

## CONTRACT AMENDMENT

Amendment # 1	Original Contract CMS (CLIN) # 82444	Amendment CMS # 97923
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**1) PARTIES**

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between DELL MARKETING L.P. (hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Personnel and Administration, State Purchasing and Contracts office, (hereinafter called the "State" or "SPCO").

**2) EFFECTIVE DATE AND ENFORCEABILITY**

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3) FACTUAL RECITALS**

The Parties entered into a price agreement effective November 11<sup>th</sup>, 2015, which authorizes the utilization of Computer, Equipment and Peripherals under Price Agreement # 2016000000000000105, Dell contract code WN05AGW.

**4) CONSIDERATION-COLORADO SPECIAL PROVISIONS**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment. If applicable, such Special Provisions are attached hereto and incorporated by reference herein as Exhibit E.

**5) LIMITS OF EFFECT**

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

**6) MODIFICATIONS**

Exhibit A, Section 3 "Term" is deleted in its entirety and replaced by the following;

**A. Initial Term - Work Commencement**

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall terminate on the date on which the NASPO ValuePoint Master Agreement terminates, unless this Participating Addendum is terminated earlier as described in this Participating Addendum or the State cancels its participation as described in the Master Agreement (the "Term").

If the term of NASPO ValuePoint Master Agreement is extended for any reason, then that extension shall be automatically incorporated in this Participating Addendum and the Term of this Participating Addendum shall be automatically modified to account for that extension, so long as such extension complies with the Colorado Procurement Code.

**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 one-hundred and twenty (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."

**7) START DATE**

This Amendment shall take effect on the later of its Effective Date or April 1<sup>st</sup>, 2017.

**8) ORDER OF PRECEDENCE**

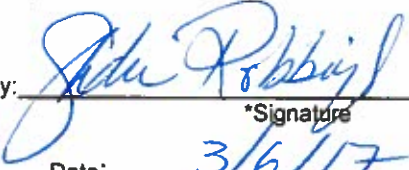


Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

**9) AVAILABLE FUNDS**

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

**THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT**


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

<p style="text-align: center;"><b>CONTRACTOR</b> <b>Dell Marketing, LP</b></p> <p>By: Sadie Robbins Title: Senior Contract Advisor</p> <p>By: <u></u> *Signature</p> <p>Date: <u>3/6/17</u></p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, Governor</b></p> <p style="text-align: center;">Department of Personnel &amp; Administration State Purchasing and Contracts Office June Taylor, Executive Director</p> <p>By: <u></u> Clady Lombardi, State Purchasing and Contracts Director</p> <p>Date: <u>3-9-2017</u></p>
<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, Governor</b> Governor's Office of Information Technology Suma Nallapati, Secretary of Technology &amp; State Chief Information Officer</p> <p>By: <u></u> <input type="checkbox"/> Brenda Berlin, Deputy Secretary of Technology and Chief Financial Officer</p> <p>Date: <u>3/21/17</u></p>	

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State contracts. This Amendment 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 Jarps, CPA, MBA, JD**

By: 

Date: 3/27/17

## **EXHIBIT E**

### **21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)**

Notwithstanding anything to the contrary in this Participating Addendum, these in the event of a conflict, these special provisions shall supersede and control over all terms of the Master Agreement and all other terms of this Participating Addendum.

**a. CONTROLLER'S APPROVAL. C.R.S. §24-30-202(1).**

This Participating Addendum shall not be valid until it has been approved by the Colorado State Controller or designee.

**b. FUND AVAILABILITY. C.R.S. §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 Participating 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, C.R.S. §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

**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. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Participating Addendum. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

**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 Participating 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 Participating Addendum, to the extent capable of execution.

**g. BINDING ARBITRATION PROHIBITED.**

The State does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Participating 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 Participating 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 Participating 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 Participating Addendum, including, without limitation, immediate termination of this Participating Addendum and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**i. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. C.R.S. §§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 Participating 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. C.R.S. §§24-30-202(1) and 24-30-202.4.**

Subject to C.R.S. §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 C.R.S. §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. C.R.S. §8-17.5-101, et**

seq.

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Participating 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 Participating Addendum, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to C.R.S. §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Participating 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 Participating Addendum. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Participating Addendum is being performed, (ii) shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Participating Addendum, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §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 C.R.S. §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Participating Addendum for breach and, if so terminated, Contractor shall be liable for damages.

**I. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. §24-76.5-101, et seq.**

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 C.R.S. §24-76.5-101 et seq., and (iii) has produced one form of identification required by C.R.S. §24-76.5-103 prior to the effective date of this Contract.

