

**PARTICIPATING ADDENDUM**  
 to NASPO ValuePoint  
**Body Armor Products**  
 Administered by the State of Colorado  
**With Propper International Sales, Inc.**  
 Master Agreement No: **2016-180**  
 And  
**The State of Colorado**  
 Participating Addendum No: **2016000000000000201**

**1. PARTIES AND SCOPE**

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the "Participating Addendum"), is entered into by and between **Propper International Sales, Inc.** (the "Contractor"), and the **State of Colorado** (the "State"). This Participating Addendum covers participation in the **Body Armor Products Contract** (the "Master Agreement"), led by the State of Colorado, for use by Purchasing Entities located in the State.

**2. PARTICIPATION**

Use of specific NASPO ValuePoint cooperative Contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by the State's statutes to use State contracts, are subject to the prior approval of the State's Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the State's Chief Procurement Officer.

**3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY**

To the extent not modified by this Participating Addendum, all terms and conditions of the Master Agreement shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.

**4. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES**

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing, without a formal amendment to this Participating Addendum, no later than 5 days following the date on which the change occurs. The Contractor's primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

**Contractor: Propper International Sales, Inc.**

Name:	Ace Laserna, Armored Products Consultant
Address:	17 Research Park Drive, Weldon Spring, MO 63304
Telephone:	(540) 226-5335
Email:	acel@propper.com

**Participating Entity: State of Colorado**

Name:	Nikki Pollack, State Procurement Administrator
Address:	1525 Sherman St., 3 <sup>rd</sup> Floor, Denver, Co 80203
Telephone:	(303) 866-5671
Email:	nikki.pollack@state.co.us

**5. SUBCONTRACTORS**

The Contractor may only use Subcontractors, as defined in **Exhibit A**, under this Participating Addendum if the State has provided written approval for the Contractor to use that Subcontractor. All such approved Subcontractors authorized in the State of Colorado, as shown on the dedicated Contractor (cooperative Contract) website, are approved to provide sales and Service support to the State and any Purchasing Entity in the State. The Contractor's Subcontractor's participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum, as appropriate.

**6. ORDERS**



Any Order placed by the State or a Purchasing Entity in the State of Colorado for a Good or Service available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement and this Participating Addendum unless the parties to the Order agree in writing that another Contract or agreement applies to such Order or the terms of that Order control to the extent that they conflict with the terms of the Master Agreement or this Participating Addendum.

**7. ATTACHED EXHIBITS**

All of the exhibits listed in this section are attached to this Participating Addendum and are incorporated herein by reference. In the event of a conflict or inconsistency between this Participating Addendum and any exhibits or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:


- A. Colorado Special Provisions in §14 of Participating Addendum **Exhibit A**, State Specific Terms,
- B. The provisions of the main body of this Participating Addendum,
- C. All other sections of Participating Addendum **Exhibit A**, State Specific Terms, and
- D. **Exhibit B**, Sample Summary Contractor Volume Report.

**THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM**

<p><b>CONTRACTOR</b> Propper International Sales, Inc.</p> <p>By: <u>ACE LASERNA</u></p> <p>Title: <u>ARMORED PRODUCTS CONSULTANT</u></p> <p> Signature</p> <p>Date: <u>5/29/2018</u></p>	<p><b>STATE OF COLORADO</b> John W. Hickenlooper, Governor Department of Personnel and Administration State Purchasing &amp; Contracts Office June Taylor, Executive Director</p> <p> By: John Chapman, State Purchasing Manager</p> <p>Date: <u>6/19/18</u></p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

§24-30-202 C.R.S. requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

<p><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By: </p> <p>Name: <u>CLARK M BOLSER</u></p> <p>Effective Date: <u>6/18/18</u></p>
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**PARTICIPATING ADDENDUM EXHIBIT A  
STATE SPECIFIC TERMS**

**1. AUTHORITY**

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, 24-101-101 *et seq.* C.R.S., and its associated rules.

**2. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

- A. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all Goods and Services needed by the State.
- B. **“Confidential Information”** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.* C.R.S. (“CORA”).
- C. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- D. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- E. **“Work”** means the provision of the Goods and performance of the Services described in this Participating Addendum.
- F. **“Work Product”** means the tangible or intangible results of Contractor’s Work, developed specifically for, and deliverable to, a Purchasing Entity including but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or Work Product of any type, including drafts, prepared, developed, originated or reduced to practice by Contractor under this Participating Addendum.

Any term used in this Participating Addendum that is defined in another Exhibit or in the main body of this Participating Addendum shall be construed and interpreted as defined in that portion of this Contract.

