- ii. **General Liability.** Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.
- iii. **Automobile Liability.** Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
- iv. **Cyber Privacy Insurance.** Contractor agrees to maintain Cyber Privacy Insurance for claims and losses with respect to network, internet (cloud) or other data disclosure risks (such as data breaches, releases of State or Ordering Entity Confidential Information, unauthorized access/use of information, and identity theft) with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- v. **Professional Liability.** Contractor agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form that provides coverage for its Work undertaken pursuant to this Addendum. If a policy written on an occurrence form is not commercially available, a claims-made policy shall remain in effect for the term of the Contract and for at least two (2) years beyond the completion and acceptance of the Work under this Addendum, or, alternatively, a two (2) year extended reporting period must be purchased.
- vi. **Additional Insured.** The Participating State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on

endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any Subcontractors hereunder.

- vii. **Primacy of Coverage.** Coverage required of Contractor and Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.
 - viii. **Cancellation.** The above insurance policies shall include provisions preventing cancellation or non-renewal without at least thirty (30) days prior notice to Contractor and Contractor shall forward such notice to the Participating State in accordance with **§8 of the Addendum** within seven days of Contractor's receipt of such notice.
 - ix. **Subrogation Waiver.** All insurance policies in any way related to this Addendum and secured and maintained by Contractor or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- C. **Certificates.** Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven (7) days of the Effective Date of this Addendum. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the Participating State, certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Addendum or any subcontract, Contractor and each Subcontractor shall, within ten (10) days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§11**.

12. BREACH

- A. **Defined.** In addition to any breaches specified in other sections of this Addendum and the Master Agreement, the failure of the Contractor, the State or an Ordering Entity to perform any of their material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within twenty (20) days after the institution or occurrence thereof, shall also constitute a breach.
- B. **Notice and Cure Period.** In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party and to the Participating State in the manner provided in **§8 of the Addendum**. If such breach is not cured within thirty (30) days of receipt of written notice, or if a cure cannot be completed within thirty (30) days, or if cure of the breach has not begun within thirty (30) days and pursued with due diligence, the State or an Ordering Entity may exercise any of the remedies set forth in **§13 (Remedies)**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Addendum in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

13. REMEDIES

If Contractor is in breach under any provision of this Addendum, the State and an Ordering Entity shall have all of the applicable remedies listed in this **§13**, except for those remedies specifically limited to the State, in addition to all other remedies set forth in other sections of this Addendum, the Master Agreement, and under applicable law, following the notice and cure period set forth in **§12 (Breach)**. The Participating State and any Ordering Entity may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

- A. **Contract Termination for Cause and/or Breach.** The Participating State may terminate this entire Addendum or any part thereof, or any Order, in response to Contractor's uncured breach. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall remain responsible for performance of this Addendum and any Orders to the extent not terminated, if any.
- i. **Obligations and Rights**

