

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
FOR BREAST PUMPS (WSCA/WIC) AND RELATED ACCESSORIES
Administered by the State of Washington (hereinafter "Lead State")
MASTER PRICE AGREEMENT
Medela, Inc.
(Hereinafter "Contractor")
State of Washington Contract Number: 01910
and
State of Colorado
(Hereinafter "Participating State")**

This Participating Addendum ("Addendum") is made between the **State of Colorado**, acting by and through the State Purchasing Office, Colorado Department of Personnel and Administration (the "Participating State") and **Medela, Inc.** ("Contractor"). This Participating Addendum (or "Addendum") adds the **State of Colorado** as a participating state to the Statewide Master Service Agreement for Equipment, Contract Number **01910** (the "Master Price Agreement").

1. **Scope:** This Addendum covers the use of the Master Price Agreement by State Agencies, as defined in Exhibit A attached hereto, and other entities located in the Participating State authorized by that State's statutes to utilize the Participating State's contracts. The award to Contractor in the Master Price Agreement, is for **all categories and for all states** (entities) authorized to use the Master Price Agreement. The purchase of services is not permitted under this Addendum.
2. **Participation:** Use of specific WSCA cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives and also including Women, Infants & Children ("WIC") Programs) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participating are solely within the authority of the State Chief Procurement Official.
3. **Participating State Modifications or Additions to Master Price Agreement:** These modifications or additions apply only to actions and relationships within the executing Participating State and are addressed in **Exhibit A** incorporated herein and attached hereto.
4. **Lease Agreements:** **Lease Agreements Are NOT Authorized By This Addendum.**
5. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Lead State Contract Administrator

Name: Melissa Cox, Contracts Specialist
Address: Department of General Administration, Office of State Procurement
210 11th Ave SW Rm 201
Olympia, WA 98504-1101
Voice: (360) 902.7439
Fax: (360) 586.2426
E-mail: mcox@ga.wa.gov

Contractor

Name: Bonnie Voigt, Supervisor, Government Contracts
Address: Medela, Inc.
1101 Corporate Drive
McHenry, IL 60050-7005
Voice: (815) 578.2459

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CMS #30815

Fax: (815) 759.2459
E-mail: bonnie.voigt@medela.com

Participating State

Contact: Jim Walker, State Purchasing Agent
State Entity: State Purchasing Office
Address: 633 17th Street, Suite 1520
City, State, Zip: Denver, CO 80202
Phone: (303) 866-2328
Fax: (303) 866-6016
Email : jim.walker@state.co.us

6. Subcontractors: **Servicing subcontractors are permitted under this Addendum.**
7. Price Agreement Number: All purchase orders issued by purchasing entities within the jurisdiction of this Addendum shall include the Participating State Contract Number: **46578YYY01M/WSCA** and the Master Price Agreement Number: **01910**.

This Participating Addendum and the Master Price Agreement, together with their respective exhibits and attachments, set forth the entire agreement between the parties with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with their respective exhibits and attachments, shall not be added to or incorporated into this Addendum or the Master Price Agreement or their respective exhibits and attachments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and their respective exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

8. Compliance With Reporting Requirements of the "American Recovery and Reinvestment Act of 2009 ("ARRA"): If or when Contractor is notified by an Ordering Entity that a specific purchase or purchases are being made with ARRA funds, Contractor shall comply with the data element and reporting requirements as currently defined in Federal Register Vol. 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). An Ordering Entity is responsible for informing Contractor as soon as the Ordering Entity is aware that ARRA funds are being used for a purchase or purchases. Contractor shall provide the required report to the Ordering Entity with the invoice presented to the Ordering Entity for payment. Contractor, as it relates to purchases under this Addendum, is not a subcontractor, but simply a provider of goods and related services.