**3. TERM**

**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 Contract is terminated earlier as described in this Participating Addendum or the State cancels its participation as described in the Master Agreement (the “Term”).

**B. Extension of Term**

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

**4. PAYMENTS**

**A. Payments to Contractor**

- i. A Purchasing Entity issuing a valid Order shall be bound by the terms and conditions of this Participating Addendum, including, without limitation, the obligation to pay Contractor for

Goods and/or Services in accordance with the provisions of this §4, using the methods set forth below.

- ii. The State of Colorado shall not be liable for payment of Orders placed by Purchasing Entities, nor shall the Contractor seek compensation from the State of Colorado for such Orders.

**B. Invoicing/Billing**

**i. Invoices**

- a. Contractor shall invoice Purchasing Entities for Goods and/or Services provided to, and accepted by, the Purchasing 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 Purchasing Entity on a regular basis or upon the request of a Purchasing Entity. Unless otherwise specified in the Order, Purchasing Entities will pay Contractor based on submission of invoices to the Purchasing Entity that detail the dates, quantity, and description of Goods delivered and/or Services performed, the billing rate, and the Order number. Incorrect payments to Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments, or other methods of collection of debt, due under Orders or other contracts between the Purchasing Entity and the Contractor.
- b. The Contractor's and Purchasing Entities' rights and obligations shall be governed solely by the terms and conditions of this Participating Addendum, the Master Agreement, and any other ordering documentation mutually agreed to by Contractor and Purchasing Entity, so long as said documentation does not conflict with the terms and conditions of this Participating Addendum and the Master Agreement.

**ii. Remittance**

Purchasing Entities will remit payments by mail or via State procurement credit cards or as otherwise agreed by Contractor and Purchasing Entity, to the address listed on the Contractor's invoice.

**iii. Payment by Purchasing Entities; Interest**

**a. State Agencies**

Contractor shall allow state agencies 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 payments made within forty-five (45) days are not considered delinquent, and unless otherwise agreed, state agencies will pay interest on any unpaid balance beginning on the 46th day at the rate of one (1) percent per month 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 agencies separately for accrued interest on delinquent amounts due.

**b. Non-State Agencies**

For Orders placed by non-state agencies (political subdivisions, non-profit organizations, higher education, or other non-state eligible entities), terms for payment shall be specified in written Orders. Non-state agencies generally remit payment within forty-five (45) days of invoice; however, it is the Contractor's responsibility to confirm all payment terms with each non-state agency at the time an Order is placed.

**c. Available Funds – Contingency – Termination of Order**

- 1) Purchasing Entities, except for authorized non-profit entities, are prohibited by law from making commitments beyond the term of the Purchasing Entity's fiscal year. Therefore, Contractor's compensation beyond the Purchasing Entity's fiscal

year is contingent on the appropriation and continuing availability of contract funds in any subsequent year, as provided in the Colorado Special Provisions, §14 hereof. If federal funds, non-State funds or funds from any other source constitute all or some of the contract funds, the Purchasing Entity's obligation to pay Contractor shall be contingent upon funding continuing to be made available for payment. Payments to be made pursuant to Orders under this contract shall be made only from contract funds, and the Purchasing Entity's liability for such payments shall be limited to the amount remaining of such contract funds. If State, federal or other Purchasing Entity funds are not appropriated, or otherwise become unavailable to fund an Order under this contract, the Purchasing Entity may, upon written notice, terminate the Order, in whole or in part, without incurring further liability. The Purchasing Entity shall, however, remain obligated to pay for Goods that are delivered and accepted prior to the effective date of notice of termination of Order. A Purchasing Entity Order termination shall otherwise be treated as if the Order was terminated in the public interest as described in §9(A)(ii) of this Exhibit A.

- 2) The Purchasing Entity may effect such termination by giving Contractor a written notice of termination, to Contractor's representative listed in §4 of the Participating Addendum, and by paying to Contractor any amounts which are due and have not been paid through the last day of the fiscal year for which appropriated funds are available. The Purchasing Entity shall endeavor to give notice of such termination not less than thirty (30) days prior to the day of non-availability of funds, and shall notify Contractor of any anticipated termination.

**d. Erroneous Payments**

- 1) State agency 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, or other methods of collection of debt, under a state agency Order. Such funds shall not be paid to any person or entity other than the applicable state agency.
- 2) Non-state agencies may have their own fiscal requirements regarding erroneous payments, which may be agreed upon in writing between the non-state agency and the Contractor.