- a) To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding Orders and subcontracts with third parties pertaining to such performance. However, Contractor shall complete and deliver to individual Ordering Entities all Orders not cancelled by the termination notice and may incur obligations as are necessary to do so within this Addendum's terms.
 - b) At the request any Ordering Entity, Contractor shall assign to the requesting Ordering Entity all of Contractor's right, title, and interest in Work Product created pursuant to any terminated Orders as of the effective date of their termination.
 - c) Upon termination, Contractor and any Subcontractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which any individual Ordering Entities have an interest. Contractor and any Subcontractors shall immediately return to the Ordering Entity all materials owned by the Ordering Entity that are in their possession. All Work Product, at the option of the Ordering Entity, shall be delivered by Contractor to the Ordering Entity and shall become the property of the Ordering Entity.
- ii. **Payments.** Ordering Entities shall reimburse Contractor only for accepted performance up to the date of termination of an Order. If, after termination of an Order by State Ordering Entities, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Addendum had been terminated in the public interest, as described below in **§13.B**.
 - iii. **Damages and Withholding.** Notwithstanding any other remedial action by the Participating State or an Ordering Entity, Contractor shall remain liable to the Participating State or the Ordering Entity as may be appropriate for any damages sustained by the State or the Ordering Entity by virtue of any breach under this Addendum by Contractor. An Ordering Entity may withhold any payment to Contractor for the purpose of mitigating the Ordering Entity's damages, until such time as the exact amount of damages due to the Ordering Entity from Contractor is determined. An Ordering Entity may withhold any amount that may be due Contractor as the Ordering Entity deems necessary to protect against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring substitute Goods or Services. Contractor shall be liable for excess costs incurred by the Ordering Entity in procuring from third parties replacement Work or substitute Goods and/or Services.
- B. Contract Early Termination in the Public Interest.** The Participating State is entering into this Addendum for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Addendum ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Addendum, and any Order, in whole or in part. Exercise by the Participating State of this right shall not constitute a breach of the State's or any Ordering Entity's obligations hereunder. This subsection shall not apply to a termination of this Addendum by the State for cause or breach by Contractor, which shall be governed by **§13.A** or as otherwise specifically provided herein.
- i. **Method and Content.** The State shall notify Contractor of such termination in accordance with **§6 of the Addendum**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Addendum and any Orders.
 - ii. **Obligations and Rights.** Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in **§13(A)(i)**.
 - iii. **Payments**
 - a) If this Addendum is terminated by the Participating State pursuant to this **§13.B**, Contractor shall be paid by respective Ordering Entities for all outstanding Orders an amount which bears the same ratio to the total reimbursement under those Orders as

Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in each Order, less payments previously made.

- b) Additionally, if an Order is less than sixty percent (60%) completed, an Ordering Entity may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor by an Ordering Entity under such Order.
- C. **State's Option to Terminate.** The Participating State may, at any time, terminate this Addendum by sending prior written notice to the Contractor. Such notice shall state the effective date of termination, which shall be no less than thirty (30) calendar days after the date of the notice.
- D. **Remedies Not Involving Contract Termination.** The Participating State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:
 - i. **Suspend Performance.** Suspend Contractor's performance with respect to all or any portion of this Addendum pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.
 - ii. **Withhold Payment.** Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.
 - iii. **Deny Payment.** Deny payment for those obligations not performed that, due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State, provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.
 - iv. **Removal.** Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued participation under this Addendum is deemed to be contrary to the public interest or the State's best interest.
- E. **Intellectual Property.** If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Addendum, Contractor shall, at the State's option or an Ordering Entity's option (i) obtain for the State or Contractor the right to use such Goods and Services; (ii) replace any Goods involved in the performance of the Services with non-infringing Goods, or modify them so that they become non-infringing; or, (iii) if neither of the foregoing alternatives are reasonably available, remove or discontinue any infringing Services or Goods and refund the price paid therefore to the State.
- F. **Non-State Ordering Entity Remedies.** Non-State Ordering Entities may include other remedies in the terms of the Orders they place.
- G. **Delay or Nonperformance – Liquidated Damages.** If an Ordering Entity provides Contractor with written notice of delay or nonperformance under an Order in accordance with §8 of the Addendum, and Contractor fails to cure such delay or nonperformance within the time specified in such notice, then to the extent such Order contains a liquidated damages provision, Contractor shall be liable for the liquidated damages in addition to any other applicable damages as provided therein.

14. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

15. STATEWIDE CONTRACT MANAGEMENT SYSTEM

- A. If the maximum amount payable to Contractor by any one State Ordering Entity under this Addendum is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §15 shall apply to that State Ordering Entity's Orders.
- i. Contractor agrees to be governed, and to abide, by the provisions of **CRS §§24-102-205, 24-102-206, 24-103-601, 24-103.5-101 and 24-105-102** concerning the monitoring of Contractor performance on state contracts and inclusion of contract performance information in a statewide contract management system.
 - ii. Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Addendum, State law, including **CRS §24-103.5-101**, and State Fiscal Rules, Policies and Guidance.
 - iii. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System.
 - iv. At the end of the current Addendum Term, the State Ordering Entity shall complete and submit a performance evaluation in a form substantially equivalent to **Exhibit 3 (Sample Contractor Performance Evaluation)**.
- B. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Addendum shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide contract management system at intervals established by State Ordering Entities and a final Evaluation, Review and Rating shall be rendered within thirty (30) days of the end of the Addendum term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain Work progress.
- C. Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration, upon request by the State Purchasing and Contracts Office, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts.
- D. Contractor may contest the final Evaluation, Review and Rating by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (**CRS §24-105-102(6)**), or (ii) under **CRS §24-105-102(6)**, exercising the debarment protest and appeal rights provided in **CRS §§24-109-106, 107, 201 or 202**, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.
- E. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress. Contractor may contest the final Evaluation, review and rating by filing rebuttal statements, which may result in either removal or correction of the Evaluation (**CRS §24-105-102(6)**).

16. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

- A. **State Materials.** Except to the extent specifically provided elsewhere in this Addendum, any Participating State Information or Ordering Entity Information, pre-existing State or Ordering Entity software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Addendum, shall be the exclusive property of the State or Ordering Entity (collectively, "State Materials" or "Ordering Entity Materials" as applicable). All State Materials or Ordering Entity Materials shall be delivered to the State or Ordering Entity by Contractor upon completion of an Order or termination thereof. The State's or Ordering Entity's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works, and to amend,

update or alter such Work Product as the Participating State or Ordering Entity deems appropriate. Contractor shall not use, or willingly allow, cause or permit any State Materials or Ordering Entity Materials to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the Participating State or Ordering Entity.

- B. Contractor Materials.** Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Addendum, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State or Ordering Entity as set forth in a State or Ordering Entity approved license agreement: (i) entered into as exhibits to this Addendum, (ii) obtained by the Participating State or Ordering Entity from an applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. INTELLECTUAL PROPERTY ESCROW

Contractor agrees to deposit the software, documentation, and/or all other related material(s) with a reputable software escrow agent ("Escrow Agent") for the term of this Contract. For the purposes of this §17, software is the source code accompanied by a running object code version submitted on a virus-free magnetic or optical media, compiled and ready to be read by a computer; documentation is all materials sufficient for a trained computer programmer of general proficiency to maintain and support the software without further assistance from Contractor; and all other related material(s) is anything else related to the software or documentation necessary or required for the proper use of the same (collectively, software, documentation and/or all other related material(s) "Escrowed Software"). Contractor shall also have a continuing obligation to deposit any maintenance modifications, updates, upgrades, new releases, or documentation related to the Escrowed Software. Contractor agrees to enter into an "Escrow Agreement" with the Escrow Agent, which will instruct the Escrow Agent to independently verify the operation of Escrowed Software and cause delivery of the Escrowed Software in Contractor's possession to the State if any one of the following events occurs:

- A.** Contractor agrees in writing to the delivery;
- B.** Contractor ceases to do business and no successor shall have agreed to assume the Contractor's obligations to the State;
- C.** Contractor has failed to support the Escrowed Software or has otherwise defaulted under this Contract and has exhausted all cure periods to avoid such termination; or
- D.** Contractor files for liquidation under the U.S. Bankruptcy Code, or files for reorganization under the U.S. Bankruptcy Code and does not remain debtor in possession.
- E.** Contractor shall grant the appropriate license rights in the Escrow Agreement to the Escrow Agent to allow the Escrow Agent to exercise its rights under this Contract. Contractor agrees that if the Escrow Agent delivers the Escrowed Software to the State, the State shall have the same license and rights to use the Escrowed Software as the State had under this Contract, including, but not limited to, the right to utilize the source code and create updates and derivative works consistent with the purpose of this Contract. All costs and fees associated with the Escrow Agreement between Contractor and the Escrow Agent for the Escrowed Software shall be the sole responsibility of Contractor. Contractor shall provide the State with a copy of the Escrow Agreement within sixty (60) days from the Effective Date.

