

**PARTICIPATING ADDENDUM
to NASPO ValuePoint
Copiers & Managed Print Services
Administered by the State of Colorado
with Sharp Electronics Corporation
Master Agreement No. 140603
And
The State of Colorado
Contract # 177476**

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 **Sharp Electronics Corporation** (the “Contractor”), and the State of Colorado, acting by and through the State Purchasing & Contracts Office (the “State”). This Participating Addendum covers usage of the **Copiers & Managed Print Services** Master Agreement led by the State of **Colorado** (the “Master Agreement”), for use by State agencies and other entities located in Colorado which are authorized by law to utilize State contracts with the prior approval of the Chief Procurement Officer. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit D (Price Lists)** of this agreement.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State’s statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

A. The Master Agreement and all its terms and conditions 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.

B. The following modifications shall be made to the Master Agreement with respect to Contractor’s performance pursuant to this Participating Addendum:

i. §3.1.12 under Price and Rate Guarantee Period, shall be modified as follows:

“All-inclusive Cost Per Copy (CPC) programs may be offered upon request by the Purchasing Entity, but pricing must not exceed Master Agreement pricing. Contractor must provide the Purchasing Entity with their pricing breakdown which enables the Purchasing Entity to easily compare the pricing in the CPC structure against the pricing

in the Master Agreement.”

- ii. **§4.3.9(d)**, under Open Market Items, shall be modified as follows:
“NSP items shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all NSP items in a single Order is \$10,000.
- iii. **§4.4.3(b)**, under Standard Service Levels, shall be modified as follows:
“The Service Level Agreement (SLA) shall adhere to the following requirements:”
- iv. **§4.4.3(c)(iv)**, under Meter Read Invoicing, shall be deleted in its entirety.
- v. **§4.4.3(d)(ii)**, under Service Level Calculations, shall be deleted in its entirety.
- vi. **§4.5.6(l)**, under Leasing and Rental Overview shall be modified as follows:
“The length of any Renewal Term shall not exceed 12 months, providing the Renewal Term does not exceed the Useful Life of the Equipment.”
- vii. **§4.6.2**, Sensitive Information – “Sensitive Information” shall have the meaning as prescribed to it in **§4**, Definitions, of Exhibit A).
- viii. **§4.6.5(b)**, under Hard Drive Removal and Surrender, shall be modified as follows:
“At the Purchasing Entity’s discretion, Contractor shall remove the hard drive from the applicable Device and provide the Purchasing Entity with custody of the hard drive before the Device is removed from the Purchasing Entity’s location, moved to another location, or any other disposition of the Device. The Purchasing Entity shall then be responsible for securely erasing or destroying the hard drive.”
- ix. **§4.7.3**, under Equipment Demonstration Requirements, shall be modified as follows:
“Upon request by a Purchasing Entity, showroom Equipment for Groups A, B and C may be converted to a purchase, lease, or rental, providing the following conditions are met.”
Subsections (a), (b), (c) and (d) shall not be modified.
- x. **§4.11.11**, under Warranty Requirements, shall be deleted in its entirety.
- xi. **§4.11.12(d)**, under Lemon Clause, shall be modified as follows:
“This clause shall take precedence over any other warranty or Services clauses associated with the Master Agreement.”
- xii. **§5.1.3**, under Ordering and Invoicing Specifications, shall be modified as follows:
“Contractor shall provide a centralized billing option for Leasing and Managed Print Services, upon request by a Purchasing Entity.”
- xiii. **§5.1.4**, under Ordering and Invoicing Specifications, shall be modified as follows:
“Authorized Dealers may invoice the Purchasing Entity directly, with Purchasing Entity’s prior approval.”
- xiv. **§5.1.6**, under Ordering and Invoicing Specifications, shall be modified as follows:

“Contractor shall bill property tax separately, unless otherwise requested by a Purchasing Entity.”

4. EQUIPMENT, SERVICE, AND SOFTWARE OPTIONS

- A.** A Purchasing Entity may purchase, lease or rent Equipment and software under this Participating Addendum. Financing options include a Fair Market Value (FMV) Lease, \$1 Buyout Lease, Straight Lease, Cancellable Rental, and Short-Term Lease. The lease terms available for an FMV Lease, \$1 Buyout Lease, Straight Lease and Cancellable Rental are 12, 18, 24, 36, 48, and 60 months. The lease term available for a Short-Term Lease is a maximum of 12 months. In addition, Contractor may offer 72-month and 84-month lease rates for Group C Devices only.
- B.** The State has reviewed and approved the terms and conditions in the Contractor’s documents, which are attached hereto as **Attachment 1 and Attachment 2**, and incorporated by reference. In addition, **Attachment C** of the Master Agreement has also been reviewed and approved by the State. Purchasing Entities are still advised however, to conduct their own internal review of Contractor’s documents prior to entering into any type of Order.

Attachment D-1 of the Master Agreement has not been reviewed or approved by the State; therefore, Purchasing Entities are encouraged to review the language in the EULA’s prior to ordering and/or using the software associated with the agreement.

With the exception of **Exhibits A, B, C, D, E and F**, and **Attachments C and D-1** of the Master Agreement, no other Contractor documents are permissible under this Participating Addendum unless mutually agreed to in writing by Contractor and the State, or as otherwise stated in the Master Agreement. Should there be a conflict between the terms and conditions of this Participating Addendum, and any terms of the aforementioned Exhibits and Attachments, this Participating Addendum shall govern.

- C.** In the event the Purchasing Entity receives or obtains copies of the language in any of the Exhibits or Attachments referenced in **§4.B** above, and the language varies from what is listed in said Exhibits and/or Attachments, the language in the Exhibits and Attachments incorporated into this Participating Addendum and the Master Agreement, shall prevail.

5. 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 no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum. 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.

Primary Contact for the State:

Nikki Pollack
Colorado State Purchasing & Contracts Office
1525 Sherman Street, 5th Floor
Denver, CO 80203
Phone: 303-866-5671
E-mail: nikki.pollack@state.co.us

Primary Contact for the Contractor:

Mike Marusic
Sharp Electronics Corporation
100 Paragon Drive
Montvale, NJ 07645
Phone: 816-588-1962
Email: marusicm@sharpsec.com

Each individual identified in this §5 of the Participating Addendum shall be the primary contact of the designated Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party's primary contact at the address set forth above or (iii) as an email with read receipt requested to the primary contact at the email address, if any, set forth above. If a Party delivers a notice to another through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Unless otherwise provided in this Participating Addendum, notices shall be effective upon delivery of the written notice.

6. SUBCONTRACTORS

The Contractor is authorized to use Subcontractors to provide sales and service support to any Purchasing Entity, per **Exhibit C**, Authorized Dealers by State, of the Master Agreement. 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.

7. ORDERS

Any Order placed by a Purchasing Entity in the State of Colorado for a Good or Service available under this Participating Addendum shall be deemed to be a sale (and governed by the prices and other terms and conditions) under 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.

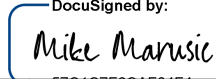
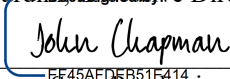
8. ORDER OF PRECEDENCE AND ATTACHED EXHIBITS AND ATTACHMENTS

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 §20 of Exhibit A, State Specific Terms;
- B. Exhibit B, Information Technology Specific Terms;
- C. The provisions of this Participating Addendum;
- D. All other sections of Participating Addendum Exhibit A, State Specific Terms;
- E. Participating Addendum Exhibit C, Statement of Work;
- F. Participating Addendum Exhibit D, Price Lists; and
- G. Participating Addendum Attachment 1 and Attachment 2, with equal precedence.

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that (i) requires the State to indemnify or hold harmless Contractor or any other party, (ii) is in violation of State law as, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State or (iii) is contrary to any of the provisions incorporated into **Exhibit A, §19** or the main body of this Participating Addendum.

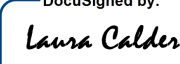
THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

CONTRACTOR Sharp Electronics Corporation By: Mike Marusic Title: President & CEO DocuSigned by:  57C1C7F6CAF04F4... Signature Date: 7/11/2022	STATE OF COLORADO Jared S. Polis, Governor Department of Personnel and Administration State Purchasing and Contracts Office Tony Gherardini, Executive Director DocuSigned by:  EF45AFDEB51E414... By: John Chapman, State Purchasing Manager Date: 7/12/2022
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STATE OF COLORADO
Governor's Office of Information Technology

In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.