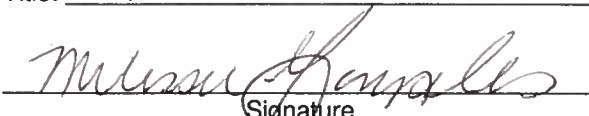
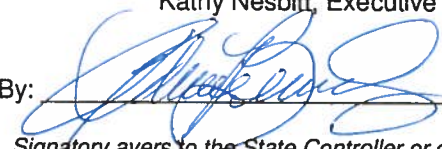
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CMS #30815

**THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM AS OF THE DATES SET FORTH NEXT
TO THEIR RESPECTIVE NAMES.**

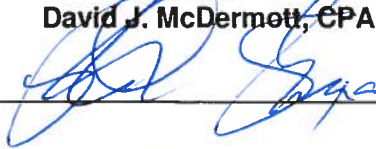
Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Participating State is relying on their representations to that effect.

<p align="center">CONTRACTOR Medela, Inc.</p> <p>By: <u>Melissa Gonzales</u></p> <p>Title: <u>VP, Professional Business</u></p> <p> Signature</p> <p>Date: <u>May 11, 2011</u></p>	<p align="center">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Department of Personnel and Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director</p> <p>By: </p> <p><i>Signatory avers to the State Controller or delegate that Contractor has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</i></p> <p>Date: <u>5/19/11</u></p>
	<p align="center">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Addendum is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: 

Date: 12-19-2011

STATE OF COLORADO
Exhibit A
with
Medela, Inc.

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1. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

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

2. DEFINITIONS

A. Defined Terms

The following terms as used herein shall be construed and interpreted as follows:

- i. **"Equipment"** means manual and electric breast pumps, double pumping kits, equipment, supplies and accessories and is synonymous with "goods" and shall refer to any category of Equipment not specifically excluded under §6.2.11 of the IFB.
- ii. **"IFB"** means Invitation for Bid, IFB01910 of the State of Washington.
- iii. **"Order"** means any purchase order, contract, or other authorized agreement used to order the Equipment priced in the Master Price Agreement. An Order amended consistent with the requirements of any State Agency or Political Subdivision shall also be governed by the Master Price Agreement.
- iv. **"Ordering Entity"** means a State Agency, a Political Subdivision, or a Registered Non-Profit Organization within the Participating State that places an Order.
- v. **"Parties"** means the Participating State and Contractor.
- vi. **"Political Subdivision"** means a political subdivision of the Participating State.
- vii. **"Registered Non-Profit Organization"** means a non-profit organization that has contacted the State Purchasing Office, met the non-profit organization eligibility of section 501(c)(3) under the Internal Revenue Code of 1986, as amended, and obtained a Colorado registered assigned number.
- viii. **"State Agency"** means any department, agency, or institution of higher education of the State of Colorado, not including Political Subdivisions
- ix. **"State Purchasing Office"** means the State Purchasing Office, Colorado Department of Personnel and Administration.

B. Other Definitions

Capitalized terms used and not otherwise defined in this **Exhibit A** shall have the meanings ascribed to them in the Addendum or the Master Price Agreement.

3. TERM AND ORDERS

A. Term

The Parties' respective performances under this Addendum shall commence on the later of the Effective Date. The term of this Addendum is set forth in the Master Price Agreement. This Addendum shall terminate on **January 17, 2013** unless sooner terminated or further extended as specified elsewhere herein. The Participating State, at its sole option, may renew the term of this Participating Addendum for four additional one (1) year terms, but the total contract term shall not exceed five (5) years and one month.

B. Orders

Orders may be placed consistent with the terms of this Addendum during the term specified in **§3(A)**.

All Orders for Equipment issued pursuant to this Addendum, at a minimum, shall include:

- i. Order date, when the Order was placed by the Ordering Entity;
- ii. A brief description of the Equipment being purchased, including item number and quantity;
- iii. The place and time of delivery;
- iv. The billing address;
- v. The complete name of the Ordering Entity, the name, phone number, and address of the Ordering Entity's representative (example for Agency designation: "Colo. Dept. of Transportation," "CDOT" is not acceptable);
- vi. The price by item and the total amount of the Order for Equipment being purchased;
- vii. The WSCA Master Price Agreement Number: **01910**;
- viii. The Participating State's Statewide Price Agreement Number: **46578YYY01M/WSCA**.