**5. REPORTING – NOTIFICATION**

**A. Volume Reporting**

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State within 30 calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form as directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

- i. A summarized report in a form substantially equivalent to **Exhibit B, Sample Summary Contractor Volume Report**, which includes, but is not limited to, all of the following for the quarter that the report covers:
  - a. The total spent by each type of Purchasing Entity under this Participating Addendum.
  - b. The total of the list price of all items purchased by each type of Purchasing Entity under this Participating Addendum.
  - c. The total estimated price savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list price minus the total spent for that Purchasing Entity.
  - d. Any additional summary information as requested by the State.

- ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
  - a. The name of the Purchasing Entity who the sale was made to.
  - b. The date of the sale.
  - c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended cost for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list cost for the item calculated by multiplying the quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list cost.
  - d. Any other detail information as requested by the State.

**B. Additional Operational Reporting**

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Participating Entities as requested by the State. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

**C. Litigation Reporting**

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact described in this Participating Addendum.

**D. Performance Outside the State of Colorado or the United States, C.R.S. § 24-102-206, C.R.S.**

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact described in this Participating Addendum, within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum.

**6. CONFIDENTIAL INFORMATION-STATE RECORDS**

**A. Confidentiality**

Contractor shall hold and maintain any and all Confidential Information provided to Contractor or made available to Contractor by the State or its Purchasing Entities in confidence for the sole and exclusive benefit of the State or Purchasing Entity that provided such Confidential Information. Contractor shall not, without prior written approval of the State, use for Contractor's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Participating Addendum. Any request or demand to Contractor by any third party for the State's Confidential Information shall be immediately forwarded to the State's primary contact described in the Participating Addendum.

**B. Confidential Information Indemnification**

Disclosure or use of State Confidential Information by Contractor in violation of §6.A of this Exhibit A may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by

Contractor, or its employees, agents, assigns, or Subcontractors in violation of §6.A of this Exhibit A.

**C. Notification**

Contractor shall notify its agent, employees, Subcontractors and assigns that may come into contact with State Records 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 State Records.

**D. Use, Security, and Retention**

State Records of any kind shall be stored, processed, or transferred only in, or to, facilities located within the United States, and shall not be distributed or sold to any third party, retained in any files or otherwise, or used by Contractor or its agents in any way, except as authorized by this Participating Addendum or approved in writing by the State, as applicable. Contractor shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information wherever located.

**7. CONFLICTS OF INTEREST**

**A. Actual Conflicts of Interest**

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the Work. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State or a Participating Entity, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Participating Addendum or any Order.

**B. Apparent Conflicts of Interest**

Contractor acknowledges that with respect to this Participating Addendum, even the appearance of a conflict of interest will be harmful to the State's interests. Absent the 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 the Contractor's obligations under this Participating Addendum.

**C. Disclosure to the State**

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, 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 Participating Addendum.

**8. BREACH**

**A. Defined**

The failure of a Party to perform any of its obligations in accordance with this Participating Addendum and the Master Agreement, in whole or in part or in a timely or satisfactory manner shall be 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 30 days after the institution of such proceeding, shall also constitute a breach.

**B. Notice and Cure Period**

In the event of a breach, the aggrieved party shall give written notice of breach to the other Party's primary contact described in this Participating Addendum. If the notified Party does not cure the breach within 30 days after receipt of written notice, or, if a cure cannot be completed within 30 days but cure of the breach has not begun within 30 days and has not been pursued with due



diligence, the State may exercise any of the remedies set forth in §9 of this Exhibit A. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in the Contract in order to protect the public interest of the State.

## 9. REMEDIES

### A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum, the State, following the notice and cure period set forth in §8.B of this Exhibit A, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum and any remedies available by law or equity. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

#### i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Participating Addendum or any part of this Participating Addendum. Contractor shall continue performance of this Participating Addendum to the extent not terminated, if applicable.

##### a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding Orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated Orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. At the State's request, Contractor shall return materials owned by the State that Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the State at the State's request.

##### b. Payments

The State shall reimburse Contractor only for accepted Goods and Services received as of the date of termination. If, after termination by the State, the State agrees 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 as if this Participating Addendum had been terminated in the public interest §9(A)(ii) below.

##### c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages. The State may withhold any amount that may be due Contractor as the State deems necessary to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the State in procuring from third parties replacement Work as cover.

#### ii. Early Termination in the Public Interest

The State is entering into this Participating 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 Participating Addendum ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Participating Addendum, in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's or any

Purchasing Entity's obligations hereunder. This subsection shall not apply to a termination of this Participating Addendum by the State for cause or breach by Contractor, which shall be governed by §9.A or as otherwise specifically provided herein. In the event of termination of the Participating Addendum, all underlying leases, rentals, maintenance and license/subscription agreements to this Addendum including applicable terms and conditions will remain in full force and effect throughout the duration of the lease, rental, maintenance, or license/subscription agreement.