18. TRANSITION OF SERVICES

Upon expiration or earlier termination of this Addendum or any Services provided hereunder, Contractor shall accomplish a complete transfer of the Services from Contractor to the Participating State or Ordering Entity or any replacement entity designated solely by the State or Ordering Entity without any interruption of or adverse impact on the Services or any other services provided by third parties hereunder. Contractor shall cooperate fully with the State or Ordering Entity or such replacement entity, and promptly take all steps required to assist in effecting a complete transfer of

the Services as designated by the Participating State or Ordering Entity. All work related to such transfer of Services shall be performed at no additional cost beyond what would be paid for the Services hereunder.

19. GENERAL PROVISIONS

- A. Assignment and Subcontracts.** Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the Participating State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.
- B. Binding Effect.** Except as otherwise provided in §19(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
- C. Captions.** The captions and headings in this Addendum are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.
- D. Counterparts.** This Addendum may be executed in multiple identical original counterparts, all of which shall constitute one agreement.
- E. Entire Understanding.** This Addendum, together with the Master Agreement, represents the complete integration of all understandings between the Parties, and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.
- F. Indemnification**
 - i. General.** ExContractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, **CRS §24-10-101 et seq.**, or the Federal Tort Claims Act, **28 U.S.C. §2671 et seq.**, as applicable, as now or hereafter amended.
 - ii. Intellectual Property.** Contractor shall indemnify, hold harmless, and defend, at Contractor's sole expense, the State and its employees and agents against any and all loss, cost, expenses, or liability, including but not limited to attorney fees, court costs, and other legal expenses and damages arising out of a claim that any Deliverable, Good or Service, software, or Work Product provided by Contractor under this Addendum (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor's obligation hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or Contractor's subsidiaries or affiliates, **(b)** specified by Contractor to work with the IP Deliverables, **(c)** reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function, or **(d)** is reasonably expected to be used in combination with the IP Deliverables.
- G. Jurisdiction and Venue.** All suits or actions related to this Addendum shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
- H. Modification**
 - i. By the Parties**

- a) Except as specifically provided in this Addendum, modifications of this Addendum shall not be effective unless agreed to in writing by the Parties in an amendment to this Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.
- b) Modifications permitted under this Addendum, other than amendments, shall conform to the policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.
- ii. **By Operation of Law.** This Addendum is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Addendum on the effective date of such change, as if fully set forth herein.
- I. **Order of Precedence.** The provisions of this Addendum shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Addendum and its Exhibits and other Attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
 - i. FFATA Provisions
 - ii. §21 of this Exhibit A to the Addendum, Colorado Special Provisions,
 - iii. The provisions of the main body of this Addendum and this Exhibit A,
 - iv. The Provisions of the Master Agreement,
 - v. The provisions of each Order, and
 - vi. The Solicitation, RFP 06913, Public Safety Communication Equipment.
- Notwithstanding anything to the contrary herein, the State and Ordering Entities shall not be subject to any provision incorporated in any exhibit attached hereto, any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click through or online agreements, or any provision incorporated into any other document or agreement between the Parties that (a) requires the State or Ordering Entity to indemnify Contractor or any other Party, (b) is in violation of State laws, regulations, rules, fiscal rules, policies, or other State or Ordering Entity requirements as deemed solely by the State or Ordering Entity, or (c) is contrary to any of the provisions incorporated into §21 or the main body of this Addendum.
- J. **Severability.** Provided this Addendum can be executed and performance of the obligations of the Parties accomplished as intended, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Addendum in accordance with its intent.
- K. **Survival of Certain Addendum Terms.** Notwithstanding anything herein to the contrary, provisions of this Addendum requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State or an Ordering Entity if Contractor fails to perform or comply as required.
- L. **Third Party Beneficiaries.** Enforcement of this Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Addendum are incidental to the Addendum, and do not create any rights for such third parties.
- M. **Waiver.** Waiver of any breach under a term, provision, or requirement of this Addendum, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- N. **CORA Disclosure.** To the extent not prohibited by federal law, this Addendum and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