Unless otherwise agreed in writing, any Equipment ordered pursuant to this Addendum shall be delivered F.O.B. destination to the location specified in the Order. The Ordering Entity shall not be deemed to have accepted any Equipment until such Equipment has been inspected in accordance with the specifications and is accepted by the Ordering Entity. Title to Equipment shall pass to the Ordering Entity upon acceptance of delivered items.

Orders under this Addendum may be placed at any time prior to the termination hereof. All Orders must be placed prior to the expiration date of the Master Price Agreement, but may have a delivery date or performance period up to 120 days past the then-current expiration date of this Addendum. Financial obligations of State Agencies and Political Subdivisions payable after the current applicable fiscal year

are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Notwithstanding the expiration or termination of this Addendum or the Master Price Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Addendum, or otherwise inconsistent with its terms. Orders for any indefinite quantity, task order, or other form of indefinite delivery order arrangement priced under the Master Price Agreement shall not be placed after the expiration or termination of this Addendum, notwithstanding the term of any such indefinite delivery order agreement.

4. MODIFICATIONS TO MASTER PRICE AGREEMENT

The Master Price Agreement shall be modified as follows:

A. Public Records

Section 8.4 of the Master Price Agreement is deleted in its entirety and the following is inserted in lieu thereof:

"The disclosure of Contractor information by the Participating State, a State Agency or a Political Subdivision shall be governed by the Colorado Open Records Act, CRS §24-72-200.1, et seq.

B. Payment

The section entitled "6.3 Payment, Invoicing and Discounts" in the Master Price Agreement is deleted in its entirety and the following is inserted in lieu thereof: "Payments shall be submitted to Contractor at the address shown on the invoice, as long as Contractor has exercised due diligence in notifying the State of Washington and the Ordering Entity of any changes to that address. Each Ordering Entity shall use commercially reasonable efforts to fully pay each invoice within 30 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by Ordering Entity. Uncontested amounts not paid by the Ordering Entity within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the Ordering Entity separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate."

"Cash discount terms is replaced by §12, Purchase Order in this Addendum."

C. Taxes

The section entitled "6.4 Taxes, Fees and Licenses" in the Master Price Agreement is deleted in its entirety and the following is inserted in lieu thereof:

"State Agencies are tax-exempt and are not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The Participating State's tax exemption number is 98-02565. The Participating State is not liable for any taxes assessed against Contractor for franchise or related to Contractor's income. No taxes of any kind shall be charged to the Participating State. Contractor is hereby notified that when materials are purchased for the benefit of the Participating State, some Political Subdivisions require the vendor to pay sales or use taxes even though the ultimate product or service is provided to the Participating State. These sales or use taxes will not be reimbursed by the Participating State Ordering Entity, nor will any prices or rates in this Addendum be adjusted on account of such taxes.

Contractor shall accord the same tax free treatment to Political Subdivisions and Registered Non-Profit Organizations placing an Order under this Addendum to the extent that they establish like exemption from taxes.

C. Problem Resolution and Disputes

The section entitled "10.1 Problem Resolution and Disputes" in the Master Price Agreement is deleted in its entirety.

D. Alternative Dispute Resolution

The section entitled "10.4 Alternative Dispute Resolution Fees and Costs" in the Master Price Agreement is deleted in its entirety.

E. Venue

All suits or actions related to this Addendum or any Order placed hereunder shall be filed and proceedings held in the State of Colorado and exclusive venue shall be proper in the City and County of Denver.

F. Contract Termination

1. For a termination of this Addendum, all references in Section 11 "Contract Termination" in the Master Price Agreement to the "OSP" shall mean the "Participating State," "Contract" shall mean this "Addendum," "Contract Administrator" shall mean the Participating State's State Purchasing Agent and "Purchaser" shall mean "Ordering Entity."

2. The last sentence in Section 11.4 in the Master Price Agreement is deleted and replaced with "This Termination for Convenience clause may be invoked by the Participating State when it is in the best interest of the State of Colorado."