**PARTICIPATING ADDENDUM**  
**NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM**  
**Computer Equipment**  
**Administered by the State of Minnesota (hereinafter "Lead State")**

**MASTER AGREEMENT**  
Master Agreement No: **MNWNC-108**  
**Dell Marketing L.P.**  
(hereinafter "Contractor")  
And  
**State of Colorado**  
(hereinafter "Participating State/Entity" or "State")  
**PA # 2016-0000-0000-0000-0105/NASPO**

**1. Scope:**

This Participating Addendum ('Addendum') is made between the **State of Colorado**, acting by and through the **State Purchasing Office, Colorado Department of Personnel & Administration** (the "Participating State") and **Dell Marketing L.P.** ("Contractor") and allows for purchase of the following **Computer Equipment/Services: Desktops, Laptops, and Tablets, Servers, and Storage**. This Addendum between Contractor and Participating State (the "Parties") modifies and amends the Contract, NASPO ValuePoint Master Agreement No. **MNWNC-108** ("Master Agreement"), between the State of **Minnesota** ("Lead State") and Contractor for **Computer Equipment**, for use by State agencies and other entities located in the Participating State and authorized by that State's statutes to utilize WSCA contracts with the prior approval of the State's Chief Procurement Official.

The original solicitation contains the requirements and definitions establishing the Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor, eligible for purchase under this Addendum to include: **Band 1 – Desktop; Band 2 – Laptop; and, Band 3 – Tablet; Band 4 – Server; Band 5 – Storage**. The configuration limits and restrictions for the Master Agreement have not been modified by the Participating State in this Participating Addendum.

**2. 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 respective 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 the 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 nonprofit 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 the Participating State has under the Contract. Each agency, political subdivision and registered nonprofit organization will be responsible for its own charges, fees, and liabilities. Each agency, political subdivision and registered nonprofit 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 State shall not be liable for any other ordering entity's charges.

**3. Order of Precedence:**

- i. Participating State's Participating Addendum ("PA"); Participating State's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of the Minnesota NASPO ValuePoint Master Agreement
- ii. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)
- iii. The Solicitation including all Addendums; and
- iv. Contractor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or referenced on the Contractor's website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

**4. 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. These modifications or additions apply only to actions and relationships between the executing Participating State and the Contractor and are addressed in **Exhibit A of the Participating Addendum**, incorporated herein and attached hereto.
- ii. Master Agreement, Exhibit A, Part C. **Minnesota Terms and Conditions**, shall be replaced in its entirety by Colorado's Exhibit A.

**5. Primary Contacts:**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be delivered to such Party's principal representative or named successor at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses, if any, set forth. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Notices to Ordering Entities shall be as provided for in the Order accepted by the Contractor. Unless otherwise provided herein, all notices shall be effective upon receipt. The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Diane Wigington <i>RR-33</i>
Address	One Dell Way, Mailstop <del>8707</del> , Round Rock, TX 78682
Telephone	512-728-4805
Fax	
E-mail	Diane_Wigington@dell.com

Participating Entity

Name	Tara Larwick
Address	1525 Sherman Street, 3 <sup>rd</sup> Floor, Denver, CO 80203
Telephone	303-866-4552
Fax	
E-mail	tara.larwick@state.co.us



**6. Subcontractors/Partners/Resellers:**

The Contractor may use Subcontractors to perform some of its duties and obligations under this Addendum. However, only those 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's list of authorized resellers, partners, and service providers who may serve as Subcontractors under this Addendum may be found on the dedicated **Dell Marketing, L.P.** website ([NASPO ValuePoint Cooperative Purchasing Organization | Dell](#)), 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.

Contractor shall provide written notice to the Participating State with respect to any changes to listing available for the State of Colorado and shall obtain written approval from the Participating State, which approval shall not be unreasonably withheld, prior to adding additional names to the authorized list of resellers and service providers.

**7. Terms and Conditions:**

The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law. 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 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.