STATE CHIEF INFORMATION OFFICER
Anthony Neal-Graves, Chief Information Officer and Executive Director

DocuSigned by:

 AAADC6558C9A4BD...
 Signed: _____
 Printed Name: Laura Calder
 Title: CFO
 Date: 7/12/2022

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jarvis, CPA, MBA, JD

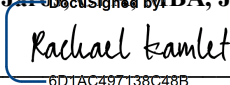
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 6D1AC497138C48B...
 By: _____
 Name: Rachael Kamlet
 Delegate
 Effective Date: 7/12/2022

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EXHIBIT A, STATE SPECIFIC TERMS

1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01., and its associated rules.

2. PURPOSE

The Parties are entering into this Participating Addendum for the Contractor to provide **Copiers and Managed Print Services** to Purchasing Entities. The Contractor was selected as a result of **RFP-NP-18-001**.

3. TERM

A. Initial Term - Work Commencement

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall be co-terminus with the NASPO ValuePoint Master Agreement #140603. Unless this Participating Addendum is terminated earlier, as described herein, or the Lead State cancels its participation as described in the Master Agreement (the "Term"), the term of the Participating Addendum shall follow the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended, per §3.B.

B. Extension of Term

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

C. Order Term

Orders may only be placed prior to the expiration or earlier termination of this Participating Addendum, but may have a delivery date or performance period that extends no longer than 120 calendar days following that expiration or earlier termination date. Regardless of whether this Participating Addendum has expired or has been terminated, the Contractor shall comply with all Orders that extend past the expiration or termination, as described in this section, and all requirements of this Participating Addendum necessary to complete outstanding Orders shall survive the expiration or termination of this Participating Addendum until all Orders are complete.

D. Early Termination in the Public Interest

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Participating Addendum by the State for breach by Contractor, which shall be governed by §14.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §5 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, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in §14.A.

iii. Payments

If the State terminates this Participating Addendum in the public interest, the Purchasing Entities shall pay Contractor according to their orders with the Contractor. The sum of any payment shall not exceed the maximum amount payable to Contractor under each order.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “Administration Fee”** means the fee that is due to the State for the administration of this Participating Addendum, as described in §7.A. of this **Exhibit A**.
- B. “Attachments”** means the following attachments attached to this Contract:
- i.** Attachment 1, Sharp Master Lease Agreement and
 - ii.** Attachment 2, Sharp Service Maintenance Agreement.
- C. “Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. 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 thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- D. “Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E. “Ceiling Price”** means the maximum price a Contractor or a Subcontractor may charge for a Good or Service under this Participating Addendum.
- F. “Chief Procurement Officer”** means the individual to whom the Executive Director of the Department of Personnel & Administration has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- G. “CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- H. “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”).
- I. “Contract”** means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future

modifications thereto.

- J.** “**Contract Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Participating Addendum.
- K.** “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- L.** “**Deliverable**” means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State or Purchasing Entity by Contractor.
- M.** “**Effective Date**” means the date on which this Participating Addendum is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Participating Addendum. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- N.** “**Environmentally Preferable Products**” means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.
- O.** “**Exhibits**” means the following exhibits attached to this Contract:
- i.** Exhibit A, State Specific Terms;
 - ii.** Exhibit B, Information Technology Provisions;
 - iii.** Exhibit C, Statement of Work; and
 - iv.** Exhibit D, Price Lists.
- P.** “**Extension Term**” means the period defined in §3.B.
- Q.** “**Goods**” means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- R.** “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation **(i)** successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; **(ii)** unwanted disruption or denial of service; **(iii)** the unauthorized use of a State system for the processing or storage of data; or **(iv)** changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- S.** “**Initial Term**” means the time period defined in §3.A of this **Exhibit A**.
- T.** “**Order**” means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Participating Addendum from the Contractor, and shall include any modification to such a document.
- U.** “**Party**” means the State or Contractor, and “**Parties**” means both the State and Contractor.

- V. **“Purchasing Entity”** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, government supported institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.
- W. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- X. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- Y. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- Z. **“Sensitive Information”** means privileged or proprietary information that, if compromised through alteration, corruption, loss, misuse, or unauthorized disclosure, could cause serious harm to the organization owning it.
- AA. **“Services”** means the services to be performed by Contractor as set forth in this Participating Addendum, and shall include any services to be rendered by Contractor in connection with the Goods.
- BB. **“State Confidential Information”** means any State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which **(i)** is subject to disclosure pursuant to CORA; **(ii)** is already known to Contractor without restrictions at the time of its disclosure to Contractor; **(iii)** is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; **(iv)** is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or **(v)** was independently developed without reliance on any State Confidential Information.
- CC. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- DD. **“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.
- EE. **“State Records”** means any State data, information, and records, regardless of physical form,

including, but not limited to, information subject to disclosure under CORA.

- FF.** “**Subcontractor**” means third parties, if any, engaged by Contractor pursuant to §19.B. to aid in performance of the Work. The term “Subcontractor” includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- GG.** “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- HH.** “**Work**” means the Goods delivered and Services performed pursuant to this Contract.
- II.** “**Work Product**” means the tangible and intangible results of the Work, developed specifically for, and deliverable to, a Purchasing Entity, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed independent of a Statement of Work or prior to the Effective Date of a Statement of Work that is used, without modification, in the performance of the Work.

Any other term used in this Participating Addendum that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

5. STATEMENT OF WORK

Contractor shall complete the Work as described in this Participating Addendum and in accordance with the provisions of Exhibit C, the Master Agreement, and with any Purchasing Entity’s Order. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.

A. Ordering and Order Fulfillment

i. Ordering

- a. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.
- b. Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.
- c. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity’s Orders.
- d. Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this Exhibit A.
- e. If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor’s necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.

- f. Contractor's internet-based portal and electronic catalogs shall clearly designate that they are part of this Participating Addendum and shall have a link to the State's web location, as determined by the State. Contractor shall ensure that all Environmentally Preferable Products are clearly listed on internet-based portal and electronic catalogs.
- g. If Contractor provides an internet-based portal or electronic catalog, Contractor shall also provide paper catalogs or catalogs on other digital media upon request by a Purchasing Entity.
- h. If Contractor's catalog will be either hosted on or accessed through the State's eCommerce system, when available, then Contractor shall comply with all policies, procedures and directions from the State in relation to hosting its catalog on or making its catalog accessible through that system. Contractor shall ensure that all information made available through the State's eCommerce system is accurate and complies with this Participating Addendum.

6. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

- i. Contractor shall allow the State and Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the State or Purchasing Entity.
- ii. The State shall not pay any amount to Contractor under this Participating Addendum unless the State issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity that is not the State, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by a Purchasing Entity that is not the State.

B. Payment Procedures

i. Invoices

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity's Order. Contractor shall not invoice the State under any Order unless the State issued that Order. Contractor shall allow 45 days for the State and Purchasing Entities to pay an invoice following the receipt of the invoice, unless the State or a Purchasing Entity specifically agrees to a shorter time in an Order. State law and regulations provide that State payments made within 45 days are not considered delinquent, and unless otherwise agreed, State Purchasing Entities will pay interest on any unpaid balance beginning on the 45th day at the rate of 1% 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 Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest rate. (§ 24-30-202(24), C.R.S., as amended.)

ii. Payment Disputes

Unless different procedures are specified in an Order, if Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the Purchasing Entity issuing the Order in writing of its dispute within 30 days following the

earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by that Purchasing Entity. The Purchasing Entity will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the Purchasing Entity's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the Purchasing Entity has concluded its review, and the Purchasing Entity shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iii. Available Funds-Contingency-Termination of Order

Purchasing Entities, except for authorized non-profit entities, are prohibited by law from making commitments beyond the term of the current Purchasing Entity's Fiscal Year. Payment to Contractor beyond the current Purchasing Entity's Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (See Colorado Special Provision). 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 such funding continuing to be made available for payment. Orders under this Participating Addendum 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 Participating Addendum, the Purchasing Entity may, upon written notice, terminate the Order, in whole or in part, without incurring further liability. The Purchasing Entity however; shall remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination of Order. A State Purchasing Entity Order termination shall otherwise be treated as if the Order was terminated in the public interest as described in §3.D. of this Exhibit A.