3. The reference in the Master Price Agreement to "Chapter 42.52RCW" in Section 11.6 is hereby deleted.

5. REPORTING

A. Volume Reports

The Participating State intends to use the new centralized method of volume reporting directly to WSCA/NASPO as it is proposed by WSCA/NASPO. Contractor shall furnish sales reports each calendar quarter. The reports must include:

- i. The total dollars spent by State of Colorado Agencies in conjunction with the Statewide Price Agreement,
- ii. The total estimated dollars saved by State Agencies on the Statewide Price Agreement for that period,
- iii. The total dollars spent by State Agencies in conjunction with the Statewide Price Agreement,
- iv. The total estimated dollars saved by State institutions of higher education (State universities and State colleges) on the Statewide Price Agreement for that period,
- v. The total dollars spent by Political Subdivisions in conjunction with the Statewide Price Agreement,
- vi. The total estimated dollars saved by Political Subdivisions and Registered Non-Profit Organizations on the Statewide Price Agreement.
- vii. The total dollars spent by Registered Non-Profit Organizations in conjunction with the Statewide Price Agreement;

- viii. The total estimated dollars saved by Registered Non-Profit Organizations on the Statewide Price Agreement;
- ix. The total dollars paid for with procurement card as opposed to traditional methods of payment for each category;
- x. The total dollars spent by each of these aforementioned entities on **Environmentally Preferable** products, including applicable discount savings, as such item is defined in Participating State's Environmentally Preferable Purchasing Policy.

If the foregoing requirements cannot be met by using the WSCA/NASPO reporting method, Contractor shall be required to provide Colorado specific reporting in the form set forth on the website of the Participating State Purchasing Office: <https://www.gssa.state.co.us/PriceAwd.nsf/Forms+Info+Pages?OpenView> .

Contractor also shall be required to provide a comprehensive sales history on July 15 of each year during the term of this Participating Addendum or within 15 days of request from the State Purchasing Office. The comprehensive sales reports shall set forth the date of sale, the name of the customer, the invoice number, quantity of Equipment sold, description, unit price and extended dollar amount. Failure to provide these reports shall constitute cause for cancellation of this Addendum and may disqualify Contractor from the award of future price agreements by the Participating State.

6. CONFLICTS OF INTEREST

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Addendum, even the appearance of a conflict of interest is harmful to the Participating State's interests. Absent the Participating State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Participating State hereunder. If a conflict or appearance of a conflict exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the Participating State a disclosure statement setting forth the relevant details for the Participating State's consideration. Failure to promptly submit a disclosure statement or to follow the Participating State's direction in regard to the apparent conflict constitutes a breach of this Addendum.

7. INSURANCE

Contractor and its Subcontractors, if any, shall obtain and maintain insurance as specified in this section at all times during the term of this Addendum. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the Participating State.

A. Contractor

i. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the Participating State, if requested by the Participating State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

ii. Non-Public Entities

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Addendum insurance coverage

and policies meeting the same requirements set forth in §7(B) with respect to subcontractors that are not "public entities".

B. Contractors - Subcontractors

Contractor shall require each contract with subcontractors other than those that are public entities, providing Goods or Services in connection with this Addendum, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by Participating State statute, and Employer's Liability Insurance covering all of Contractor or subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

iii. Automobile Liability

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

iv. Additional Insured

The State of Colorado and all of its agencies and institutions of higher education shall be named as additional insured on all Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any subcontractors hereunder.

v. Primacy of Coverage

Coverage required of Contractor and subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the Participating State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the Participating State in accordance with §12(B) 16 (Communication) within seven days of Contractor's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Addendum and secured and maintained by Contractor or its subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the Participating State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Contractor and all subcontractors shall provide certificates showing insurance coverage required hereunder to the Participating State within seven business days of the Effective Date of this Addendum. No later than 15 days prior to the expiration date of any such coverage, Contractor and each subcontractors shall deliver to the Participating State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the Participating State at any other time during

the term of this Addendum or any sub-contract, Contractor and each subcontractors shall, within 10 days of such request, supply to the Participating State evidence satisfactory to the Participating State of compliance with the provisions of this §7.