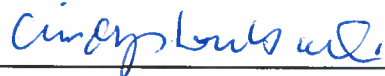

**8. Orders:**

- i. 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.
- ii. All Orders issued by Ordering Entities as defined in this Addendum shall state the Addendum Number: **2016-0000-0000-0000-0105/NASPO** and the Master Agreement Number: **MNWNC-108**.
- iii. Contractor's pricing sheets shall be located at the following web address:  
<http://www.dell.com/learn/us/en/04/slg/wsca-naspo-new-for-review?c=us&l=en&s=bsd>

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

**\*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.**

<b>Contractor:</b> Dell Marketing, L.P.	<b>Participating State:</b> State of Colorado, Department of Personnel & Administration, State Purchasing Office
<b>By: (Signature)</b> 	<b>By: (Signature)</b> 
<b>Name:</b> Stephanie Miller	<b>Name:</b> <input checked="" type="checkbox"/> Cindy Lombardi, State Purchasing and Contract Director
<b>Title:</b> Senior Manager	
<b>Date:</b> 18 November 2015	<b>Date:</b> 11-20-15
	<b>Participating State:</b> State of Colorado, Governor's Office of Information Technology
	<b>By: (Signature)</b> 
	<b>Name:</b> <input type="checkbox"/> Brenda Berlin, Deputy Chief Information Officer and Chief Financial Officer <input checked="" type="checkbox"/> Steven Sizemore, OIT Contracts Director
	<b>Date:</b> 11/20/15

**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.

<b>Participating State:</b> State of Colorado, Department of Personnel & Administration, State Controller's Office
<b>By: (Signature)</b> 
<b>Name:</b> 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
<b>Date:</b> 11/20/15

**EXHIBIT A**  
**To Participating Addendum**  
**between**  
**STATE OF COLORADO, State Purchasing Office**  
**and**  
**Dell Marketing, L.P.**

**TABLE OF CONTENTS**

- 1. RECITALS ..... 6
- 2. DEFINITIONS ..... 7
- 3. TERM ..... 9
- 4. STATEMENT OF WORK ..... 10
- 5. TAXES and PAYMENTS TO CONTRACTOR ..... 14
- 6. REPORTING – NOTIFICATION ..... 16
- 7. CONTRACTOR RECORDS ..... 18
- 8. CONFIDENTIAL INFORMATION-ORDERING ENTITY RECORDS ..... 19
- 9. CONFLICTS OF INTEREST ..... 23
- 10. REPRESENTATIONS AND WARRANTIES ..... 23
- 11. INSURANCE ..... 24
- 12. BREACH ..... 25
- 13. REMEDIES ..... 26
- 14. GOVERNMENTAL IMMUNITY ..... 28
- 15. STATEWIDE CONTRACT MANAGEMENT SYSTEM ..... 28
- 16. GENERAL PROVISIONS ..... 29
- 17. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2004 (“FFATA”) ..... 30
- 18. COLORADO SPECIAL PROVISIONS ..... 30
- EXHIBIT 1 - SAMPLE OPTION LETTER ..... 33
- EXHIBIT 2 – SAMPLE SUMMARY CONTRACTOR VOLUME REPORT ..... 34
- EXHIBIT 3 – SAMPLE CONTRACTOR PERFORMANCE EVALUATION ..... 35
- EXHIBIT 4 – IRS REQUIREMENT ..... 36

**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 **Computer 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 Office has entered into this Addendum pursuant to the award issued Contractor as a result of Solicitation # **MNWNC-108** to establish the price

and terms for purchase of Goods and/or Services within the State of Colorado by State Agencies (SA), Institutions of Higher Education (IHE), Political Subdivisions (PS), eligible Non-Profit Organizations (NPO), 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 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 Office, Colorado Department of Personnel & Administration.
- C. **Confidential Information.** "Confidential Information" means information, data, records, and documentary materials belonging to the Participating State or an Ordering Entity regardless of physical form or characteristics, including but not limited to any non-public State or Ordering Entity records, sensitive State or Ordering Entity data, protected State or Ordering Entity data, State or Ordering Entity personnel records, personally identifiable information ("PII"), and other information or data concerning individuals, which has been communicated, furnished or disclosed by the State or Ordering Entity to Contractor. Notwithstanding the foregoing, Confidential Information shall not include State Data and Records or Ordering Entity Records.
- D. **Contract.** "Contract" is synonymous with "Addendum," "Agreement" and "Price Agreement," and consists 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.
- E. **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).
- 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 (Statement of Work)** and **§15 (Statewide Contract Management System)**.
- I. **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), and Exhibit 4 (IRS Requirement).**

- J. **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.
- K. **Goods.** "Goods" means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with Services the Contractor renders.
- L. **Institution of Higher Education (IHE).** "Institution of Higher Education" means a university or college located in the State of Colorado, which is supported by the Participating State.
- M. **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.
- N. **Non-Profit Organization (NPO).** "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 NPO must submit an annual application and be approved by the State Purchasing Office to make purchases from Master Agreement Contractors (as defined in the NASPO ValuePoint Master Agreement).
- O. **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.
- P. **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.
- Q. **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 SPO to place Orders with Contractor.
- R. **Ordering Entity Records.** "Ordering Entity Records" means information, data, records, and documentary materials belonging 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 Confidential Information.
- S. **Other State Departments.** "Other State Departments" means the Department of Law, the State Treasurer, the Judicial Department, the Secretary of State, the State Legislature and any other State Ordering Entities that are not governed by the State Procurement Code.
- T. **Party or Parties.** "Party" means the Participating State or Contractor, and "Parties" means both the State and Contractor.
- U. **Political Subdivision (PS).** "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.
- V. **Review.** "Review" means examining Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§4 (Statement of Work), §15**

(**Statewide Contract Management System**), and in any Order.