- O. Press Contacts/News Releases.** Contractor shall not initiate any press and/or media contacts nor respond to press and/or media requests regarding this Addendum and/or any related matters concerning the State without the prior written approval of the State's principal representative.
- P. Force Majeure.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure event. A Party that becomes aware of a Force Majeure event that will significantly delay performances shall notify the other Party promptly (but in no event later than fifteen (15) days) after it discovers the Force Majeure event. If a Force Majeure event occurs, the Parties shall execute an amendment in accordance with §19.H to extend the Addendum or Order for a time period that is reasonable under the circumstances and in accordance with State of Colorado Fiscal Rules and State of Colorado Controller Policies.
- Q. License or Use Audit Rights.** Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once (1) per Fiscal Year to request via written notice ("Audit Request") that the State certify its compliance with any applicable license or use restrictions and limitations ("Audit") contained in this Addendum or its Exhibits. The State shall complete the Audit and provide certification of its compliance to Contractor ("Audit Certification") within one hundred twenty (120) days following the State's receipt of the Audit Request. If upon receipt of the State's Audit Certification, the Parties reasonably determine: (i) the State's use of licenses, use of software, use of programs, or any other use during the Audit period exceeded the use restrictions and limitations contained in this Addendum or its Exhibits ("Overuse") and (ii) that the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State identifying any Overuse or required Maintenance and request that the State brings its use into compliance with such use restrictions and limitations. Notwithstanding anything to the contrary in this Addendum and its Exhibits, or incorporated as a part of Contractor's or any Subcontractor's website, click-through or online agreements, third-party agreements, or any other documents or agreements between the Parties, the State shall not be liable for the costs associated with any Overuse or Maintenance, regardless of whether the State may have been notified in advance of such costs.

20. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2004 ("FFATA")

If or when an Ordering Entity places an Order using FFATA funds, the Ordering Entity shall immediately notify the Participating State and Contractor and such Order shall include the "State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to the Federal Funding Accountability and Transparency Act of 2006, as amended," as such provisions may be modified from time to time. The FFATA provisions are available on the website of the Colorado State Controller at: <https://www.colorado.gov/pacific/osc/ffata>. The Participating State and the Ordering Entity agree to comply with all federal and state reporting requirements for the use of FFATA funds. Contractor shall provide the required report to the Ordering Entity with the invoice presented to the Ordering Entity for payment. The Parties acknowledge that Contractor, for purchases under this Addendum, is not a subcontractor or subgrantee, but a provider of Goods and related Services.

21. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all State Agencies, Other State Departments, and State-funded Institutions of Higher Education contracts and Orders except where noted in italics.

- A. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This Addendum shall not be valid until it has been approved by the Colorado State Controller or designee.
- B. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- C. GOVERNMENTAL IMMUNITY.** No term or condition of this Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the

Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

- D. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent Contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or Workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees.
- E. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- F. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Addendum. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Addendum, to the extent capable of execution.
- G. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Addendum or incorporated herein by reference shall be null and void.
- H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this Addendum shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Addendum and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Addendum, including, without limitation, immediate termination of this Addendum and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Addendum. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
- J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State Agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.
- K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory Services or fund management Services, sponsored projects, intergovernmental agreements, or information technology Services or products and Services].** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform Work under this Addendum and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform Work under this Addendum, through participation in

the E-Verify Program or the State program established pursuant to **CRS §8-17.5-102(5)(c)**, Contractor shall not knowingly employ or contract with an illegal alien to perform Work under this Addendum or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform Work under this Addendum. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Addendum is being performed, (ii) shall notify the Subcontractor and the contracting State agency within three (3) days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for Work under this Addendum, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to **CRS §8-17.5-102(5)**, by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or Political Subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal Work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or **CRS §8-17.5-101 et seq.**, the contracting State agency, Institution of Higher Education or Political Subdivision may terminate this Addendum for breach and, if so terminated, Contractor shall be liable for damages.