8. INTELLECTUAL PROPERTY

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Addendum, Contractor shall, at the Contractor's option **(a)** obtain for the Participating State or Contractor the right to use such products and services; **(b)** replace any Equipment or other product involved with non-infringing products of substantially similar functionality or modify them so that they retain substantially similar functionality but become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Equipment or products and refund the price paid therefore to the Participating State, such price to be based upon a five year straight amortization schedule.

9. GENERAL PROVISIONS

A. Modification

i. By the Parties

Except as specifically provided in this Addendum, modifications of this Addendum shall not be effective unless agreed to in writing by both parties in an amendment to this Addendum, properly executed and approved in accordance with applicable Colorado State law and Fiscal Rules. Modifications permitted under this Addendum, other than contract amendments, shall conform to the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This Addendum shall be subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Addendum on the effective date of such change, as if fully set forth herein.

B. Order of Precedence

The provisions of this Addendum shall govern the relationship of the Participating State and Contractor. In the event of conflicts or inconsistencies between this Addendum and its exhibits and attachments, including, but not limited to, those provided by Contractor, or this Addendum and the Master Price Agreement, or any PO, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Exhibit A** to this Addendum, other than §12 (Purchase Orders);
- ii. §12** (Purchase Orders) of Exhibit A to this Addendum;
- iii. This Addendum**
- iv. The Master Price Agreement**
- iv. An Order.**

10. PARTICIPATING STATE ADMINISTRATIVE FEE

The Colorado General Assembly has authorized the State Purchasing Office to collect a fee for the administration of statewide contracts. On a quarterly basis, Contractor shall return to the Participating State a fee of 1.00 % (.0100 multiplication factor) of the total sales within the Participating State by all Ordering Entities during that quarter, to assist with the cost of contract administration by the Participating State. The administration fee shall be remitted to the Participating State within **forty-five (45)** days of the end of each quarter. Fees shall be made payable to

the Colorado State Treasurer by a check submitted to the Participating State's Primary Contact identified in §4 of this Addendum, or to the Participating State's assigned replacement Contact. The quarter periods are **January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31** of any given year. Contractor shall provide a report setting forth the total sales to State Agencies and other Ordering Entities within the Participating State. The report and a check in the amount of the administration fee due and owing shall be submitted to the Participating State on or before the 45th day after the end of the quarter.

Contractor shall be permitted to adjust the pricing under the Master Price Agreement pricing to include the Participating State's administration fee by adding the fee to the Master Price Agreement price of each Equipment product on the invoice.

The Statewide Price Agreement will be "mandatory" and State Agencies subject to the Participating State's Procurement Code shall be required to satisfy requirements through the Statewide Price Agreement. Exceptions may be granted by the Director of the State Purchasing Office on application by the State Agency involved. This "mandatory" Statewide Price Agreement is not an exclusive price agreement to a specific vendor and the State of Colorado reserves the right to create multiple "mandatory" price agreements. While Political Subdivisions and Registered Non-Profit Organizations may order from this Addendum whether the agreement is designated as "mandatory" or "permissive" for such Political Subdivision or Registered Non-Profit Organization shall be at the discretion of each Political Subdivision or Non-Profit Organization.

11. ADDITIONAL TERMS AND CONDITIONS

A. Doing Business in Colorado

A vendor wanting to do business in Colorado must register with the Colorado Secretary of State in accordance with Colorado Revised Statutes (CRS) 7-90-801. A vendor must be registered to do business in Colorado within 10 business days of the IFB award notification to the apparent successful Offeror, and must obtain a rating of "good standing" status and maintain it throughout the term of the resulting contract. A copy of the business entity's Articles of Incorporation and/or Bylaws may be requested by the Participating State. Link for the Colorado Secretary of State's web site: <http://www.sos.state.co.us/>.

Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of such certification shall be a material breach by Contractor and constitutes grounds for termination of this Addendum.