The Purchasing Entity may effect such termination by giving Contractor a written notice of termination, to the Contractor's primary contact in accordance with §5 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 30 days prior to the day of non-availability of funds, and shall notify Contractor of any anticipated termination.

iv. Discount and Delinquency Period

Any applicable cash discount period or delinquency period for the amounts shown on an invoice shall begin on the date the Purchasing Entity's approves of the invoice, or from the date of receipt of acceptable Goods or Services at the specified destination by an authorized Purchasing Entity representative, whichever is later.

7. PAYMENTS TO STATE

A. Administrative Fees

- i. Each State Fiscal Year quarter, Contractor shall, using a form as directed by the State, calculate an Administrative Fee equal to 1% of the total sales made under Orders during that State Fiscal Year quarter. Contractor shall pay the State the Administrative Fee for each State Fiscal Year quarter within 45 days following the end of that State Fiscal Year quarter.

- ii. Contractor shall remit all administrative fees to the State's primary contact identified in §5 of the Participating Addendum and with the payee as "State of Colorado."

8. 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's primary contact identified in §5 of this Participating Addendum 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 summary volume report that 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 of all items purchased by each type of Purchasing Entity minus the total spent for that type of Purchasing Entity.
 - d. The total paid with a procurement card or credit card for each Purchasing Entity under this Participating Addendum.
 - e. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.
 - f. The amount of the total administrative fee due to the State.
 - g. 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 to whom the sale was made;
 - 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, and the unit price for the item; and
 - 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 Purchasing Entities as requested by the State. The Contractor shall provide all such additional reports within 30 Business Days following the State's request for that information, unless the State agrees to a longer period in writing.

C. Environmentally Preferable Product Reporting

Upon request by the State, the Contractor shall provide detailed reporting on environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, which are purchased or made available under this Participating Addendum. The State and the Contractor shall agree upon the scope and detail of such reports. 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 in writing.

D. 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 Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, 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 identified in §5 of the Participating Addendum .

E. Performance Outside the State of Colorado or the United States, §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 in accordance with §5 of the Participating Addendum and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, 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, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records") performed by the Contractor and any Subcontractors, that are required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 3 years after the date this Participating Addendum expires or is terminated, **(ii)** final payment under this Participating Addendum is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Participating Addendum using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Participating Addendum or the Work, whether the audit is conducted by Contractor or a third party.

E. Periodic Business Reviews

- i. The State may schedule periodic business reviews to review Contractor's performance under this Participating Addendum.
- ii. Contractor shall ensure personnel assigned to the Participating Addendum are available for these meetings with the State as scheduled by the State.
- iii. Contractor's primary contact designated in §5 of this the Participating Addendum shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide, if applicable, for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract. Contractor shall immediately forward any request or demand for State Records to the State's primary contact as identified in §5 of the Participating Addendum.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Participating Addendum. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Participating Addendum, and that the nondisclosure provisions

are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Participating Addendum, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns nor Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures

and practices consistent with §§24-73-101 *et seq.*, C.R.S.

11. 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 obligations of Contractor under this Participating Addendum. 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 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.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Participating Addendum, even the appearance of a conflict of interest shall 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 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 concerning the actual or apparent conflict constitutes a breach of this Participating Addendum.

- D. Contractor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Contract. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Contractor employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Contractor shall provide a disclosure statement as described in §11.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Contract. Contractor may also be subject to such penalties as are allowed by law.

12. INSURANCE

Contractor shall obtain and/or maintain, and ensure that each Subcontractor shall obtain and/or maintain, insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for goods or Services or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. Insurance companies approved by the State shall issue all insurance policies required by this Participating Addendum.

A. Workers' Compensation

Workers' Compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment. Insurance must stay in place and in effect even if the contract terms expires, until all product or terms of the contract are completed and satisfied up to 120 days after

contract term expires.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$2,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, data breach management exposure, and loss of income or extra expense as a result of actual breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering damages caused by an error, omission or negligent act in association with this Participating Addendum, with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors. The requirement for Additional Insured status shall be met with production of a blanket endorsement.

H. Primacy of Coverage

The coverages required of Contractor and each Subcontractor in items B, and C shall be primary

over any insurance or self-insurance program carried by Contractor or the State.

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days' prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §5 of the Participating Addendum within 7 days of Contractor's receipt of such notice.

J. Subrogation Waiver

With the exception of Crime Insurance, all insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Participating Addendum shall include that each carrier shall waive rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers. The requirement for Waiver of Subrogation status may be met with production of blanket endorsements.

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Participating Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Participating Addendum, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Participating Addendum within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following Contractor's execution of the subcontract. Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence of compliance with the provisions of this §12.

13. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion in order to protect the public interest of the State, 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 this Participating Addendum; or if Contractor is debarred or suspended

under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

14. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum and fails to cure such breach, the State, following the notice and cure period set forth in §13, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum or at law. 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 any.

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 under §3.D.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of 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 neither the State nor any Purchasing Entity shall be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

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

c. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, at the option of and as approved by the State or Purchasing Entity (i) secure that right to use such Work for the State, Purchasing Entity and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the Purchasing Entity.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in §13 and the dispute resolution process in §15 shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

C. Purchasing Entity's Remedies

- i.** If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that Order, all remedies listed in §14.A.ii above, all remedies listed here in §14.C and all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.
- ii.** If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.
- iii. Payments and Damages**
 - a.** Notwithstanding anything to the contrary, Purchasing Entities shall only pay Contractor for accepted Work received as of the date of termination. A Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary until Contractor corrects its Work or to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the Purchasing Entity in procuring from third parties replacement Work as cover.
 - b.** Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages.

A Purchasing Entity may deny payment to Contractor for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

15. DISPUTE RESOLUTION

A. Order Disputes, Termination and Resolution

- i.** If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §5 of the Participating Addendum. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contract of any Order.
- ii.** A Purchasing Entity may terminate an Order if it determines that Contractor was in breach of that Order. Termination of an Order shall not terminate any other Order or this Participating Addendum.

- iii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

B. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum which cannot be resolved by the designated Participating Addendum primary contacts, as identified in §5 of the Participating Addendum, or through a dispute on an Order 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.

C. Resolution of Controversies arising under this Participating Addendum

If the initial resolution described in §15.B. fails to resolve the dispute within ten (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 as described in in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 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 and 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.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the Purchasing Entity and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product under an Order. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the Purchasing Entity to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the Purchasing Entity, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the Purchasing Entity a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create

derivative works of the Work Product created under that Purchasing Entity's Order and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The Purchasing Entity may assign and license its rights under this license.

ii. Patents

In addition, Contractor grants to the Purchasing Entity (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product created under an Order. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the Purchasing Entity.

iii. Assignments and Assistance

Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses, and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Participating Addendum, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Participating Addendum without the prior written consent of the State. Upon termination of this Participating Addendum for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

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

17. OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT

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 Purchasing Entities 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 appropriate Purchasing Entity all of Contractor's rights, title, and interest in and to such terminated orders. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the appropriate Purchasing Entity has an interest. At the State or Purchasing Entity's request, Contractor shall return materials owned by the Purchasing Entity that Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the appropriate Purchasing Entity at the State or Purchasing Entity's request.

18. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

19. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Participating Addendum are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Participating Addendum.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Participating Addendum shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Participating Addendum.

C. Binding Effect

Except as otherwise provided in §19.A., all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Participating Addendum and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Participating Addendum are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Participating Addendum to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. 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 the same agreement.

G. Entire Understanding

This Participating Addendum represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Participating Addendum. Prior or contemporaneous additions, deletions, or other changes to this Participating Addendum shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

J. 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 Participating Addendum, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

K. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Participating Addendum to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Participating Addendum.

L. 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, if the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of this Participating Addendum.

M. Survival of Certain Contract Terms

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

N. 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 §§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. Contractor shall honor any tax exemption that any Purchasing Entity has, and shall not charge any Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

O. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in §19.A, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

P. 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.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Participating Addendum and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. 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.

S. Licenses, Permits, and Other Authorizations

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Participating Addendum, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Participating Addendum, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Participating Addendum.

T. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Participating Addendum.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 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 Indemnified Parties, 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 §10.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Contractor under this Contract (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor’s obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or Contractor’s subsidiaries or affiliates; **(b)** specified by Contractor to work with the IP Deliverables; **(c)** reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or **(d)** is reasonably expected to be used in combination with the IP Deliverables.

U. Accessibility

i. Contractor shall comply with: 1) the Work Product provided under this Contract 2) all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by the Office Of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S. and 3) all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

ii. Contractor shall indemnify, save, and hold harmless the state, its employees, agents and

assignees (collectively, the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor’s failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

- iii. The State may require Contractor’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Contractor’s Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State’s Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 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. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

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 an agent or employee of the State. 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 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. Contractor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this Contract. 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 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, JURISDICTION, AND VENUE

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference that conflict with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION

State or other public funds payable under this Contract 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 Contract 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 Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§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 Contract. 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 AND ERRONEOUS PAYMENTS. §§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. The State may also recover, at the State's

discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

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 Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(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 Department 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 Department 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 Contract 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 Contractor **(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.

EXHIBIT B, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

1. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
- B. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. Information Technology is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
 - i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;
 - ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
 - iii. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
- C. Contractor shall, and shall cause its Subcontractors to meet all of the following:
 - i. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
 - ii. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - iii. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - iv. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - v. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State’s Office of Information Security (“OIS”).
 - vi. Comply with all rules, policies, procedures, and standards issued by the Governor’s Office of Information Technology (“OIT”), including change management, project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at www.oit.state.co.us/about/policies.
- D. Subject to Contractor’s reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting

and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.

- E. Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its respective employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be deemed current.
- i. Upon request, Contractor shall provide notice to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
 - ii. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

2. DATA HANDLING

- A. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- B. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- C. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State data.
- i. This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
 - ii. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.

- D. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract.

3. DELIVERY AND ACCEPTANCE

- A. Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.
- B. Contractor's delivery of any Work or Deliverables to the State shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.
- C. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. Such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor's gross negligence or willful misconduct.

4. WARRANTY

- A. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
- B. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the State to ascertain the feasibility, risks, and impacts of each recommendation. The State's remedy for such defect or material non-conformity shall be:
- i. Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or

- ii. Contractor shall refund to the State all amounts paid for such Work or Deliverable, as well as pay to the State any additional amounts reasonably necessary for the State to procure alternative goods or services of substantially equivalent capability, function, and performance.
- C. Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.

5. COMPLIANCE

- A. In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with, to the extent applicable to Contractor's Services:
 - i. All Colorado Office of Information Security (OIS) policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5 and posted at <http://oit.state.co.us/ois>
 - ii. All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:
 - a. Health Information Portability and Accountability Act (HIPAA)
 - b. IRS Publication 1075
 - c. Payment Card Industry Data Security Standard (PCI-DSS)
 - d. FBI Criminal Justice Information Service Security Addendum
 - e. CMS Minimum Acceptable Risk Standards for Exchanges
 - f. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration
 - iii. Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. Contractor shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.
- B. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include:
 - i. An annual SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by OIS; or

- ii. The performance of security audit and penetration tests, as requested by OIS.
- D. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application level risk assessments, and other security assessment activities as required by this Contract or reasonably requested by OIS. Contractor will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the State. The State will work with Contractor and OIS to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and OIS will consider such requests in accordance with their policies and procedures referenced herein.

6. TRANSITION OF SERVICES

Upon request by the State prior to expiration or earlier termination of this Contract or any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State or any successor provider and shall promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Contract.

7. LICENSE OR USE AUDIT RIGHTS

- A. To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
- B. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.
- C. If upon receipt of the State's Audit Certification, the Parties reasonably determine that: **(i)** the State's use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Contract ("Overuse") and **(ii)** the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.

ATTACHMENT B.1 TO EXHIBIT B – IRS PUBLICATION 1075**I. PERFORMANCE**

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

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

II. CRIMINAL/CIVIL SANCTIONS:

- 1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against

the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- 2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
- 3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

III. INSPECTION:

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

ATTACHMENT B.2 – HIPAA BUSINESS ASSOCIATE ADDENDUM

This **Exhibit B.2 – HIPAA Business Associate Addendum** (“Addendum”) is part of that certain contract, CMS # 177476 (“Contract”), by and between Sharp Electronics Corporation (“Contractor”) and the State of Colorado (“State”). In the event of a conflict or inconsistency between the Contract and its Exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified in §8 of the main body of the Contract. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Contract and its Exhibits. For purposes of this Addendum, the State is referred to as “Covered Entity” or “CE” and Contractor is referred to as “Associate.” Unless the context clearly requires a distinction between the Contract document and this Addendum, all references herein to “the Contract” or “this Contract” include this Addendum.

RECITALS

- A.** CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B.** CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 USC §1320d-1320d-8 (“HIPAA”) as amended by the American Recovery and Reinvestment Act of 2009 (“ARRA”)/HITECH Act (PL 111-005), and its implementing regulations promulgated by the US Department of Health and Human Services, 45 CFR Parts 160, 162, and 164 (the “HIPAA Rules”) and other applicable laws, as amended.
- C.** As part of the HIPAA Rules, the CE is required to enter into a written contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, §§ 160.103, 164.502(e), and 164.504(e) of the Code of Federal Regulations (“CFR”) and contained in this Addendum.

The parties agree as follows:

1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Rules at 45 CFR Parts 160, 162, and 164, as amended. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the provisions of this Contract, the HIPAA Rules shall control. Where the provisions of this Contract differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Contract shall control.
- b. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: **(i)** that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- c. “Protected Information” shall mean PHI provided by CE to Associate or created, received, maintained, or transmitted by Associate on CE’s behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment,

and health care operations, Protected Information under this Contract does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access, and amendment of Associate's PHI.

- d. "Subcontractor" shall mean a third party to whom Associate delegates a function, activity, or service that involves CE's Protected Information, in order to carry out the responsibilities of this Addendum.

2. Obligations of Associate.

- a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under this Contract and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Rules if so used by CE, except that Associate may use Protected Information: **(i)** for the proper management and administration of Associate; **(ii)** to carry out the legal responsibilities of Associate; or **(iii)** for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in **Attachment B.2** to this Addendum. Associate accepts full responsibility for any penalties incurred as a result of Associate's breach of the HIPAA Rules.
- b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Rules if disclosed by CE, except that Associate may disclose Protected Information: **(i)** in a manner permitted pursuant to this Contract; **(ii)** for the proper management and administration of Associate; **(iii)** as required by law; **(iv)** for Data Aggregation purposes for the Health Care Operations of CE; or **(v)** to report violations of law to appropriate federal or state authorities, consistent with 45 CFR §164.502(j)(1). To the extent that Associate discloses Protected Information to a third-party Subcontractor, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances through execution of a written agreement with such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that such third party will notify Associate within two (2) business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in **Attachment B.2**.
- c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Contract. Associate shall comply with the requirements of the HIPAA Security Rule at 45 CFR §§164.308, 164.310, 164.312, and 164.316. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Associate shall review, modify, and update the documentation of, its safeguards as needed to ensure continued provision of reasonable and appropriate protection of Protected Information.
- d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Contract within five (5) business days of becoming aware of such use or disclosure.