- W. **Services.** "Services" means the labor required to be performed by Contractor pursuant to this Addendum and an Order.
- X. **State Agencies.** "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).
- Y. **State Data and Records.** "State Data and Records" means information, data, records, and documentary materials belonging to the Participating State regardless of physical form or characteristics, including but not limited to any public Participating 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 Confidential Information.
- Z. **State Ordering Entities.** "**State Ordering Entities**" means **State Agencies, Institutions of Higher Education, and Other State Departments**
- AA. **State Ordering Entities** "State Ordering Entities means State Agencies, Institutions of Higher Education and Other State Departments.
- BB. **State Purchasing Office or SPO.** "State Purchasing Office" or "SPO" means the Colorado State Purchasing Office, a unit of the Colorado Department of Personnel & Administration.
- CC. **Statement of Work (SOW).** "Statement of Work" (SOW) means a formal document that captures and defines the work activities, deliverables, and timeline Contractor must execute in performance of specified work for Ordering Entity. The SOW usually includes detailed requirements and pricing, with standard regulatory and governance terms and conditions
- DD. **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.
- EE. **User Equipment.** "User Equipment" means any hardware, software, equipment, or other products available under this Addendum.
- FF. **Work.** "Work" means the Goods and associated Services Contractor is required to provide to fulfill its obligations under this Addendum and each Order.
- GG. **Work Product.** "Work Product" means the tangible or intangible results of Contractor's Work, including but not limited to, software, except for pre-existing intellectual property, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or documents of any type, including drafts which are prepared by Contractor under this Addendum.

### 3. TERM

- A. **Initial Term-Work Commencement.** The Parties' respective performances under this Participating Addendum shall commence on the later of either the Effective Date or **November 1, 2015**. This Participating Addendum shall terminate on **March 31, 2017**, unless terminated sooner, as specified in **§13 (Remedies)**, or extended further as specified in **§3.C** below.
- 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 one- hundred and twenty (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 up to three consecutive periods of up to one (1) year each 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**.
- ii. Continuation of this Participating Addendum beyond the initial 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 Participating State for any purpose as a result of this Addendum.
- C. **Pricing and Price Changes**
  - i. The SPO 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 **§5 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. **Reserved.**
  - iv. **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 shall contact the SPO 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 SPO via email within five (5) business days of receipt thereof.
  - v. **Marketing Notices.** Prior to any distribution, Contractor must submit to SPO 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.
  - vi. **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.
  - vii. **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.
  - viii. **Procurement Card.** Contractor shall have the capability to accept procurement "credit" cards, when available. Contractor shall have industry standard security protocol including storage of data, ordering security, and data file security.
  - ix. **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 **§5 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 and Contractor invoices 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: **2016-0000-0000-0000-0105/NASPO**, and
  - vii. The NASPO ValuePoint Master Agreement Number: **MNWNC-108**.
- F. Delivery.** Unless otherwise agreed in writing, any Goods and/or Services ordered pursuant to this Addendum shall be delivered freight on board (F.O.B.) destination to the location specified in the Order. The ordering entity will notify Contractor of any external damage found at time of delivery and such damage will be covered under Contractor warranty. Notwithstanding, the Ordering Entity may refuse delivery if there is external damage at time of delivery or if the items ordered do not match those described in the Order. The Ordering Entity shall not be deemed to have accepted any Services until such has been inspected in accordance with the Statement of Work. 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 in writing (email is acceptable) 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 **§5 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 Participating 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 inaction's, 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 undisputed 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 SPO 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.

- J. **Catalogs.** Contractor must provide paper and/or computer media catalogs to any Ordering Entity, upon request for the duration of this Contract.
- K. **Order for Leased Goods.** An Ordering Entity may place an Order for Goods to be leased from a third Party leasing company. The Ordering Entity must have been approved for the lease by the leasing company when placing the Order. The Order will provide for payment of the Goods by the leasing company at the time the lease is executed by the Ordering Entity and the leasing company and the Ordering Entity accepts the Goods covered by the lease. The Contractor shall convey title to the Goods, and any applicable warranties, to the leasing company upon payment of the Order by the leasing company.

