

**PARTICIPATING ADDENDUM**  
**NASPO ValuePoint**  
**Body Armor and Ballistic Resistant Products**  
Administered by the State of **Colorado** (hereinafter "Lead State")

MASTER AGREEMENT  
**GH Armor Systems, Inc.**  
Master Agreement No: **164713**  
(hereinafter "Contractor")

And

**State of Tennessee – Tennessee Wildlife Resources Agency (TWRA)**  
(hereinafter "Participating State/Entity") – The PA is intended only for the TWRA. It is not for a State-wide agreement. All references to the TWRA in the clauses herein shall be referred to as Entity or Agency

1. **Scope:** This addendum covers the **Body Armor and Ballistic Resistant Products** led by the State of **Colorado** for use by state agencies and other entities located in the Participating State/Entity authorized by that state's statutes to utilize state/entity contracts with the prior approval of the State's Chief Procurement Official.
  
2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state/entity contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
  
3. **Participating State/Entity Modifications or Additions to Master Agreement:**  
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Participating State/Entity to check one box.

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

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

This Participating Addendum with Tennessee State specific terms and conditions are attached below as Attachment 1 and if conflict, take precedence over the NASPO Value Point Master Agreement Number 164713 terms and conditions.

**Master Agreement 164713 Section 4.1 Overview is modified to add the following language as 4.1.5.:**

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Additionally, Contractor or Distributor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services or Goods provided or Contractor's or Distributor's performance under this Participating Addendum, which has been filed in any court or administrative agency, shall deliver copies of such document to the State's Contract Administrator, or the Central Procurement Officer's Chief Procurement Officer.

4. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor: GH Armor Systems, Inc.

Name	Chris Grado, VP/General Manager
Address	1 Sentry Drive, P.O. Box 280 Dover, TN 37058
Telephone	(606) 219-5159
E-mail	cgrado@gharmor.com

Participating Entity: Tennessee Wildlife Resources Agency (TWRA)

Name	Nickki Davis, Contract Administrator
Address	5107 Edmondson Pike, Nashville, TN 37211
Telephone	615-781-6603
Fax	NA
E-mail	Nickki.Davis@tn.gov

**Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Participating Addendum shall be in writing and shall be made by certified, first-class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to

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the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

5. **Subcontractors:** All GH Armor Systems, Inc. Distributors authorized in the State of Tennessee, as shown on the dedicated GH Armor Systems, Inc. NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's Distributor's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
6. **Orders:** Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.
7. Attachment 1, Additional Terms and Conditions are hereby included in the Participating Addendum.

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

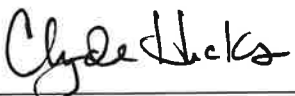

Participating State: <b>State of Tennessee,</b>	Contractor: <b>GH Armor Systems, Inc.</b>
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<b>Tennessee Wildlife Resources Agency (TWRA)</b>	
By: 	By: 
Name: <b>CLYDE HICKS</b>	Name: Chris Grado
Title: <b>Chief Procurement Officer</b>	Title: VP/General Manager
Date: <b>JUNE 12, 2023</b>	Date: 6/11/23

[Additional signatures as required by Participating State]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint	
Cooperative Development Coordinator	Abigail Chittenden, CPPB
Telephone	463-278-0250
E-mail	<a href="mailto:AChittenden@naspo.org">AChittenden@naspo.org</a>

[Please email fully executed PDF copy of this document to [PA@naspo.valuepoint.org](mailto:PA@naspo.valuepoint.org) to support documentation of participation and posting in appropriate data bases]

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**Attachment 1**

State of Tennessee  
("State," "Participating Entity," or "Purchasing Entity")

NASPO ValuePoint, GH Armor Systems, Inc.

Additional Terms and Conditions

**1. Section 1 -- Background Information**

1.1. This Participating Addendum is for the provision of body armor and tactical supplies through GH Armor Systems, Inc. for the State of Tennessee, Tennessee Wildlife Resources Agency

**2. Section 2 -- Standard Terms of the Participating Addendum**

2.1. Contractor Registration. Pursuant to Tenn. Code Ann. § 4-56-105 all contractors must be registered prior to the issuance of a contract or a purchase order. Contractors can register online at the State of Tennessee Supplier Portal:

[https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP\\_GUEST](https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST)

2.2. Performance. All Goods or Services are subject to inspection and evaluation by the State as set out in the Master Agreement 4.5.15.