- L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of **CRS §24-76.5-101 et seq.**, and (iii) has produced one form of identification required by **CRS §24-76.5-103** prior to the effective date of this Addendum.

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EXHIBIT 1 - SAMPLE OPTION LETTER

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
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1) **OPTION.** Option to renew *(for an additional 12 month term OR coterminous with the NASPO ValuePoint Master Agreement)*.

2) **REQUIRED PROVISIONS.**

In accordance with Section(s) _____ of the Original Contract between the State of Colorado, Department of Personnel & Administration, State Purchasing and Contracts Office and Insert Legal Name of Contractor, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at a cost/price specified in Section _____, Exhibit _____.

3) **EFFECTIVE DATE.** The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, Governor Name of Agency or IHE</p> <hr/> <p>By: Insert Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Name of Agency or IHE Delegate-Please delete if Contract will be routed to OSC for approval

Date: _____

EXHIBIT 2 – SAMPLE SUMMARY CONTRACTOR VOLUME REPORT

STATE OF COLORADO VENDOR QUARTERLY SUMMARY VOLUME REPORT	Send completed form to: State Purchasing Office 1525 Sherman Street, Third Floor Denver, CO 80203 <i>or email to Sourcing Specialist</i>
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Vendor Name:	x	Revised - 4/24/14 <div style="border: 1px solid black; width: 30px; height: 20px; margin: 10px auto;"></div> ← Fill In Highlighted Areas
Contact Person:	x	
E-Mail Address:	x	
Phone:	x	
Date:	xx/xx/20xx	
Colorado Price Agreement #:	x	
Commodity or Service Name:	x	

Reporting Period - Please select the appropriate period:	July - September ▾	← Select one from each Drop Down Menu
--	--------------------	---------------------------------------

Reporting Year - Please select the appropriate year:	2013 ▾	
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SPO Sourcing Specialist Contact - Please select the Specialist and e-mail this form to:	Molly Randol (303) 866-6191 Molly.Randol@state.co.us
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Sales Data Reported								
Type of Entity	Total Sales Dollars This Quarter ¹	Regular (List) Pricing of Total Sales ²	Estimated Cost Savings ³		Total Paid By Commercial Credit Card ⁴		Total Green Sales ⁵	
State Agencies and other State Departments	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%
Higher Education	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%
Political Subdivisions ⁶	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%
Non-Profit ⁷	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%
Totals	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%
Colo. Admin. Fee ⁸	\$ -	Note: Make check payable to "State of Colorado". Send to: Colorado State Purchasing Office, 1525 Sherman Street, Third Floor, Denver, CO 80203						

Vendor Comments:	(enter here--->)
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Legend	
1	Total Sales Dollars this Quarter - Attach detailed reports/data to support these amounts.
2	Regular (List) Pricing of Total Sales - The List / Catalog / MSRP Pricing and %, prior to any discounts.
3	Estimated Cost Savings - Savings to the State and % as a direct result of this price agreement.
4	Total Paid by Commercial Card - Reflects the portion of total sales and % paid by the State Procurement Card or credit cards.
5	Total Green Sales - Reflects the portion of total sales and % that has Environmentally Preferable attributes.
6	Political Subdivisions - Examples include City/County/Local Governments, Special Districts (School, Fire, Water, Transportation etc.)
7	Non-Profits - Organizations qualified by the State Purchasing Office based on C.R.S. 24-110-207.5.
8	Colorado Administration Fee - Only applicable to price agreements where the State is collecting a fee. Vendor manually enters