- e. Associate's Rights. If Associate uses one or more Subcontractors or agents to provide services under the Contract, and such Subcontractors or agents receive or have access to Protected Information, each Subcontractor or agent shall sign an agreement with Associate containing the same provisions as this Addendum and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from such Subcontractors or agents in the event of any violation of such Subcontractor or agent agreement. The agreement between Associate and the Subcontractor or agent shall ensure that the Subcontractor or agent agrees to at least the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.
- f. Access to Protected Information. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate shall make Protected Information maintained by Associate or its agents or Subcontractors in such Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the HIPAA Rules, including, but not limited to, 45 CFR §164.524. If such Protected Information is maintained by Associate in an electronic form or format, Associate must make such Protected Information available to CE in a mutually agreed upon electronic form or format.
- g. Amendment of PHI. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate or its agents or Subcontractors shall make such Protected Information available to CE for amendment within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, and shall incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the HIPAA Rules, including, but not limited to, 45 CFR §164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or Subcontractors, Associate must notify CE in writing within five (5) business days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or Subcontractors shall be the responsibility of CE.
- h. Accounting Rights. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate and its agents or Subcontractors shall make available to CE within ten (10) business days of notice by CE, the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the HIPAA Rules, including, but not limited to, 45 CFR §164.528. In the event that the request for an accounting is delivered directly to Associate or its agents or Subcontractors, Associate shall within five (5) business days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.
- i. Governmental Access to Records. Associate shall keep records and make its internal practices, books, and records relating to the use and disclosure of Protected Information available to the Secretary of the US Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of

- determining CE's or Associate's compliance with the HIPAA Rules. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary when the Secretary is investigating CE. Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of Associate's policies, procedures, or practices to determine whether Associate is complying with the HIPAA Rules, and permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including Protected Information, that are pertinent to ascertaining compliance.
- j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use, and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Rules including, but not limited to 45 CFR §§164.502(b) and 164.514(d).
- k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to Protected Information.
- l. Retention of Protected Information. Except upon termination of the Contract as provided in Section 4(d) of this Addendum, Associate and its Subcontractors or agents shall retain all Protected Information throughout the term of this Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.
- m. Associate's Insurance. Associate shall maintain insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Contract (e.g. occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
- n. Notice of Privacy Practices. Associate shall be responsible for reviewing CE's Notice of Privacy Practices, available on CE's external website, to determine any requirements applicable to Associate per this Contract.
- o. Notification of Breach. During the term of this Contract, Associate shall notify CE within two (2) business days of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall not initiate notification to affected individuals per the HIPAA Rules without prior notification and approval of CE. Information provided to CE shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed during the breach. Associate shall take **(i)** prompt corrective action to cure any such deficiencies and **(ii)** any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- p. Audits, Inspection, and Enforcement. Within ten (10) business days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies, and procedures

relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: **(i)** Associate and CE shall mutually agree in advance upon the scope, timing, and location of such an inspection; and **(ii)** CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's **(i)** failure to detect or **(ii)** detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract.

- q. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of Protected Information transmitted pursuant to the Contract, in accordance with the standards and requirements of the HIPPA Rules.
- r. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 CFR §164.522, Associate will restrict the use or disclosure of an individual's Protected Information. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of CE.

- a. Safeguards During Transmission. CE shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of Protected Information transmitted pursuant to the Contract, in accordance with the standards and requirements of the HIPAA Rules.
- b. Notice of Changes. CE maintains a copy of its Notice of Privacy Practices on its website. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent that it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of PHI, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR §164.522.

4. Termination.

- a. Material Breach. In addition to any other provisions on the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of this Contract and shall provide grounds for immediate termination of this Contract by CE pursuant to the provisions of the Contract covering termination for cause, if any. If the Contract contains no express provisions regarding termination for cause, the following terms and conditions shall apply:

- (1) Default. If Associate refuses or fails to timely perform any of the provisions of this

Contract, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Contract. Associate shall continue performance of this Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

- (2) Associate's Duties. Notwithstanding termination of this Contract, and subject to any directions from CE, Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.
 - (3) Compensation. Payment for completed supplies delivered and accepted by CE shall be at the Contract Price. In the event of a material breach under paragraph 4a, CE may withhold amounts due Associate as CE deems necessary to protect CE against loss from third-party claims of improper use or disclosure and to reimburse CE for the excess costs incurred in procuring similar goods and services elsewhere.
 - (4) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this Contract had been terminated for convenience, as described in this Contract.
- b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract pursuant to Section 4(a), then CE shall take reasonable steps to cure such breach or end such violation. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either **(i)** terminate the Contract, if feasible or **(ii)** if termination of this Contract is not feasible, CE shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services. If Associate knows of a pattern of activity or practice of a Subcontractor or agent that constitutes a material breach or violation of the Subcontractor's or agent's obligations under the written agreement between Associate and the Subcontractor or agent, Associate shall take reasonable steps to cure such breach or end such violation, if feasible.
- c. Judicial or Administrative Proceedings. Either party may terminate the Contract, effective immediately, if **(i)** the other party is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or other security or privacy laws or **(ii)** a finding or stipulation that the other party has violated any standard or requirement of the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- d. Effect of Termination.
- (1) Except as provided in paragraph (2) of this subsection, upon termination of this Contract, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.

- (2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d), and 2(e) of this Addendum to such Protected Information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Injunctive Relief. CE shall have the right to injunctive and other equitable and legal relief against Associate or any of its Subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this Contract or applicable law.

6. No Waiver of Immunity. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq. or the Federal Tort Claims Act, 28 USC §2671 et seq. as applicable, as now in effect or hereafter amended.

7. Limitation of Liability. Any limitation of Associate's liability in the Contract shall be inapplicable to the terms and conditions of this Addendum.

8. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Contract or the HIPAA Rules will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to the HIPAA Rules relating to certification of its security practices, CE or its authorized agents or contractors may, at CE's expense, examine Associate's facilities, systems, procedures, and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with the HIPAA Rules or this Addendum.

10. Amendment.

- a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules and other applicable laws relating to the confidentiality, integrity, availability, and security of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information and that it is Associate's responsibility to receive satisfactory written assurances from Associate's Subcontractors and agents. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Rules or other applicable laws. CE may terminate this Contract upon thirty (30) days' written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section, or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules.

- b. Amendment of Attachment B.2. Attachment B.2 may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any Subcontractors, employees, or agents assisting Associate in the performance of its obligations under the Contract, available to CE, at no cost to CE up to a maximum of thirty (30) hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of the HIPAA Rules or other laws relating to security and privacy or PHI, except where Associate or its Subcontractor, employee, or agent is a named adverse party.

12. No Third-Party Beneficiaries. Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. Together, the Contract and this Addendum shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules. The parties agree that any ambiguity in this Contract shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. This Contract supersedes and replaces any previous separately executed HIPAA addendum between the parties.

14. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate’s obligations under Section 4(d) (“Effect of Termination”) and Section 12 (“No Third-Party Beneficiaries”) shall survive termination of this Contract and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate. This Addendum shall remain in effect during the term of the Contract including any extensions.

15. Representatives and Notice.

- a. Representatives. For the purpose of the Contract, the individuals identified elsewhere in this Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties’ respective representatives for purposes of this Contract. Either party may from time to time designate in writing new or substitute representatives.
- b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

State/Covered Entity Representative

Contractor/Business Associate Representative

Name: _____

Name: _____

Title: _____

Title: _____

Department and Division: _____

Department and Division: _____

Address: _____

Address: _____

ATTACHMENT B.3 – HIPAA BAA ATTACHMENT

This **Attachment B.3 – HIPAA BAA Attachment** is part of that certain contract, CMS # 177476 (“Contract”), by and between Sharp Electronics Corporation (“Contractor”) and the State of Colorado acting by and through the Governor’s Office of Information Technology (“State” or “OIT”). In the event of a conflict or inconsistency between the Contract and its Exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified in §8 of the main body of the Contract. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Contract and its Exhibits.

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the Contract, and is effective as of the Effective Date of the Contract (the “Attachment Effective Date”). This Attachment may be amended from time to time.

1. Additional Permitted Uses. In addition to those purposes set forth in the Addendum, Associate may use Protected Information as follows: N/A
2. Additional Permitted Disclosures. In addition to those purposes set forth in the Addendum, Associate may disclose Protected Information as follows: N/A
3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract: Refer to Exhibit C of the Master Agreement
4. Receipt. Associate’s receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows, and Associate’s obligations under the Addendum shall commence with respect to such PHI upon such receipt: Ongoing throughout life of contract
5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: N/A
6. Additional Terms. [This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.] N/A

ATTACHMENT B.4 – FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICES SECURITY ADDENDUM

Traditionally, law enforcement and other criminal justice agencies have been responsible for the confidentiality of their information. Accordingly, until mid-1999, the Code of Federal Regulations Title 28, Part 20, subpart C, and the National Crime Information Center (NCIC) policy paper approved December 6, 1982, required that the management and exchange of criminal justice information be performed by a criminal justice agency or, in certain circumstances, by a noncriminal justice agency under the management control of a criminal justice agency.