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2.3. Tax Exemption. The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in Contractor’s prices. The successful Contractor shall pay all taxes lawfully imposed on it with respect to any Goods or Services delivered in accordance with this Participating Addendum.

2.4. Pricing. The pricing shall be as set forth in the Master Agreement No. 164713.

2.5. RESERVED.

2.6. Department of Revenue Registration. Contractor must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Contractor provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of this Participating Addendum. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: <https://tntap.tn.gov/eservices/#1>

**3. SCOPE:**

3.1. Goods or services and deliverables as required, described, and detailed as covered under the Master Agreement (MA).

**4. TERM OF CONTRACT:**

4.1. Term of Contract.

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4.1.1. Participating Addendum runs concurrently with the term of the Master Agreement (MA). In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) Months and zero (0) days.

5. **PAYMENT TERMS AND CONDITIONS:**

5.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Participating Addendum exceed Two Hundred Fifty Thousand Dollars and zero cents (\$250,000.00) ("Maximum Liability"). This Participating Addendum does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Participating Addendum. Subject to the terms and conditions of this Participating Addendum, the Contractor will only be paid for goods or services provided under this Participating Addendum after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

5.2. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

5.3. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Participating Addendum. Contractor shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services

a) Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);

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2. Invoice date;
  3. Contract number (assigned by the State);
  4. Purchase order number (assigned by the State);
  5. Customer account name: The State of Tennessee;
  6. Customer account number (assigned by the Contractor to the above-referenced Customer);
  7. Contractor name;
  8. Contractor Tennessee Edison supplier ID number;
  9. Contractor contact for invoice questions (name, phone, or email);
  10. Contractor remittance address;
  11. Description of delivered Goods or Services provided and invoiced, including identifying information as applicable;
  12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
  13. Applicable payment methodology of each good or service invoiced;
  14. Amount due for each compensable unit of good or service; and
  15. Total amount due for the invoice period.
- b) Contractor's invoices shall:
1. Only include charges for Goods delivered or Services provided as described in this Participating Addendum and in accordance with payment terms and conditions set forth in this Participating Addendum;
  2. Only be submitted for Goods delivered or Services completed and shall not include any charge for future Goods to be delivered or Services to be performed;
  3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
  4. Include shipping or delivery charges only as authorized in this Participating Addendum.



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The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

5.4. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

5.5. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Participating Addendum, to not constitute proper compensation for goods delivered or services provided.

5.6. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

5.7. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Participating Addendum until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

- a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the

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State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

- b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

6. MANDATORY TERMS AND CONDITIONS:

6.1. **RESERVED.**

6.2. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver Goods or provide Services.

6.3. **RESERVED.**

6.4. **Required Approvals.** The State is not bound by this Participating Addendum until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Participating Addendum, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

6.5. **RESERVED**

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6.6. **Modification and Amendment.** This Participating Addendum may be modified only by a written amendment signed by all parties and approved by all applicable State officials.

6.7. **Subject to Funds Availability.** The Participating Addendum is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Participating Addendum upon written notice to the Contractor. The State's exercise of its right to terminate this Participating Addendum shall not constitute a breach of Participating Addendum by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Participating Addendum. If the State terminates this Participating Addendum due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Participating Addendum due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

6.8. **Termination for Convenience.** The State may terminate this Participating Addendum for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for

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convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

**6.9. Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Participating Addendum ("Breach Condition"), the State shall have the right to immediately terminate the Participating Addendum and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Participating Addendum.

**6.10. Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Participating Addendum.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

**6.11. Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Participating Addendum or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

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6.12. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Participating Addendum, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Participating Addendum.

- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Participating Addendum and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Participating Addendum. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at:

[https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-](https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html)

[information-.html](https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html), semi-annually during the Term. If the Contractor is a party to more than one Participating Addendum with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b) Prior to the use of any subcontractor in the performance of this Participating Addendum, and semi- annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Participating Addendum and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Participating Addendum. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

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- c) The Contractor shall maintain records for all personnel used in the performance of this Participating Addendum. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e) For purposes of this Participating Addendum, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Participating Addendum.