**a. Method and Content**

The State shall notify Contractor of such termination in accordance with §9 of this Participating Addendum. The notice shall specify the effective date of the termination, and whether it affects all or a portion of this Participating Addendum.

**b. 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 §9(A)(i).

**iii. Remedies Not Involving Termination**

The State, in its discretion, may exercise the following additional remedies:

**a. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work 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.

**b. Removal**

Demand immediate removal from Work under this Participating Addendum of any of Contractor's employees, agents, or Subcontractors whom the State deems unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest.

**B. Contractor's Remedies**

If the State is in breach of any provision of this Participating Addendum, Contractor, following the notice and cure period set forth in §8.B of this Exhibit A and the dispute resolution process in §10 of this Exhibit A shall have all remedies available to it at law and equity.

**10. DISPUTE RESOLUTION**

**A. Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum, or any Order to which the State is a party, which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

**B. Resolution of Controversies**

If the initial resolution described in §10.A of this Exhibit A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office, Department of Personnel and Administration, as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel & Administration, or their delegate, under the Resolution Statutes before Contractor

pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply, including, without limitation, time limitations.

#### **11. RIGHTS IN WORK PRODUCT**

Unless otherwise modified by another Exhibit to this Participating Addendum, the State shall have all rights to title and ownership granted to it by the Master Agreement.

#### **12. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S.

#### **13. GENERAL PROVISIONS**

##### **A. Binding Effect**

All provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

##### **B. Counterparts**

This Participating Addendum may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

##### **C. Venue**

The exclusive venue for all suits or actions related to this Participating Addendum shall be in the State of Colorado, in the City and County of Denver.

##### **D. Modification**

Except as otherwise provided in this Participating Addendum, any modification to this Participating Addendum shall only be effective if agreed to in a formal amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than Contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

##### **E. Severability**

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of the Participating Addendum.

##### **F. Survival of Certain Participating Addendum Terms**

Any provision of this Participating Addendum that imposes an obligation after termination or expiration of the Participating Addendum shall survive the termination or expiration of the Participating Addendum and shall be enforceable by the other Party.

##### **G. Taxes**

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under C.R.S. §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with

this Participating Addendum. Some Purchasing Entities may be subject to taxes for Orders, but in no event shall the State have liability to the Contractor for any such taxes.

**H. Third Party Beneficiaries**

Except for the Parties' respective successors and assigns permitted under this Participating Addendum, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties, except for rights explicitly provided for Participating Entities or rights contained in an Order. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties, except for rights explicitly provided for Participating Entities or rights contained in an Order. Any Services or benefits which third parties receive as a result of this Participating Addendum are incidental to the Contract, and do not create any rights for such third parties, except for rights explicitly provided for Participating Entities or rights contained in an Order.

**I. Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Participating Addendum, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

**J. CORA Disclosure**

To the extent not prohibited by federal law, this Participating Addendum and the performance measures and standards required under §24-103.5-101, C.R.S., if any, are subject to public release through the CORA.

**K. Standard and Manner of Performance**

Contractor shall perform its obligations under this Participating Addendum in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

**L. Additional Insured**

The Contractor shall ensure that the State is added as an additional insured for all insurance required under the Master Agreement.

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

Notwithstanding anything to the contrary in this Participating Addendum, 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), C.R.S.**

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), C.R.S.**

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, §24-10-101 *et seq.*, C.R.S., 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, 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, C.R.S.**

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, C.R.S.**

Subject to §24-30-202.4(3.5), C.R.S., 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 §39-21-101, *et seq.*, C.R.S.; (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. §8-17.5-101, et seq., C.R.S.**

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 §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or Participating Addendum with an illegal alien to perform work under this Participating Addendum or enter into a Participating Addendum with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or Participating Addendum 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 §8-17.5-102(5), C.R.S., 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 §8-17.5-101 et seq., C.R.S., 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.

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

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

## PARTICIPATING ADDENDUM EXHIBIT B SAMPLE SUMMARY CONTRACTOR VOLUME REPORT

<b>STATE OF COLORADO VENDOR QUARTERLY SUMMARY VOLUME REPORT</b>				Send completed form to: <b>State Purchasing Office</b> 1525 Sherman Street, Third Floor Denver, CO 80203 <i>or email to Sourcing Specialist</i>				
Vendor Name:		x		Revised - 4/24/14				
Contact Person:		x						
E-Mail Address:		x		<input style="width: 30px; height: 15px;" type="text"/> ← 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		
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		
<b>Sales Data Reported</b>								
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>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0%</b>	<b>\$ -</b>	<b>0%</b>	<b>\$ -</b>	<b>0%</b>
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-->)								
<b>Legend</b>								
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-->)								