In light of the increasing desire of governmental agencies to contract with private entities to perform administration of criminal justice functions, the FBI sought and obtained approval from the United States Department of Justice (DOJ) to permit such privatization of traditional law enforcement functions under certain controlled circumstances. In the Federal Register of May 10, 1999, the FBI published a Notice of Proposed Rulemaking, announcing as follows:

1. Access to CHRI [Criminal History Record Information] and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized. In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management

Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to properly perform services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

Consistent with such intent, Title 28 of the Code of Federal Regulations (C.F.R.) was amended to read:

§ 20.33 Dissemination of criminal history record information.

- a) Criminal history record information contained in the Interstate Identification Index (III) System and the Fingerprint Identification Records System (FIRS) may be made available:
 - 1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies.
 - 2) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and
 - 3) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

This Security Addendum, appended to and incorporated by reference in a government-private sector contract entered into for such purpose, is intended to insure that the benefits of privatization are not attained with any accompanying degradation in the security of the national system of criminal records accessed by the contracting private party. This Security Addendum addresses both concerns for personal integrity and electronic security which have been addressed in previously executed user agreements and management control agreements.

A government agency may privatize functions traditionally performed by criminal justice agencies (or noncriminal justice agencies acting under a management control agreement), subject to the terms of this Security Addendum. If privatized, access by a private contractor's personnel to NCIC data and other CJIS information is restricted to only that necessary to perform the privatized tasks consistent with the government agency's function and the focus of the contract. If privatized the contractor may not access, modify, use or disseminate such data in any manner not expressly authorized by the government agency in consultation with the FBI.

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CHS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information."

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1. Definitions

- 1.1.** Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.
- 1.2.** Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

2. Responsibilities of the Contracting Government Agency

- 2.1.** The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CHS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).

3. Responsibilities of the Contractor

- 3.1.** The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

4. Security Violations

- 4.1.** The CGA must report security violations to the CHS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.
- 4.2.** Security violations can justify termination of the appended agreement.

- 4.3.** Upon notification, the FBI reserves the right to:
- a.** Investigate or decline to investigate any report of unauthorized use;
 - b.** Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CJA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5. Audit

- 5.1.** The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6. Scope and Authority

- 6.1.** This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.
- 6.2.** The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.
- 6.3.** The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CHS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.
- 6.4.** This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.
- 6.5.** All notices and correspondence shall be forwarded by First Class mail to:

Assistant Director
Criminal Justice Information Services Division, FBI
1000 Customer Hollow Road
Clarksburg, West Virginia 26306

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

CERTIFICATION

I hereby certify that I am familiar with the contents of (1) the Security Addendum, including its legal authority and purpose; (2) the NCIC Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

Printed Name/Signature of Contractor Employee

Date

Printed Name/Signature of Contractor Representative

Date

Organization and Title of Contractor Representative

Date

EXHIBIT C, STATEMENT OF WORK

1. GOODS AND/OR SERVICES

Contractor shall provide Goods and Services per §4, Statement of Work, of the Master Agreement, contract #140603, or as otherwise indicated in §3, State Modifications to Master Agreement and Applicability, of the Participating Addendum.

2. OTHER PROJECT REQUIREMENTS

A. Delivery of Goods and Performance of Services

- i. Contractor shall provide all Goods and perform all Services described in each Order.
- ii. Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. All Goods shall be free on board (“F.O.B.”) destination to the location specified in the Order.
- iii. If a good in an Order is out of stock, Contractor may only provide a substitute good if it has notified the Purchasing Entity for that Order, in writing, that the good is out of stock and has received the Purchasing Entity’s approval to provide the substitute good. Purchasing Entities may request additional information comparing the substitute good with the original good in the Purchasing Entity’s sole discretion.

B. Additional Terms

Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form, including, without limitation, terms regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Participating Addendum or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish receipt of Goods or completion of Services and shall not make any term of that form enforceable.

EXHIBIT D, PRICE LISTS

1. Contractor has been awarded the following categories:

- Group A – MFD, A3
- Group B – MFD, A4
- Group C – Production Equipment
- Group D – Single-function Printers
- Group F – Scanners
- Managed Print Services (MPS)

2. The price lists are located on the State’s dedicated contract website, and are incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the Lead State and shall be effective when published on the dedicated state website.

3. Pricing

The price lists contain Ceiling Prices. Contractor may offer lower prices to Purchasing Entities, and Purchasing Entities may negotiate lower prices with Contractor, without the review or approval of the State. Contractor shall not allow an Authorized Dealer to charge an amount greater than the Ceiling Price for any Order.

ATTACHMENT 1, SHARP MASTER LEASE AGREEMENT

Sharp Leasing USA Corp.

Master Lease Agreement



Master Lease Number:	Customer's Federal Tax ID#:
Customer Name (exact registered name if a corporation, LLC or LP):	Customer's Address (principal place of business):
Customer's d/b/a (if any):	Customer's Main Business Phone Number:

In this Master Lease Agreement, as it may be amended from time to time (the "**Master Agreement**"), the words "**You**" and "**Your**" mean the Customer named above. "**We**," "**Us**" and "**Our**" mean Sharp Leasing USA Corporation ("**SLUSA**"). "**Schedule**" means a document, in the form attached hereto as **Exhibit A** or such other form as We may accept in Our sole discretion, to be entered into between You and Us for each individual transaction entered into between You and Us pursuant to this Master Agreement. "**Sharp**" means Sharp Electronics Corporation (either directly or through one of its branch dealers), the supplier of the Equipment to You. ***This Master Agreement, each Schedule, the NASPO ValuePoint Master Agreement, and the State of Colorado Participating Addendum, and any other approved documents executed or delivered by Us in connection herewith and therewith represent the final and only agreement between You and Us regarding the subject matter herein and therein and shall supersede any other oral or written agreements between You and Us. This Master Agreement can be changed only by a written agreement between You and Us. Other agreements not stated herein (including, without limitation, those contained in any purchase agreement or other agreement between You and Sharp) are not binding on Us.*** This Master Agreement and each Schedule may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. You acknowledge that You have received a copy of this Master Agreement and agree that a facsimile or other copy containing Your faxed or copied signature shall be as enforceable as the original executed Master Agreement. You hereby represent that this Master Agreement is legally binding and enforceable against You in accordance with its terms.

1. LEASE OF EQUIPMENT - GENERAL. Each Schedule executed by You (and to be executed by You in the future) represents your agreement to lease from Us the personal property listed therein (together with all existing and future accessories, attachments, replacements, additions and embedded software, the "**Equipment**"), upon the terms stated in such Schedule and this Master Agreement, the terms and conditions of which are incorporated by reference into the Schedule (collectively, a "**Lease**"). Each Schedule, including the terms and conditions incorporated therein by reference, shall be considered a separate and independent Lease. If the Equipment includes any software, You agree that (i) We don't own the software, (ii) You are responsible for entering into any necessary software license agreements with the owners or licensors of such software, (iii) You shall comply with the terms of all such agreements, if any, and (iv) any default by You under any such agreements shall also constitute a default by You under this Master Agreement and the related Schedule. The initial term of each Lease will begin on a date designated by Us after We accept it (the "**Commencement Date**") and will continue for the number of months shown on such Schedule ("**Initial Term**"). You promise to pay to Us the periodic payments shown on each Schedule in accordance with the payment schedule set forth therein, plus all other amounts stated herein and therein. Each Schedule is binding on You as of the date You sign it. After You sign a Schedule, We may (i) insert the Schedule or contract number thereon and any other information missing in such Schedule. (ii) lease payment may be adjusted downward if the actual cost of the equipment is less than the original estimate provided to the Lessee.