B. Federal Employer Identification Number ("F.E.I.N.")

For the purpose of this §11(B), "Offeror" or "vendor" shall be deemed to be a reference to the Contractor. For the purpose of verifying the Offeror's registration to the Colorado BIDS system, the Offeror is required to provide their F.E.I.N. in their proposal. Additionally, vendors are required to submit their F.E.I.N. prior to contract, or purchase order issuance, or payment from the State of Colorado; and as directed by the Office of the State Controller. A W-9, Taxpayer Identification form provided by the Participating State may be required to be completed and submitted by the vendor.

C. Sex Offender Registry Check (CRS §16-22-110)

If in the course of doing business a Contractor's employee visits a Participating State facility that has as clients, children under the age of 21 on the premises, Contractor agrees to perform a sex offender registry check on such employee prior to the employee going to a Participating State facility. In the event a Contractor's

employee is on the registry, that employee will not be admitted to the Participating State facility. Link to access the Colorado Department of Public Safety's website: <http://cdpsweb.state.co.us/>.

12. PURCHASE ORDER

A. Definitions

For the purposes of this §12 a reference to the term:

1. "Buyer" or "buyer" shall be deemed to be a reference to an Ordering Entity;
2. "PO" shall be deemed to be a reference to an Order;
3. "Solicitation" or "solicitation" shall be deemed to be a reference to this Addendum, the Master Price Agreement and their respective exhibits and attachments; and
4. "Vendor" or "vendor" shall be deemed to be a reference to Contractor.

B. Purchase Order Terms and Conditions

The following terms and conditions shall apply to all POs issued pursuant to this Addendum.

1. Offer/Acceptance. If this purchase order ("PO") refers to vendor's bid or proposal, this PO is an ACCEPTANCE of vendor's OFFER TO SELL in accordance with the terms and conditions of the "solicitation" identified in vendor's bid or proposal. The solicitation includes an RFP, IFB, or any other form of order by buyer. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to vendor's acceptance, demonstrated by vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by buyer accepting a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included in or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof.

2. Safety Information. All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

3. Changes. Vendor shall furnish products and/or services strictly in accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by purchasing agent and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless this PO has been modified, superseded or otherwise altered in accordance with this section.

4. Delivery. Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. Buyer is relying on the promised delivery date, installation, and/or service performance set forth in vendor's bid or proposal as material and basic to buyer's acceptance. If vendor fails to deliver or perform as and when promised, buyer, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. Intellectual Property. Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by vendor in performance of its obligations under this PO shall be the exclusive property of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare

derivative works, or otherwise use the materials. Vendor shall comply with all applicable Cyber Security Policies of the State of Colorado (the "State"), or buyer, as applicable, and all confidentiality and non-disclosure agreements, security controls, and reporting requirements.

6. Quality. Buyer shall be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise specified.

7. Warranties. All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 ("CUCC"), relating to implied and/or express warranties are incorporated herein, in addition to any warranties contained in this PO or the specifications.

8. Inspection and Acceptance. Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, buyer may exercise all of its rights, including those provided in the CUCC. Buyer shall have the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this section includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to PO requirements, buyer may require vendor to perform the services again in conformity with PO requirements, without additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, buyer may (a) require vendor to take necessary action to ensure that future performance conforms to PO requirements and (b) equitably reduce the payment due vendor to reflect the reduced value of the services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.

9. Cash Discount. The cash discount period will start from the later of the date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized buyer representative.

10. Taxes. Buyer and the State are exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government sales and use taxes [CRS, Title 39, Article 26, Parts I and II]. Such exemptions apply when materials are purchased for the benefit of State, except that in certain Political Subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to buyer. Buyer shall not reimburse such sales or use taxes.

11. Payment. Buyer shall pay vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the 46th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to buyer's obligation to pay all or a portion of the amount due. Vendor shall invoice buyer separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate.

12. Vendor Offset. *[Not Applicable to Inter-governmental POs]* Under CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

13. Assignment and Successors. Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of buyer. This PO shall inure to the benefit of and be binding upon vendor and buyer and their respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to buyer.

14. Indemnification. If any article sold or delivered under this PO is covered by a patent, copyright, trademark, or application therefore, vendor shall indemnify and hold

harmless buyer from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions or judgments arising out of manufacture, sale or use of such article in violation or infringement of rights under such patent, copyright, trademark or application. If this PO is for services, vendor shall indemnify, save, and hold harmless buyer, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services under this PO.