## 5. TAXES and PAYMENTS TO CONTRACTOR

### A. Taxes and Tax Exemption Status

- i. The Participating State and State Ordering Entities are exempt from all federal excise taxes under the US Internal Revenue Code (IRC) **Chapter 32 (Certificate of Registry 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. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

For the purpose of establishing this Addendum, the SPO'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, the Order number, the Price Agreement number and the NASPO ValuePoint Master Agreement 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 (e.g. Contractor's website and/or online terms), 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 bill of lading 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. Contractor must provide written notice (email is acceptable) of a remittance change to the SPO within five (5) business days of a change.
- 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 thirty (30) 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 purchase or 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, §18** 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 State Ordering Entities will pay Contractor for Goods or Services delivered and accepted prior to the date of termination.
- 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 a form substantially equivalent to **Exhibit 3 (Sample Contractor Performance Evaluation)**.
- B. **Volume Reports.** The Participating State intends to use the centralized method of tracking volume. Contractor shall furnish the SPO sales/volume reports by the last day of the month following quarter end. 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 SPO 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: Order Date, 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 SPO such as an Excel spreadsheet. Reports shall be sent via email to the Primary Contact identified in **§5 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 NASPO ValuePoint Administration Fee.** The amount of the NASPO ValuePoint Administration Fee due to the Participating 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 SPO. 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 and agreed by Contractor, 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 completed Vendor Disclosure Statement re: Contract Performance Outside of the United States or Colorado to the Participating State, in accordance with **§5 of the Addendum**, 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 SPO in writing (email is preferable) of such action and deliver copies of such pleadings to the Participating State's principal representative as identified in §5 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 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 (1) percent 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 **§5 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.** Except for confidential or proprietary records, such as but not limited to cost data, Contractor shall make, keep, maintain, and allow inspection and monitoring by the Participating State and its Office of Information Security (OIS) 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, OIS, 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 to assure compliance with the terms hereof or to evaluate performance hereunder. The Participating State and OIS reserve 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 or as more particularly described in a Statement of Work, the Participating State, OIS, 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, OIS, or the relevant Ordering Entity may require Contractor to take action necessary to ensure that future performance conforms to Addendum or a Statement of Work 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, OIS, 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 Participating 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-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 Confidential Information in connection with its performance hereunder.

- A. Confidentiality.** Contractor shall keep all Confidential Information confidential at all times and comply with all laws and regulations concerning confidentiality of Confidential Information. Any request or demand by a third Party for State Data and Records, Confidential Information, or Ordering Entity Records and 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 Confidential Information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such Confidential Information.
- C. Use, Security, and Retention.** Confidential Information, State Data and Records, and/or Ordering Entity Records of any kind shall not be distributed or sold to any third Party 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 Confidential Information wherever located. Confidential Information, State Data and Records, and/or Ordering Entity Records shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Addendum or approved in writing by the Ordering Entity or the Participating State. All Confidential Information, State Data and Records, and/or Ordering Entity Records of any kind, shall be stored, processed, or transferred only in, or to, facilities located within the United States.
- D. Protection**
- i. If Contractor provides physical or logical storage, processing or transmission of Confidential Information, State Data and Records, and/or Ordering Entity Records Contractor shall 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. Contractor shall provide the State or an Ordering Entity with access, subject to Contractor's reasonable access security requirements, 7 days a week, 24 hours a day, for the purpose of inspecting and monitoring access and use of Confidential Information, State Data and Records, Ordering Entity Records, maintaining State or Ordering Entity systems, and evaluating physical and logical security control effectiveness.
  - iii. Contractor, if it retains, stores, or is given Confidential Information, or State Data and Records, or Ordering Entity Records, at all times shall maintain, and shall cause its Subcontractor's to maintain network, system, and application security, which includes network firewalls, intrusion detection, and annual security testing.



- iv. Contractor, if it retains, stores, or is given Confidential Information, or State Data and Records, or Ordering Entity Records, shall comply and shall cause its Subcontractor's to comply with State and federal regulations and guidelines related to security, confidentiality and auditing.

Contractor, if it retains, stores, or is given Confidential Information, State Data and Records, or Ordering Entity Records shall ensure, and shall cause its Subcontractors to ensure, that security is not compromised by unauthorized access to computers, programs, software, databases, or other electronic environments and shall promptly report all breaches and attempted breaches to a representative of the Office of Information Security (OIS).