2. NON-CANCELABLE TERM; AUTOMATIC RENEWAL. As used herein, "**Present Term**" means the term presently in effect at any time with respect to a Lease, whether it is the Initial Term or a Renewal Term (as defined below). With respect to each Lease, **You shall notify Us in writing at least 30 days before the end of the Present Term (the "Notice Period") that You intend to return the Equipment at the end of such Present**

Term or enter into a Renewal Term, per the terms and conditions outlined in the NASPO ValuePoint Master Agreement. Should you choose to renew the Lease, **then** the payment amount and other terms of such Lease will continue to apply. If You do notify Us in writing within the Notice Period that You intend to return the Equipment at the end of the Present Term, then, promptly upon the expiration of such Present Term, You shall return the Equipment pursuant to Section 13 below. **Each Lease is non-cancelable during the Initial Term and any Renewal Term.**

3. UNCONDITIONAL OBLIGATIONS. With respect to each Lease, You agree that: (a) **We are a separate and independent company from Sharp, the manufacturer and any other vendor (collectively, "Vendors"), and the Vendors are NOT Our agents;** (b) **no statement, representation or warranty by any Vendor is binding on Us, and no Vendor has authority to waive or alter any term of this Master Agreement or any Schedule;** (c) **You, not We, selected all Equipment and the Vendors based on Your own judgment;** (d) **Your duty to perform Your obligations under this Master Agreement and each Schedule is unconditional and irrevocable despite any failure of any Equipment, the existence of any law restricting the use of any Equipment, or any other adverse condition;** (e) **if You are a party to any maintenance, service, supplies or other contract with any Vendor, We are NOT a party thereto, such contract is NOT part of this Master Agreement or any Schedule (even though We may, as a convenience to You and a Vendor, bill and collect monies owed by You to such Vendor), We have no obligations to You under such contract, and no breach by any Vendor will excuse You from performing Your obligations to Us under this Master Agreement or any Schedule;** and (f) **if the Equipment is unsatisfactory or if any Vendor fails to provide any service or fulfill any other obligation to You.**

4. PAYMENTS. The payments due pursuant to each Schedule, plus applicable taxes and other charges provided for herein and in the Schedule, shall be due and payable by 45 days after the receipt of Our invoice.. The payments due under a Schedule may include additional copy charges at the "Overage Copy Charge" rate specified in the Schedule for copies in excess of the Monthly Copy Allowance provided in the Schedule. You agree to (a) provide Us or Sharp by telephone or facsimile with the actual meter readings whenever You are requested to do so, (b) allow Us or Sharp to attach an automatic meter reading device to the Equipment, which meter reading device You will not remove or alter without approval from Us or Sharp, and/or (c) give Us or Sharp access to the Equipment to obtain meter readings or audit the meter reading device. If We or Sharp request You to provide meter readings and You fail to do so within 7 days of the date of such request, then (i) the number of copies used by You may be estimated by Us or Sharp and We will invoice You accordingly, and (ii) We will adjust the estimated charge for excess copies upon receipt of actual meter readings. Restrictive endorsements on checks will not be binding on Us. All payments received will be applied to past due amounts and to the current amount due in such order as We determine. Any security deposit or estimated future Governmental Charge (as defined in Section 10 below) that You pay with respect to a Lease is non-interest bearing, may be commingled with Our funds, may be applied by Us at any time to past-due amounts, and the unused portion will be returned to You within 90 days after the end of this Lease. If We do not receive a payment within forty-five (45) days of the due date, You shall pay (i) a fee equal to 1% per month of the outstanding balance. If any check is dishonored, You shall pay Us a fee of \$20.00.

5. RESERVED.

6. NO WARRANTIES. WE ARE LEASING ALL EQUIPMENT TO YOU "AS IS". **We have not made and we hereby disclaim any and all warranties, express or implied, arising by applicable law or otherwise, including without limitation, the implied warranties of merchantability and fitness for a particular purpose.** We hereby transfer to You, **without recourse to Us**, all automatically transferable warranties, if any, made to Us by the Vendor(s) of the Equipment. You agree that each Lease is a "finance lease" under the Uniform Commercial Code (the "**UCC**") unless otherwise expressly stated in the related Schedule or as provided by law. To the extent permitted by law, You hereby waive any and all rights and remedies conferred upon You under UCC Sections 2A-303 and 2A-508 through 522. You may be entitled under Article 2A of the UCC to the promises and warranties (if any) provided to Us by some or all of the Vendor(s) in connection with or as part of the contracts (if any) by which We acquire Equipment from such Vendor(s). You may contact such Vendor(s) for an accurate and complete statement of those promises and warranties (if any), including any disclaimers and limitations of them or of remedies. If it is determined that any Lease is a lease intended as security and/or the related Schedule grants to You a \$1.00 purchase option, then **You hereby grant to Us a security interest in the related Equipment and all proceeds thereof.** You authorize Us to record UCC financing statements to protect Our interests in the Equipment.

7. DELIVERY, LOCATION, OWNERSHIP, USE, MAINTENANCE OF EQUIPMENT. Sharp will install (and, with Our prior consent, remove) the Equipment in accordance with Sharp's service policies. Sharp, or one of their

Authorized Dealers, is responsible for all Equipment maintenance. You shall not remove any Equipment from the Equipment location specified in the related Schedule unless You first get Our permission. You shall give Us access to each Equipment location so that We may inspect the Equipment. Unless otherwise stated in the related Schedule or as provided by law, **We will own and have title to all Equipment (excluding any software) during each Lease.** You agree that all Equipment is and shall remain personal property. Without Our prior written consent, You will not permit it to become (i) attached to real property or (ii) subject to any liens or encumbrances. **You represent that all Equipment will be used solely for commercial purposes and not for personal, family or household purposes.** You shall use all Equipment in accordance with all laws, operation manuals, any service contracts and insurance requirements, and shall not make any permanent alterations to it. At Your cost, You shall keep all Equipment in good working order and warrantable condition, ordinary wear and tear excepted (“**Good Condition**”).

8. LOSS; DAMAGE; INSURANCE. With respect to each Lease, You shall, at all times during the Initial Term and any Renewal Term, (i) bear the risk of loss and damage to the Equipment and shall continue performing all Your obligations to Us even if it becomes damaged or suffers a loss, (ii) keep the Equipment insured against all risks of damage and loss (“**Property Insurance**”) in an amount equal to its replacement cost, with Us named as sole “loss payee,” and (iii) carry public liability insurance covering bodily injury and property damage (“**Liability Insurance**”) in an amount acceptable to Us, with Us named as “additional insured.” You have the choice of satisfying these insurance requirements by providing Us with satisfactory evidence of Property and Liability Insurance (“**Insurance Proof**”), within 30 days of the Commencement Date of such Lease. Such Insurance Proof must provide for at least 30 days prior written notice to Us before it may be cancelled or terminated and must contain other terms satisfactory to Us. **If you do not provide Us with Insurance Proof within 30 days of the Commencement Date of any Lease, or if such insurance terminates for any reason, then (a) You agree that We have the right, but not the obligation, to obtain such Property Insurance and/or Liability Insurance in such forms and amounts from an insurer of Our choosing in order to protect Our interests (“Other Insurance”), and (b) You agree that We may charge you a periodic charge for such Other Insurance.** This periodic charge will include reimbursement for premiums advanced by Us to purchase Other Insurance, billing and tracking fees, charges for Our processing and related fees associated with the Other Insurance, and a finance charge of up to 18% per annum (or the maximum rate allowed by law, if less) on any advances We make for premiums, (collectively, the “**Insurance Charge**”). We and/or one or more of our affiliates and/or agents may receive a portion of the Insurance Charge, **which may include a profit.** We are not obligated to obtain, and may cancel, Other Insurance at any time without notice to You. Any Other Insurance need **not** name You as an insured or protect Your interests. The Insurance Charge may be higher than the amount You would pay if You obtained Property and Liability Insurance on Your own.

9. ASSIGNMENT. You shall not sell, transfer, assign or otherwise encumber (collectively, “**Transfer**”) this Master Agreement or any Schedule, or Transfer or sublease any Equipment, in whole or in part. We may, upon prior written notice to You, Transfer Our interests in any Equipment and/or this Master Agreement or any Schedule, in whole or in part, to a third party (“**New Owner**”), and if so, the New Owner will, to the extent of the Transfer, have all of Our rights and benefits but will not have to perform Our obligations (if any). You agree not to assert against the New Owner any claim or defense You may have against Us or any predecessor in interest.

10. TAXES AND OTHER FEES. You are responsible for all applicable taxes (including, without limitation, sales and personal property taxes, and excluding only taxes based on Our income), levies, assessments, license and registration fees and other governmental charges relating to this Master Agreement, each Schedule and/or the related Equipment (collectively “**Governmental Charges**”). You authorize Us to pay any Governmental Charges as they become due, and You agree to reimburse Us for the full amount.