15. Independent Contractor. Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or employee of buyer. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through buyer and buyer shall not pay for or otherwise provide such coverage for vendor or any of its agents or employees. Unemployment insurance benefits will be available to vendor and its employees and agents only if coverage is made available by vendor or a third party. Vendor shall pay when due all applicable employment, income, and local head taxes incurred pursuant to this PO. Vendor shall not have authorization, express or implied, to bind buyer to any agreement, liability or understanding, except as expressly set forth herein. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by buyer, and (c) be solely responsible for its acts and those of its employees and agents.

16. Communication. All communication concerning administration of this PO, prepared by vendor for buyer's use, shall be furnished solely to purchasing agent.

17. Compliance. Vendor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

18. Insurance. Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as specified in the solicitation, and provide proof of such coverage as requested by purchasing agent.

19. Termination Prior to Shipment. If vendor has not accepted this PO in writing, buyer may cancel this PO by written or oral notice to vendor prior to shipment of goods or commencement of services.

20. Termination for Cause. (a) If vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified herein, buyer may notify vendor in writing of non-performance and, if not corrected by vendor within the time specified in the notice, terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. (b) Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. (c) If after rejection, revocation, or other termination of vendor's right to proceed under the CUCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to termination under §21.

21. Termination in Public Interest. Buyer is entering into this PO for the purpose of carrying out the public policy of the State, as determined by its Governor, General Assembly, and Courts. If this PO ceases to further the public policy of the State, buyer, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of buyer's obligations hereunder. This section shall not apply to a termination for vendor's breach, which shall be governed by §20. Buyer shall give written notice of termination to vendor specifying the part of the PO

terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, buyer shall pay (a) reasonable settlement expenses, (b) the PO price or rate for supplies and services delivered and accepted, (c) reasonable costs of performance on unaccepted supplies and services, and (d) a reasonable profit for the unaccepted work. For existing goods, buyer shall pay (e) reasonable settlement expenses, (f) the PO price for goods delivered and accepted, (g) reasonable costs incurred in preparation for delivery of the undelivered goods, and (h) a reasonable profit for the preparatory work. Buyer's termination liability under this section shall not exceed the total PO price plus a reasonable cost for settlement expenses. Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as required by CRS §24-106-101, upon request of buyer.

22. PO Approval. This PO shall not be valid unless it is executed by purchasing agent. Buyer shall not be responsible or liable for products or services delivered or performed prior to proper execution hereof.

23. Fund Availability. Financial obligations of buyer payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. Buyer represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.

24. Governmental Immunity. No term or condition of this Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

25. Choice of Law. State laws, rules and regulations shall be applied in the interpretation, execution, and enforcement of this PO. The CUCG shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations is null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Unless otherwise specified in the solicitation or this PO, venue for any judicial or administrative action arising out of or in connection with this PO shall be in the City and County of Denver, Colorado. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against buyer.

26. Binding Arbitration Prohibited. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Addendum or incorporated herein by reference shall be null and void.

27. Public Contracts for Services. *[Not Applicable to offer, issuance, or sale of securities, investment advisory services, fund management services, sponsored projects, intergovernmental POs, or information technology services or products and services]* Vendor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this PO and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this PO, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Vendor shall not knowingly employ or contract with an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this PO. Vendor shall (a) not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants during performance of this PO, (b) notify subcontractor and buyer within

three days if vendor has actual knowledge that subcontractor is employing or contracting with an illegal alien for work under this PO, **(c)** terminate the subcontract if subcontractor does not stop employing or contracting with the illegal alien within three days of receiving notice, and **(d)** comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If vendor participates in the Department program, vendor shall deliver to the buyer a written, notarized affirmation that vendor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If vendor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., buyer may terminate this PO for breach and, if so terminated, vendor shall be liable for damages.

28. Public Contracts with Natural Persons. Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced a form of identification required by CRS §24-76.5-103 prior to the date vendor delivers goods or begins performing services under terms of the PO.