- v. Neither Contractor nor its Subcontractors shall have any rights to use or access any Office of Information Technology (OIT) or other State agency data or information, except with the prior written approval of OIT or the other State agency.
- vi. Contractor shall review, on a semi-annual basis, the Colorado Cyber Security Program (CCSP) posted at <http://oit.state.co.us/ois> and its related documents, including its policies and procedures to ensure compliance with the standards and guidelines published therein.
- vii. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee.
- viii. Contractor shall follow, and shall cause its Subcontractors to follow, the State's Data Handling and Disposal policy, which can be found at <http://oit.state.co.us/ois>.
- ix. Contractor shall perform, and shall cause its Subcontractor's 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 Confidential Information, State Data and Records, and/or Ordering Entity Records provided under the Addendum. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access shall be deemed to be current.

**E. Security-Notice.** Contractor is responsible for the security of all Confidential Information, State Data and Records, and/or Ordering Entity Records provided to it by the State or an Ordering Entity. If Confidential Information and/or State Data and Records are provided to Contractor or any Subcontractor by the State or an Ordering Entity, Contractor shall comply with the State's Cyber Security Policies, which the OIS has promulgated pursuant to **CRS §24-37.5-401 through 406 and 8 CCR §1501-5**. The Policies are posted at <http://oit.state.co.us/ois>.

**F. Security Breach Remediation**

- i. If Contractor becomes aware of a data security breach involving Confidential Information, State Data and Records, and/or Ordering Entity Records that Contractor has received from the State or an Ordering Entity (Security Breach), it shall notify the OIS, the State, and the Ordering Entity immediately and cooperate with the State, the OIS, and the Ordering Entity regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Contractor can establish that Contractor and any of its Subcontractors are not the cause or source of the Security Breach, Contractor shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised in compliance with the law. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the law and the OIS.
- ii. Contractor shall be responsible for performing an analysis to determine the cause of the Security Breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future.
- iii. Contractor shall present such analysis and remediation plan to the State and the OIS within ten (10) days of notifying the State, the OIS, and the Ordering Entity of the Security Breach. The State and/or the OIS reserve the right to adjust this plan, in its sole discretion. If Contractor cannot produce the required analysis and plan within the allotted time, the State and/or the OIS, in its sole discretion, may elect to perform such analysis, produce a remediation plan, and Contractor shall reimburse the State and/or the OIS for the reasonable costs thereof.

## G. Rights in Data, Documents, and Computer Software

- i. Except to the extent specifically provided elsewhere in this Addendum, any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor solely in the performance of its obligations under this Addendum, shall be the exclusive property of the State or Ordering Entity with an irrevocable, perpetual, royalty-free license back to the Contractor that shall be strictly used by Contractor for the benefit of and at no cost to other governmental entities and all Work Product 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 State or Ordering Entity deems appropriate. Contractor shall not use, or willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State or Ordering Entity. The State or Ordering Entity shall have the right to exercise all incidents of ownership of the Work Product without any further obligation to Contractor, other than compensation for Services rendered as set forth herein.
- ii. Contractor retains all right and title to any Licensed Software, pre-existing Contractor materials, third Party materials, Open Source software, and derivatives thereof, delivered by Contractor under the Addendum, whether incorporated in a Deliverable or necessary to use a Deliverable ("Contractor Property"). Contractor Property will be licensed to the State or Ordering Entity as set forth in a license agreement that is: (a) acceptable to the State or Ordering Entity, or (b) obtained by the State or Ordering Entity from an applicable third Party Contractor, or (c) in the case of Open Source software, the license terms set forth in the applicable Open Source license agreement.

## H. Disclosure-Liability

- i. Disclosure of Confidential Information, State Data and Records, or Ordering Entity Records 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, and their employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this §8 subject to the State or Ordering Entity providing reasonable notice of the claim and reasonably cooperating with the Contractor's defense of such claim.
- ii. The State or an Ordering Entity, in its sole discretion, may securely deliver Confidential Information, State Data and Records, and/or Ordering Entity Records directly to the facility where the data is used to perform the Work. Confidential Information, State Data and Records, and/or Ordering Entity Records are 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. The Contractor shall ensure that Confidential Information, State Data and Records, and/or Ordering Entity Records are not retained beyond time-frames established by the State and Ordering Entity unless otherwise required by law.