**6.13. Records.** The Contractor shall maintain documentation for all charges under this Participating Addendum. The books, records, and documents of the Contractor, for work performed or money received under this Participating Addendum, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

**6.14. Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Participating Addendum, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

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6.15. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.

6.16. **Strict Performance.** Failure by any Party to this Participating Addendum to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Participating Addendum shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Participating Addendum shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

6.17. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting entities. Nothing in this Participating Addendum shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.

6.18. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

6.19. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Participating Addendum. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any

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indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Participating Addendum or otherwise. Notwithstanding anything else herein, the State's total liability under this Participating Addendum (including without limitation any exhibits, schedules, amendments or other attachments to the Participating Addendum) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

**6.20. Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Participating Addendum shall be limited to an amount equal to two (2) times the Maximum Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Participating Addendum or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for:

(i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Participating Addendum providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**6.21. Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any



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person acting for or on its or their behalf relating to this Participating Addendum. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**6.22. HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable requirements in the course of this Participating Addendum.
- b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Participating Addendum so that both parties will be in compliance with the Privacy Rules.
- c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Participating Addendum is

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NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

**6.23. Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Participating Addendum to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Participating Addendum is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

**6.24. Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Participating Addendum.

**6.25. Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b) have not within a three (3) year period preceding this Participating Addendum been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d) have not within a three (3) year period preceding this Participating Addendum had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

6.26. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources,

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workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Participating Addendum. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Participating Addendum arising from a Force Majeure Event is not a default under this Participating Addendum or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Participating Addendum is not a Force Majeure Event under this Participating Addendum. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Participating Addendum or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Participating Addendum or charge the State any fees other than those provided for in this Participating Addendum as the result of a Force Majeure Event.

**6.27. State and Federal Compliance.** The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Participating Addendum.

**6.28. Governing Law.** This Participating Addendum shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under

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this Participating Addendum. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Participating Addendum shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 408.

6.29. **Entire Agreement.** This Participating Addendum is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Participating Addendum supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.

6.30. **Severability.** If any terms and conditions of this Participating Addendum are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Participating Addendum shall not be affected and shall remain in full force and effect. The terms and conditions of this Participating Addendum are severable.

6.31. **Headings.** Section headings of this Participating Addendum are for reference purposes only and shall not be construed as part of this Participating Addendum.

6.32. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Participating Addendum. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

6.33. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of Goods or Services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

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6.34. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section

shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Participating Addendum.

6.35. **Boycott of Israel.** The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Participating Addendum, engage in a Boycott of Israel, as that term is defined in Public Chapter No. 775.

**7. SPECIAL TERMS AND CONDITIONS:**

7.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Participating Addendum, the special terms and conditions shall be subordinate to the Participating Addendum's other terms and conditions.

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7.2. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Participating Addendum.

7.3. **State Ownership of Goods.** The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Participating Addendum including full rights to use the goods and transfer title in the goods to any third parties.

7.4. **Product Recall Procedures.** The Contractor shall provide recall notification, regardless of level, warranty replacements, safety notices, or ANY applicable notice regarding the products being sold in writing to the State Contract Administrator and each ordering agency through the most expedient method possible within fifteen (15) calendar days. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number and disposition instructions.

The Contractor shall pick up, test, destroy or return recalled products to the manufacturer at no expense to the State. The Contractor shall issue replacement of product or credit for any product removed or recalled. Each ordering agency shall have the option of accepting either product or credit in exchange for recalled/removed products.

Failure to notify the State may result in the immediate cancellation of the contract.

7.5. **Unacceptable Materials.** Contractor shall adhere to the standards established under the Master Agreement. Materials that fail to meet this standard are unacceptable to the State.

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7.6. **RESERVED.**

7.7. **Extraneous Terms and Conditions.** Contractor shall fill all orders submitted by the State under this Participating Addendum. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Participating Addendum shall contain any terms or conditions other than as set forth in the Participating Addendum. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Participating Addendum conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Participating Addendum and constitute an act of bad faith by Contractor.