

AUDIO VIDEO EQUIPMENT and SUPPLIES

Led by the State of Alaska

Master Agreement #: 200000035 B

Utah Participating Addendum #: PA3401

Contractor: **B&H PHOTO VIDEO**

Participating Entity: **STATE OF UTAH**

The following product categories are included in this contract portfolio:

- CATEGORY 1 – AUDIO EQUIPMENT**
- CATEGORY 2 – VIDEO EQUIPMENT**
- CATEGORY 3 – PROJECTING EQUIPMENT**
- CATEGORY 4 – PHOTOGRAPHIC EQUIPMENT**
- CATEGORY 5 – SCREENS/DISPLAYS**
- CATEGORY 6 – PERIPHERALS/ACCESSORIES**

VALUE-ADD SERVICE OPTIONS	% DISCOUNT
Field Service	1% off
Technical Installation	1% off
Non-Technical Installation	1% off
Programming	1% off
Design	1% off
Basic Setup	1% off
Entry Level Training	1% off

Master Agreement Terms and Conditions:

- Scope: This addendum covers the Audio Video Equipment and Supplies contract led by the State of Alaska for use by state agencies and other entities located in the Participating State authorized by that State’s statutes to utilize State contracts with the prior approval of the State’s Chief Procurement Official.
- Participation: The NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Utah. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
- Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):



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Contractor

Name:	B & H Foto & Electronics Corp.
Address:	420 Ninth Avenue, New York, NY 10001
POC:	Israel Mamann
Telephone:	212-239-7500 ex 2266
Fax:	
Email:	israelm@bhphoto.com

Participating Entity

Name:	David Bundy
Address:	4315 S 2700 W FL 3
Telephone:	801-957-7134
Fax:	
Email:	davidbundy@utah.gov

4. Participating Entity Modifications or Additions to The Master Agreement: Modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

Attached Terms and Conditions

State of Utah Admin fee of .25%

5. Lease Agreements: *Equipment may be leased with discussion between user and vendor*
6. Subcontractors: All contactors, dealers, and resellers authorized in the State of *Utah*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.



PARTICIPATING ADDENDUM



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

Participating Entity: State of Utah - Division of Purchasing	Contractor: B&H Photo Video
Signature: 	Signature:  <small>Manny Steigman (Apr 21, 2020)</small>
Name: Chris Hughes	Name: Manny Steigman
Title: Director of Purchasing	Title: VP Marketing
Date: Apr 21, 2020	Date: Apr 21, 2020

[Additional signatures may be added if required by the Participating Entity]

For questions regarding NASPO ValuePoint Participating Addendums, please contact the NASPO ValuePoint Cooperative Contract Coordinator team at:

ccc@naspovlauepoint.org

Please note that fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to:

pa@naspovaluepoint.org

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ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor signed.
 - d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
 - f) "**Division**" means the Division of Purchasing and General Services.
 - g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) "**Procurement Item**" means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
 - j) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
 - k) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - l) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - m) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - n) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources

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that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.

- a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of an Eligible User.
11. **Damages:** Notwithstanding anything in this Agreement to the contrary, in no event shall Contractor be liable to the Division or the State of Utah, or to any other party, for any special, indirect, punitive, incidental, compensatory or consequential damages (including, without limitation, any damages or costs due to loss of profits, data, use, goodwill, personal or property damage, or the cost of procuring substitute products or services) resulting from or in connection with the Agreement or the Division or State of Utah's use or inability to use the service or other products or services hereunder regardless of the cause of action or the theory of liability, whether in tort, contract, strict liability or otherwise, and even if Contractor has been notified of the possibility of such damages.
In all instances, Contractor's liability shall be limited to the monetary value of the goods purchased.
12. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
13. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement by the Division and Contractor, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if identified elsewhere in this Contract.
14. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
15. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date of the Master Agreement, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon thirty (30) days written termination notice being given to the non-terminating party. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

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On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User, provided such Procurement Item is promptly returned to Contractor (at Contractor's expense). In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.

16. **ORDER ACCEPTANCE:** Orders placed in accordance with this Contract shall not be deemed accepted unless and until such order has been affirmatively accepted by Contractor or has been affirmatively shipped by Contractor. For the avoidance of doubt, Contractor shall be under no obligation to accept all orders placed in accordance with this Agreement

17. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW/ORDER CANCELLATION:**

Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract that does not contain custom or non-cancellable goods may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. Eligible users will be notified of custom and non-cancellable items prior to order acceptance.

18. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

19. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONTRACTOR HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding the foregoing, Contractor agrees to deliver to Eligible Users the items set forth in each order and that such items shall meet the manufacturer's specifications at the time of delivery.

All items sold by Contractor are warranted solely by the manufacturer/distributor, except "direct import"—a.k.a. IMP—items. All items requiring repair (other than IMP) should be sent to the manufacturer/distributor directly for service. Contractor is not liable if the manufacturer/distributor fails to perform warranty service.

For IMP items only, Contractor will provide a warranty identical to the provisions and limitations of the manufacturer's warranty for such items, with the exception of the time period, which is equal to the term of the manufacturer's warranty or one (1) year, whichever is less. All warranty cards and/or sales slips must accompany all items.

20. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed

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- at the statutory limits required by said jurisdiction.
- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
 - c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

21. RESERVED.

22. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
23. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Notwithstanding the foregoing, Items weighing more than 70 lbs. or requiring truck delivery may be charged reasonable shipping.
24. **ACCEPTANCE AND REJECTION:** Receipt of merchandise shall occur immediately upon an Eligible Users actual receipt of the merchandise, or when the merchandise has been delivered in accordance with an Eligible User's written instruction. Eligible Users shall inspect all shipments within five (5) business days of receipt to inspect for shortages, overages, damage, defects, or non-conforming merchandise. Failure to make a claim within the preceding timeframe shall constitute Purchaser's acceptance of the merchandise. Upon acceptance of the merchandise, all returns shall be made pursuant to Seller's standard Return Policy, attached hereto and made a part hereof as Exhibit A.)
25. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to contest any invoice that it believes contains incorrect pricing. In the event of an invoice-related dispute between Contractor and Eligible User, Eligible User shall pay to Contractor all undisputed sums due to Contractor and the parties shall work together in good faith to resolve such disputed funds.

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26. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer. The Eligible User's Purchasing Card (major credit card) can only be accepted at time of purchase. If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. An Eligible User's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.
27. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
28. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
29. **Export Compliance:** Eligible Users shall assume full responsibility for both the security and possession of the goods upon receipt. Eligible Users agree (i) to comply with all applicable U.S. export rules and regulations, (ii) assume responsibility for determining which, if any, licensing requirements are applicable in connection with the exportation of the goods, and (iii) if necessary, to obtain all requisite licenses and/or other authorizations from the appropriate government agencies in connection with therewith. Eligible Users agree to indemnify and hold harmless Contractor from any and all claims which may arise in connection with an Eligible User's intentional or unintentional breach of the foregoing provisions.
30. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor, to the extent it has the right to do so, grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract.
31. **ASSIGNMENT:** Neither party may assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the other party.
32. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment made directly related to the default.
33. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract, provided such purchase order does not contain non-cancellable or custom goods. Notwithstanding the foregoing, the occurrence of a force majeure event shall not relieve an Eligible User, the Division or the State of Utah from its payment obligations under this Contract.
34. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation

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of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

35. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
36. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor, subject to the terms and conditions of this Contract, agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
37. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
38. **REPORTS AND FEES:**
 - a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 - b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor..>
 - c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 - d. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
 - e. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
39. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

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40. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
41. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES: Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.
42. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
43. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
44. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
45. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
46. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
47. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
48. **TRAVEL COSTS:** Intentionally Omitted.
49. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
50. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
51. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

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52. **DISPUTE RESOLUTION:** The parties agree to work together in good faith to resolve a dispute prior to either party filing a judicial proceeding.
53. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
54. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
55. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
56. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
57. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
58. **Counterparts; Execution:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same agreement. Facsimile or PDF execution and delivery of this Agreement by either party will constitute a legal, valid and binding execution and delivery of this Agreement by such party.

(Revised May 13, 2019)

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EXHIBIT A

RETURN POLICY & INSTRUCTIONS

Return Policy & Instructions

Easy 30-Day Return Policy

If you are dissatisfied with your purchase for any reason, you may return it to B&H within 30 days of the purchase date, subject to the conditions and exclusions below.

You may initiate a return or exchange online, by phone or Live Chat.

1

Fill Out the Online Return Form

Get an RMA (Return Merchandise Authorization) Number by filling out the online form found in the My Orders section, or by contacting us by phone or Live Chat.

2

Pack Your Item Properly

Place your item back into the original manufacturer's packaging. Then place it and your invoice into an outer shipping box. Be sure to pack it properly so your item won't get damaged.

3

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Ship Your Item with Return Label

Securely affix your return label to the outside of the shipping package. Return shipping fees are the responsibility of the customer. We recommend you ship via insured ground service with a tracking number. We cannot be responsible for lost packages.

Return Address

Attn: Return Department
B&H Photo Video Inc.
400 Cedar Lane Unit 78
Florence, NJ 08518-2899

Return an Item in Person

You may return an item to our Returns Department at our New York Superstore. Our Returns Department is located on 34th Street, around the corner from the SuperStore's main entrance.

Eligibility Conditions

Please read conditions below. If all conditions are not met, B&H reserves the right to refuse the return or to charge a minimum 15% restocking fee. All returned items must be in new condition, in their original unaltered box (including an intact UPC code) and must include all packing material, blank warranty cards, manuals and accessories. B&H can only refund the original purchase price. Shipping and handling fees are nonrefundable.

Nonreturnable Items

- Opened TVs, combos and monitors 37" and larger — original packaging cannot be unsealed
- Opened computers and computer software — original packaging cannot be unsealed
- Electronic software downloads
- Opened consumable items (e.g., film, tapes, paper, bulbs, CD, DVDs, ink cartridges, etc.)

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- Any computers built or modified by B&H to customer specifications
- Select special-order merchandise, or any item indicated on the website as nonreturnable
- Underwater equipment that has been submerged
- Opened or unwrapped educational tapes and books

Defective or Damaged Items

Defective items may be repaired, exchanged or refunded at our discretion for the same model or manufacturer's equivalent model.

Exchanges

Please allow 3-5 business days for mail-in exchanges to be processed.

Refunds & Credits

Once we receive and inspect your item(s), we will credit your account. Please allow 5-7 days for a credit to appear on your account. In most cases, we will issue your refund in the same way you made the original purchase. If payment was made by check, the refund check will be issued no sooner than 10 business days after the date of purchase. Please note: we can only refund the original purchase price. Shipping and handling fees are nonrefundable.

Limited Liability

B&H is not responsible for personal data or items left in returned merchandise. B&H is not responsible for any consequential or incidental damage resulting from the sale or use of any merchandise bought from us. We are responsible for the monetary value of the merchandise only. Also, claims for missing items or items damaged in transit must be received within two business days of receipt of merchandise.