**End of Agreement Data Handling.** Upon request by the Participating 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 system data in the format provided by the State, including all Confidential Information, State Data and Records, Ordering Entity Records, schema and transformation definitions, and/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, the Contractor shall, at the choice of the State or Ordering Entity, return all data, records, Confidential Information, State Data and Records, and/or Ordering Entity Records transferred, and any copies thereof to the State or Ordering Entity, and certify to the State or Ordering

Entity that it has done so, unless legislation applicable to the Contractor prevents it from returning or destroying all or part of the data, Confidential Information, State Data and Records, and/or Ordering Entity Records transferred. In that case, the Contractor warrants that it will guarantee thereafter the confidentiality of the data, Confidential Information, State Data and Records, and/or Ordering Entity Records transferred and will not actively process the data transferred anymore.

- I. **Disposition of Data.** The Participating State and Ordering Entities retain the right to use the established operational Services to access and retrieve Confidential Information, State Data and Records, and/or Ordering Entity Records stored on Contractor's infrastructure, at their sole discretion. The Contractor and its Subcontractors warrant that upon request of the State, an Ordering Entity, and/or the OIS, the Contractor will make available its data processing facilities for an audit of the measures referred to in §7.D. The Participating State and Ordering Entities reserve all right, title and interest, including all intellectual property and proprietary rights, in and to, system data, Confidential Information, State Data and Records, Ordering Entity Records, and and content provided by the State and Ordering Entity.
- J. **Safeguarding Personal Identifiable Information (PII).** If Contractor or any of its Subcontractors will or may receive personally identifiable information (PII) (as defined in **CRS §18-5-901(13)**) under the Addendum, Contractor shall provide for the security of such PII in a manner acceptable to the State, Ordering Entity, or the OIS in the case of a State Agency subject to compliance with **CRS§24-37.5-101 et seq.**, 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 data in its possession or in the possession of its Subcontractors, and shall hold the Participating State and Ordering Entities harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.
- K. **Safeguarding Federal Tax Information (FTI).** If Contractor or any of its Subcontractors will or may receive federal tax information (FTI) under the Addendum, Contractor shall provide for the security of the FTI, in a manner acceptable to the Ordering Entity, or OIS in the case of a State Agency subject to compliance with **CRS §24-37.5-101 et seq.**, and in accordance with State and federal law. For the purposes of the Addendum, "FTI" shall mean federal or state tax returns, return information, and such other tax-related information as may be protected by State and federal law. 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 the 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 **Exhibit 4 (IRS Requirement)**, attached hereto and incorporated herein.
- L. **Safeguarding Payment Card Industry (PCI) Data.** If Contractor or any of its Subcontractors will or may receive payment card industry (PCI) data under the Addendum, Contractor shall provide for the security of the PCI data, in accordance with PCI Data Security Standard (DSS) 1.1 or the then current version as provided by PCI Security Standards Council. For the purposes of the Contract, "PCI data" shall mean any data related to card holders' names, credit card numbers, or other credit card information as may be protected by State and federal law. 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 the Addendum, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications and inspections.
- M. **Intellectual Property Indemnification.** Contractor shall indemnify, hold harmless and defend, at Contractor's sole expense, the Participating State and Ordering Entities and their respective employees and agents against any and all loss, cost, expenses or liability, including but not limited to attorneys fees, court costs and other legal expenses and damages arising out of a claim that any

Goods or Services, software or Work Product provided by Contractor under this Contract, 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 the Goods, Services, software or Work Product with any other product, system or method, unless the other product, system or method is (i) provided by Contractor

or Contractor's subsidiaries or affiliates, or (ii) specified by Contractor to Work with the Goods, or (iii) reasonably required in order to use the Goods 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 (iv) is reasonably expected to be used in combination with the Goods.

- N. 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 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.

## 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 commercially reasonable 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 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 requirements set forth in §11(B), and shall obtain and maintain during the terms of this Addendum, insurance coverage and policies meeting the same requirements 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 employees acting within the course and scope of their employment.
- ii. **Commercial 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 Contractual liability, personal injury, and advertising liability with 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, Contractor and/or 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 limit of \$1,000,000 each accident combined single limit.
  - iv. The Contractor will provide errors and omissions insurance, including cyber privacy coverage, at \$1,000,000 and \$1,000,000 annual aggregate.
  - v. **Professional Liability.** If Contractor or Subcontractor is providing IT, legal, engineering, accounting, medical, architectural or other professional Services, Contractor shall require such Contracts with Subcontractors to acquire a Professional Liability (including Cyber Privacy) 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 one (1) year beyond the completion and acceptance of the Work under this Contract.
  - vi. **Additional Insured.** The Participating State shall be included 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. **Subrogation Waiver.** The Worker's Compensation maintained by Contractor 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 shall provide certificates showing insurance coverage required hereunder to the Participating State within seven (7) business days of the Effective Date of this Addendum. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor 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, Contractor and each Subcontractor shall supply the State with evidence, satisfactory to the 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.