11. SAVINGS CLAUSE. If any amount charged or collected under this Master Agreement or any Lease is greater than the amount allowed by law, including, without limitation, any amount that exceeds applicable usury limits (an “**Excess Amount**”), then (i) any Excess Amount charged but not yet paid will be waived by Us and (ii) any Excess Amount collected will be refunded to You or applied to any other amount then due hereunder.

12. DEFAULT. With respect to each Lease, You will be in default if You (1) fail to pay any amount due within 45 days of the due date, (2) breach or attempt to breach any other term, representation or covenant set forth herein, the related Schedule or in any other agreement between You and Us, (3) die (if You are an individual), go out of business or commence dissolution proceedings, (4) become insolvent, admit Your inability to pay Your debts, make an assignment for the benefit of Your creditors (or enter into a similar arrangement), file (or there is filed against You) a bankruptcy, reorganization or similar proceeding or a proceeding for the appointment of a receiver, trustee or liquidator, or (5) suffer an adverse change in Your financial condition and, as a result thereof or for any other reason, We deem Ourselves insecure. If You default, We may do any or all of the following with respect to

any one or more Schedules: (A) cancel the related Lease, (B) require You to return the Equipment pursuant to Section 13 below, (C) take possession of and/or render the Equipment (including any software) unusable, and for such purposes You hereby authorize Us and Our designees to enter Your premises, with or without prior notice , (D) require You to pay to Us, on demand, an amount equal to the sum of (i) all payments and other amounts then due and past due, (ii) **all remaining payments for the remainder of the then Present Term thereof** discounted at a rate of 6% per annum, (and (iii) all other amounts that may thereafter become due hereunder to the extent that We will be obligated to collect and pay such amounts to a third party (such amounts specified in sub-clauses "i" through "iv" referred to below as the "**Balance Due**"), and/or (E) exercise any other remedy available to Us under law.

13. RETURN OF EQUIPMENT. If You are required to return any Equipment pursuant to the terms hereof, You shall, at Our expense, promptly send the Equipment to a location(s) designated by Us. The Equipment must be received in Good Condition (as defined in Section 7). If the Equipment is not received within 30 days of the date of demand, You agree to continue paying the scheduled payments and all other amounts due pursuant to the related Schedule until it is received by Us.

14. APPLICABLE LAW; VENUE; JURISDICTION. Each Lease shall be deemed to be performed in Denver, Colorado . **This Lease shall be governed by the laws of the State of Colorado, but without regard to Colorado's choice-of-law laws. All legal actions relating to this Lease shall be filed and adjudicated exclusively in a state or federal court located in Denver, Colorado. You hereby agree not to object to such venue, and You consent to personal jurisdiction in such courts. You and We hereby waive Your and Our respective rights to a trial by jury in any legal action.** Each provision hereof shall be interpreted to the maximum extent possible to be enforceable under applicable law. If any provision is construed to be unenforceable, such provision shall be ineffective only to the extent of such unenforceability without invalidating the remainder hereof.

DO NOT SIGN THIS CONTRACT BEFORE YOU READ AND UNDERSTAND IT. PLEASE SEEK LEGAL COUNSEL BEFORE SIGNING IF YOU HAVE QUESTIONS.

Customer: By: X _____ Date: ____ / ____ / ____ Print name: _____ Title: _____	Accepted by Sharp Leasing USA Corp. , Mahwah, New Jersey By: _____ Acceptance Date: ____ / ____ / ____ (to be filled in by Sharp Leasing USA Corp.)
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ATTACHMENT 2, SHARP SERVICE MAINTENANCE AGREEMENT



SHARP NATIONAL ACCOUNT PROGRAM

SNAP FULL SERVICE MAINTENANCE AGREEMENT

Sharp Electronics Corporation ("Sharp") agrees with the undersigned customer ("Customer") to provide maintenance service for the Sharp brand equipment and accessories described on the attached Schedule(s) ("Equipment") subject to the terms and conditions set forth on the reverse side hereof.

CUSTOMER:

CustomerName: _____
Address: _____
City: _____
State: _____ Zip: _____
Person to Contact: _____
Tel.: _____
Email: _____

SEND INVOICE TO:

Name: _____
Address: _____
City: _____
State: _____ Zip: _____
Person to Contact: _____
Tel.: _____
Email: _____

AGREED TO BY:

CUSTOMER

BY: _____
PRINTEDNAME: _____
TITLE: _____
DATE: _____

SHARP ELECTRONICS CORPORATION

BY: _____
PRINTEDNAME: _____
TITLE: _____
DATE: _____

1. MAINTENANCE AGREEMENT

If any term or condition in this Service Maintenance Agreement conflicts with the terms or conditions in the NASPO ValuePoint Master Agreement ("Master Agreement") or the Sharp Participating Addendum with the State of Colorado ("Participating Addendum"), then the NASPO ValuePoint Master Agreement and/or the Sharp Participating Addendum with the State of Colorado, shall govern and control.

During the term hereof Sharp will arrange for a designated Sharp Authorized Dealer ("Dealer") or Sharp Business Systems ("SBS") to repair or replace, in accordance with the terms and conditions of this Agreement, any part of the Equipment that causes the Equipment to not perform in accordance with published operating specifications under operating conditions of normal wear and tear.

Equipment eligible for coverage under this Agreement, and added under separate schedules from time to time, must be currently under warranty or to be renewed under a current Maintenance Agreement with the Dealer or SBS Equipment that is not under warranty or a renewal of an existing Maintenance Agreement will be subject to inspection and repair to manufacturer operating specifications prior to acceptance under this Agreement. Equipment over five (5) years old may be subject to decline for acceptance under this Agreement or for coverage at additional charge, per the Master Agreement. Replacement parts will be furnished on an exchange basis and will be new, reconditioned or used; all parts removed due to replacement will become the property of the Dealer or SBS. Maintenance services provided by the Dealer or SBS under this Agreement do not include the following:

- a) Repairs resulting from accident or misuse by the Customer (including without limitation improper voltage or the use of supplies that do not conform to the manufacturer's specifications).
- b) Repairs made necessary by service performed by person(s) other than the Dealer or SBS.
- c) Additional service calls or work that the Customer requests to be performed outside regular business hours.
- d) Relocation, rebuilding or remanufacturing of the equipment.
- d) Provision or replacement of consumable supplies such as paper, toner, and developer or staples (unless included on the front side of this Agreement).

2. PERFORMANCE OF MAINTENANCE SERVICES

Maintenance services as described in Paragraph 1 hereof will be provided at the Customer's place of business where the Equipment is located, indicated on the Schedule attached hereto, Monday through Friday except holidays during the hours 8:00 AM to 5:00 PM. Preventative maintenance for the Equipment will be provided as determined by the Dealer or SBS.

Remedial maintenance will be provided after notification by the Customer that the Equipment is inoperative. The response time for an emergency service call should average four (4) hour response time, 96% of the time. Calls for non-emergency situations and some outlying areas will usually be handled the next business day.

3. LIMITATIONS

Sharp and its Dealer or SBS shall not be liable for non-performance caused by circumstances beyond its control, including, but not limited to: work stoppages, fire, civil disobedience, riots and acts of God. In no event will Sharp or its Dealer or SBS be liable for any indirect, special or consequential damages arising out of this Agreement or services provided under this Agreement.

4. TERM AND TERMINATION

This Agreement will become effective as of the effective date indicated on the face hereof upon acceptance by Sharp and continue in effect for each unit of Equipment until the expiration of the time or copy limit indicated on the face hereof.

5. ASSIGNMENT

This Agreement is not assignable. Any attempt to assign or transfer any of the rights, duties or obligations hereof is void.

6. HEADINGS

The headings and titles of this Agreement are inserted only for convenience and shall not affect the interpretation of this Agreement.

7. WAIVER

Any failure by either party to require conformity to all provisions hereof shall not be deemed a waiver of future conformity to such provisions.

8. GOVERNING LAW

This Agreement shall be governed by, and construed according to, the domestic laws of the state in which the Equipment is located.

9. ENTIRE AGREEMENT

The foregoing terms and conditions and those contained in the Master Agreement and Participating Addendum, constitute the entire agreement between Sharp and Customer with respect to its subject. This Agreement may be amended only by written instrument executed by both parties.

10. NOTICE

Written notice required by this Agreement shall be addressed to the parties at the addresses indicated on the face hereof or such other addresses as either party shall have previously furnished from time to time in writing to the other.