

STATE OF COLORADO – State Purchasing Office
Exhibit A
with
(SUPPLIER)

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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 (hereinafter called the “Effective Date”). The 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. RECITALS.

- A. Authority, Appropriation, and Approval.** Authority to enter into this **Addendum** exists in CRS §24-102-202, and Colorado Procurement Code R-24-102-202-01. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies of the State.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this **Addendum**.

C. **Purpose.** Contractor is authorized to provide **Vehicles** under this **Addendum**. This **Addendum** authorizes the purchase of such Goods, in accordance with the terms of Orders issued pursuant to the IFB-CM-00001-14 by eligible entities within the State of Colorado.

The State Purchasing Office has issued this **Addendum** to establish the terms for purchase of Goods priced in IFB-CM-00001-14 within the State of Colorado by State Agencies, Institutions of Higher Education, Political Subdivisions, eligible Non-Profit Organizations, and other eligible entities (including cooperatives, collectively referred to as the "Ordering Entities").

Except with respect to any Orders placed by it under this **Addendum**, the State Department of Personnel & Administration shall not be liable to the Contractor as a signatory to this **Addendum** for any breach by an Ordering Entity of any payment or other obligation herein or under any Order or contract for Goods under this **Addendum**, and the State shall not be liable to Contractor for any payment or other obligation owed by any Political Subdivision or Non-Profit Organization or other non-state authorized ordering entity.

D. **Participation.** Use of this **Addendum** by Ordering Entities that are authorized by Colorado statutes to use this **Addendum** is subject to the prior approval of the State Purchasing Office. Determination of eligibility for participation in this **Addendum** is solely within the discretion of the State Purchasing Office.

E. **References.** All references in this **Addendum** to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

3. DEFINITIONS.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in this **Addendum**. The following terms as used herein shall be construed and interpreted as follows

Acceptance. "Acceptance" means a written notice from an Ordering Entity to Contractor advising Contractor that the Vehicle has passed its Acceptance Testing. Acceptance of a Vehicle for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Vehicle, unless the Ordering Entity provides a written notice of rejection to Contractor.

Acceptance Testing. "Acceptance Testing" means the process for ascertaining that the Vehicle meets the standards set forth in IFB-CM-00001-14.

Contract. "Contract" means the integrated agreement consisting of this **Addendum**, IFB-CM-00001-14 their respective attachments, and any Orders issued in connection therewith, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

Contract Funds. "Contract Funds" means funds available for payment by the Ordering Entity to Contractor pursuant to this Contract for Orders placed by a State Agency, Institution of Higher Education, or Political Subdivision or any Ordering Entity.

Environmentally Preferable. "Environmentally Preferable" shall mean products or services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or services that serve the same purpose (CRS §24-103-207.5, May 21, 2007).

Executive Director. “Executive Director” shall mean the Executive Director of the Colorado Department of Personnel and Administration.

Evaluation. “Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in **§5 (Statement of Work) and §18 (Statewide Contract Management System)**.

Goods. “Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with Services the Contractor renders.

Institution of Higher Education. “Institution of Higher Education” means a university or college located in the State of Colorado, which is supported by the State and not subject to the jurisdiction of the State Procurement Code.

Non-Profit. “Non-Profit” means eligible entities that have 501(c)(3) status under the United States of America’s Internal Revenue Code, are recognized as “in good standing” by the Colorado Secretary of State office, and receive funding from federal, state, or local governmental sources with which to make purchases from State Price Agreement vendors. A Non-Profit eligible to utilize this Addendum must submit an annual application and be approved by the State Purchasing Office to make purchases from State Price Agreement vendors.

Order. “Order” means any purchase order, contract, or other authorized commitment voucher used by an Ordering Entity to order the Goods or Services priced in the **IFB-CM-00001-14**. An Order amended consistent with the requirements of any Ordering Entity shall also be governed by the same terms and conditions presented in this **Addendum**.

Ordering Entity. “Ordering Entity” means a Colorado State Agency in the Executive Branch of Colorado State government; other departments of the State (including the Department of Law, the State Treasurer, the Judicial Department, the Secretary of State; and the State Legislature); Institutions of Higher Education, Political Subdivisions, eligible Non-Profits, and other authorized entities (including cooperatives) that places Orders with Contractor.

Party or Parties. “Party” means the State or Contractor, and “Parties” means both the State and Contractor.

Political Subdivision. “Political Subdivision” means any Colorado governmental entity such as cities, towns, counties, and special districts such as school, fire, water, transportation, etc.

Price Agreements. “Price Agreements” are agreements with the State of Colorado providing for statewide acquisition of Goods and/or Services by “Participating Entities” as authorized by Colorado statutes. The State Purchasing Office administers Price Agreements on behalf of State Agencies and other Ordering Entities.

Review. “Review” means examining Contractor’s delivery of goods to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§5 Standard of Performance And Acceptance** and in any Order.

Services. “Services” means the services required to be performed by Contractor pursuant to this **Addendum** and an Order.

State Agencies. “State Agencies” means the departments, divisions, commissions, boards, bureaus and institutions in the executive branch of Colorado State government (which do not include the Judicial Department, Department of Law, the Secretary of State, the State Treasurer, the State Legislature, State-supported Institutions of Higher Education not governed by the State Procurement Code; Colorado Political Subdivisions or Non-Profit entities, or other non-state authorized entities).

State Purchasing Office or SPO. “State Purchasing Office” or “SPO” means the State of Colorado State Purchasing Office, Colorado Department of Personnel & Administration, Division of Finance and Procurement.

Subcontractor. “Subcontractor” means, in the event subcontracting by the Contractor is authorized, a third-party, if any, engaged by Contractor to aid in performance of its obligations under this **Addendum**.