SPO Use Only	Date Entered to QVR Log: _____
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Notes/Comments: (enter here--->)



EXHIBIT 3 – SAMPLE CONTRACTOR PERFORMANCE EVALUATION

State of Colorado
Contract Management Information
FINAL Contractor Performance Evaluation
Colorado Revised Statutes §24-102-205(6)

Upon completion of each personal services contract with a value over \$100,000, the individual selected by the state agency or institution of higher education (IHE), pursuant to CRS §24-103.5-101(3), to monitor the contractor's work under the contract (Contract Monitor) shall complete this FINAL Contractor Performance Evaluation (Evaluation) and submit the completed Evaluation to the contractor for review and comment pursuant to CRS §24-103.5-101(6). This Evaluation and contractor's response, if any, shall be added to the statewide Contract Management System (CMS) within 30 days after contract completion and become publicly available as part of the State's searchable website. Soliciting state agencies and IHEs are required to review completed Evaluations prior to making future contract awards to ensure that the prospective contractor meets applicable responsibility. A contractor who disputes any information contained in an Evaluation may exercise the contract rights set forth in CRS §§24-109-106, 107, 201 or 202.

Completing this Form

- Before completing this Evaluation, the Contract Monitor shall ensure that **ALL applicable fields in CMS** are completed upon conclusion of the contract.
- The Contract Monitor or Procurement Staff shall submit the completed Evaluation to the contractor for review and comment within 30 days of contract completion.
- The state agency or IHE shall maintain this Evaluation and contractor's response, if any, as part of its official contract file and shall post the Evaluation on CMS within 30 days of contract completion.
- This Evaluation shall remain a part of CMS for at least 5-years following the date it is attached to the CMS contract record. CRS. §24-105-102(4).
- If the contract is for construction services with a value of \$500,000 or more, the Contract Monitor *also* shall complete the form entitled "Construction Contractor Final Performance Evaluation Report".
- This Evaluation is *not* required for contracts under Medicare, the "Colorado Medical Assistance Act", Articles 4 to 6 of Title 25.5, CRS, the "Children's Basic Health Plan Act", Article 8 of Title 25.5, CRS, or the "Colorado Indigent Care Program", Part I of Article 3 of Title 25.5, CRS.

CMS Identification Number:
Name of State Agency/IHE:
Name of Project/Program:

Contract Completion Date:
Name of Contractor/Grantee:

Contractor Performance – Evaluation conducted after completion of Services

Contractor met requirements related to Quality: Yes ☐ No ☐
Contractor met requirement related to Cost: Yes ☐ No ☐
Contractor met requirements related to Timeliness: Yes ☐ No ☐

Briefly indicate area(s) of non-compliance and steps taken to remedy:

Indicate number and dates of interim performance Evaluation worksheets completed for this Contract:

Overall Rating of Contractor Performance: Below Standard ☐ Standard ☐ Above Standard ☐

The following to be completed by the State following submittal to Contractor for review

Provided Contractor with opportunity to review Evaluation? (Date sent:) Yes ☐ No ☐
Contractor submitted response to Evaluation? (Date rebuttal received:) Yes ☐ No ☐
Contractor disputed Evaluation? (Date Dispute received:) Yes ☐ No ☐

If No, explain:

By signing below, I acknowledge that I have completed this Final Contractor Performance Evaluation in accordance with CRS §24-102-205(6)

Signature: _____

Title: _____

Print Name: _____

Date: _____

Phone: _____

EXHIBIT 4 – FORM OF CONTRACTOR NOTIFICATION STATEMENT

**State of Colorado
Contract Management Information
Contractor Notification Statement
Colorado Revised Statutes §24-102-206(1)(b)**

Notification pursuant to “Keep Jobs in Colorado Act of 2013”

This Notification Statement is NOT required for (1) Contracts under Medicare, the “Colorado Medical Assistance Act,” Articles 4 to 6 of Title 25.5, CRS, the “Children’s Basic Health Plan Act,” Article 8 of Title 25.5, CRS, or the “Colorado Indigent Care Program,” Part I of Article 3 of Title 25.5, CRS; or (2) Contracts that receive federal funds.