**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 §5 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 undisputed 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 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 (60) percent 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 inaction's, 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 (a) for the affected product in the first year or the depreciated value thereafter or; (b) for support services, the balance of any pre-paid amount or; (c) for professional services rendered 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 **§5 of the Addendum**, and Contractor fails to cure such delay or nonperformance within the time specified in such notice, then to the extent that both Contractor and Ordering Entity agree in advance in writing to a specific 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, **CRS §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** applies.
  - 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 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 (Executive Director), upon request by the State Purchasing 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. 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, which shall not be unreasonably withheld. 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 **§18(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.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all third-party claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any negligent or intentional 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.
- 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. **§4.D.vi. and §17** of this Exhibit A to the Addendum, HIPPA and FFATA
  - ii. **§18** of this Exhibit A to the Addendum, Colorado Special Provisions,
  - iii. The provisions of the main body of this Addendum and this Exhibit A,
    - a) The provisions of the Master Agreement, and
    - b) The provisions of each Order.

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 determined solely by the State or Ordering Entity, or (c) is contrary to any of the provisions incorporated into **§16** 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. **Sex Offender Registry Check.** If in the course of doing business, a Contractor's employee and its Subcontractors, and/or authorized dealers/distributors, visits a State facility that has as clients children under the age of 21 on the premises, Contractor shall complete a sex offender registry check on each such employee prior to such employee going to any such State facility. In the event a Contractor's employee is on the registry, such employee shall not be sent to a State facility and will not be admitted to such facility. Link to access the Colorado Department of Public Safety's website: <http://cdpsweb.state.co.us/> (Reference **CRS §16-22-110**, Sex Offender Registry.)

## **17. 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 applicable 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 sub-grantee, but a provider of Goods and related Services.

## 18. 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.

SPs Effective 01/01/09

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**EXHIBIT 1 - SAMPLE OPTION LETTER**

<b>Date:</b>	<b>Original Contract CMS #:</b>	<b>Option Letter #</b>	<b>CMS Routing #</b>
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1) **OPTION.** Option to renew only *(for an additional term)*

2) **REQUIRED PROVISIONS.**

In accordance with Section(s) \_\_\_\_\_ of the Original Contract between the State of Colorado, Department of Personnel & Administration, State Purchasing 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.

<b>STATE OF COLORADO</b> <b>John W. Hickenlooper, Governor</b> Name of Agency or IHE
By: Insert Name & Title of Person Signing for Agency or IHE
Date: _____

**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: \_\_\_\_\_ Insert 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 or email to Sourcing Specialist
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Vendor Name:	x	
Contact Person:	x	Revised - 4/24/14
E-Mail Address:	x	← Fill In Highlighted Areas
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
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Reporting Year - Please select the appropriate year:	2013 ▼	
--	--------	--

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 <sup>1</sup>	Regular (List) Pricing of Total Sales <sup>2</sup>	Estimated Cost Savings <sup>3</sup>		Total Paid By Commercial Credit Card <sup>4</sup>		Total Green Sales <sup>5</sup>		
State Agencies and other State Departments	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Higher Education	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Political Subdivisions <sup>6</sup>	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Non-Profit <sup>7</sup>	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
<b>Totals</b>	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Colo. Admin. Fee <sup>8</sup>	\$ -								

Note: Make check payable to "State of Colorado".  
Send to: Colorado State Purchasing Office, 1525 Sherman Street, Third Floor, Denver, CO 80203

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

SPO Use Only	Date Entered to QVR Log: _____
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 thirty (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 thirty (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 thirty (30) days of contract completion.
- This Evaluation shall remain a part of CMS for at least five (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 – IRS REQUIREMENT

### I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- 1) All Work will be done under the supervision of the Contractor or the Contractor's employees.
- 2) Any return or return information made available in any format shall be used only for carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- 3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- 4) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and the Contractor will retain no output at the time the Work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- 6) All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in **IRS Publication 1075**. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- 7) No Work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- 8) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- 9) The agency will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

### II. CRIMINAL/CIVIL SANCTIONS

- 1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections **7213** and **7431** and set forth at **26 CFR 301.6103(n)-1**.
- 2) Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as

may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section **7213A and 7431**.

- 3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, **5 U.S.C. 552a**. Specifically, **5 U.S.C. 552a(i)(1)**, which is made applicable to Contractors by **5 U.S.C. 552a(m)(1)**, provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established there under, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

### **III. INSPECTION**

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any Work under this Contract. Based on such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.