RE: Contract CMS #: _____ **(the “Contract”)**
Contractor Name: _____
Date of Notice: _____

Section 6(D) of the Contract states:

Performance outside the State of Colorado and/or the United States

[Not applicable if Contract Funds include any federal funds] Following the Effective Date, Contractor shall provide written notice to the State, in a form substantially equivalent to Exhibit 4, within twenty (20) days of the earlier to occur of Contractor’s decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this §6.D shall be posted on the Colorado Department of Personnel & Administration’s website. Knowing failure by Contractor to provide notice to the State under this §6.D shall constitute a material breach of this Contract.

Pursuant to CRS §24-102-206(1)(b), this Contractor Notification Statement shall serve as written notice to the State of Colorado (the “State”) Department of Personnel & Administration that the Contractor listed below anticipates services under the above-referenced Contract or any subcontract services may be performed outside the United States or the State during the term of the Contract. Services to be performed outside the United States or the State include:

Performance of such services outside the United States or the State is necessary or advantageous to the State for the following reasons:

Contractor Company Name: _____

Representative Signature: _____

Print Representative Name and Title: _____

EXHIBIT 5 – CONFIDENTIALITY OF TAXPAYER INFORMATION CERTIFICATION

This **Exhibit 5 – Confidentiality of Taxpayer Information Certification** is part of that certain contract, CMS # Insert # (“Contract”), by and between Insert Contractor’s Name (“Contractor”) and the State of Colorado acting by and through the Governor’s Office of Information Technology (“State” or “OIT”). In the event of a conflict or inconsistency between the Contract and its exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified in §19.I (Order of Precedence) of the main body of the Contract. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Contract and its Exhibits.

The State has legal responsibilities to safeguard the confidentiality of taxpayer information obtained and used in the course of this Contract for the State. As a contractor providing services to and for the benefit of the State, Contractor is required to uphold these responsibilities as a condition of being allowed access to taxpayer information. These obligations apply to information that is discussed, collected, or maintained verbally, in paper, or in electronic format.

Contractor understands that in the course of its provision of services as a contractor for the State, Contractor’s employees may receive or learn of taxpayer information that is confidential by law. The confidentiality of all taxpayer information provided by the State, or learned in the course of Contractor’s duties as a contractor for the State, shall be maintained at all times in accordance with safeguards set forth under CRS §39-21-113(4) as amended, 1 CCR 201-1 Regulation 39-21-113(4) as amended, 26 CFR §6103 and the associated US Treasury Regulations as amended, and IRS Publication 1075. This confidential taxpayer information shall not be disclosed, re-disclosed, distributed, sold, or shared with any third party nor used in any way except as expressly authorized by the State. Information compiled, hosted, and retained on electronic media or in databases for the use of the State shall be secured and adhere to the standards of protection set forth under federal and State safeguards for the protection of electronically-stored taxpayer information.

Disclosure of such confidential taxpayer information may be cause for legal action against Contractor and any involved third party. Contractor shall immediately notify the State of any breach of security resulting in any inadvertent or intentional disclosure of confidential taxpayer information. The State shall not be in any way responsible for defense of any action against Contractor for a disclosure of confidential taxpayer information. No disclosure shall be made by Contractor to a Subcontractor or third party without the express written consent of the State.

Contractor shall not retain any confidential taxpayer information once Contractor has completed legal services under the terms of Contract for the State, and shall return all confidential taxpayer information to the State. Contractor shall return all confidential taxpayer information immediately upon notice and demand from the State.

Contractor hereby acknowledges that it shall remain in compliance with all State and federal laws and the aforementioned terms and conditions pertaining to the protection, security, and confidentiality of taxpayer information provided by the State or learned of in the course of its duties as a contractor for the State.