Work. “Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this **Addendum** and each Order, including the provision of Goods and performance of Services.

Work Product. “Work Product” means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

4. TERM.

A. **Initial Term**— The Parties’ respective performances under this **Addendum** shall commence on the later of either the Effective Date or October 1, 2013. This **Addendum** shall terminate on, September 30, 2014, unless terminated sooner or further extended as specified elsewhere herein.

B. Orders.

Orders shall be placed consistent with the terms of this **Addendum** during the term specified above. Orders must be placed pursuant to this **Addendum** prior to the termination date hereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this **Addendum**. Notwithstanding the expiration or termination of this **Addendum**, the Contractor agrees to perform in accordance with the terms of any Orders outstanding at such expiration or termination. **Addendum** provisions required to implement and govern Order performance shall survive **Addendum** termination until all outstanding Orders have been completed or terminated in accordance with this **Addendum**.

B. **State’s Option to Extend.** The State may unilaterally require continued performance for a period of time at the same rates and same terms specified in the **Addendum**. If the State exercises its option(s), it shall provide written notice to Contractor at least 30 days prior to the end of the current contract term in form substantially equivalent to **Exhibit B (sample Option Letter)**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this **Addendum**. The total duration of this **Addendum**, including the exercise of any options under this clause, shall not exceed 1 year, unless authorized in writing by the State Purchasing Director.

Continuation of this **Addendum** beyond the initial term is a State prerogative and not a right of the Contractor. This prerogative shall be exercised only when such continuation is clearly in the best interest of the State.

5. Standard of Performance And Acceptance

A. **Completion.** Contractor shall complete delivery of Goods and its other obligations as described herein and in accordance with any Order issued by an Ordering Entity. The State shall not be liable to compensate Contractor for any delivery performed on an Order placed prior to the Effective Date or after the termination of this **Addendum**. Further, the State shall not be held liable to compensate Contractor for any deliveries performed on an Order placed by a non-State Ordering Entity. Additional requirements for Acceptance are contained in **Attachment A hereto**.

- B. Employees.** All persons employed by Contractor or Subcontractors to perform Work under this Addendum shall be Contractor's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Addendum.
- C. Pricing and Price Changes.** The SPO reserves the right to publish any pricing contained in **IFB-CM-00001-14** on the State Price Agreements website, currently found at <https://www.bidscolorado.com/>, for use by Ordering Entities.
- i. **Price Adjustments.**
In accordance with the this Addendum, Contractor may not pass on to Ordering Entities manufacturer's price increases or other increases in the cost of doing business. Contractor shall pass on any price decrease effectuated during the Contract period by reason of market price change. No price reduction on a Price Agreement such as this Contract may be offered to any State Ordering Entity unless that reduction is offered to all Ordering Entities.
 - ii. **Extension of Retail Price with Rebates over Contract Price.**
If the Retail Price is lower than the contract price due to promotions or discounts, the Vendor shall charge the State the Retail price. Any other instance that causes the Retail price to be lower than the contract price, the Vendor shall charge the State the Retail price.
 - iii. **Renewal of Agreement.** In the event of renewal of this **Addendum**, or any amendment of its terms (including prices), unless otherwise specified in an Order, the Contractor shall provide Goods and/or Services in accordance with the terms of the **Addendum** current at the time of the Order, and invoice the Ordering Entity at the pricing in effect at the time the Order was placed.
- D. Performance.** Contractor shall become familiar with individual Ordering Entity rules and regulations, as identified by the Ordering Entity, regarding personnel, procurement, and fiscal rules, delivery requirements, and other relevant procedures, and shall comply with any Executive Orders of the Governor of the State and any other judicial or administrative decisions regarding the State of Colorado.
- i. **Customer Service Representatives.** Contractor shall provide each Ordering Entity utilizing the **Addendum** with contact information for customer service representatives assigned to handle questions and resolve all problems that arise with any Orders. Service representatives shall be available, at a minimum, from 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday (State holidays excepted). Contractor shall also provide a list of customer service contacts to the State's principal representative identified in **§15_(Notices and Representatives)** or successor, and shall provide notice when any updates are made to this list. Customer service representatives shall be available by phone (via local or toll free number), fax, or email during the required times. Contractor shall also provide an emergency number and contact for after hours use. All customer service representatives shall have online access to account information and be able to provide a timely response to inquiries concerning the status of Orders (shipped or pending), delivery, back-orders, **Addendum** pricing, category discounts, product availability, product information, account and billing questions.
 - ii. **Subcontracting.** Subcontracting will not be allowed. Contractor is the prime contractor and shall be fully accountable to the State for assuring that it complies with the terms of this **Addendum** between the State and the Contractor.
 - iii. **PERA.** State Ordering Entities are Colorado PERA affiliated employers. In the event billable personal Services are performed by the Contractor, and pursuant to Colorado SB06-235 and CRS §24-51-1101(2), the Contractor must notify in writing (email is acceptable) the State Ordering Entity's representative listed on the Order within fifteen (15) calendar days from the date of receipt of any Order if the Services to be provided are being or will be performed by a PERA retiree (as defined at CRS §24-51-101).

- iv. **Resolution of Performance Issues.** Ordering Entities have the authority and discretion to resolve performance issues with Contractor. Contractor is required to first meet with the Ordering Entity and its purchasing office to resolve issues once an Ordering Entity has given notice of a performance issue. If resolution cannot be reached, then Contractor and the Ordering Entity should contact the SPO in writing to request assistance in reaching resolution to the satisfaction of all parties involved. Contractor's failure to provide satisfactory performance after receiving notice of a performance issue may be sufficient cause for Ordering Entities to give notice of breach to Contractor and terminate Orders they have placed. Contractor shall convey any notice a breach it receives to the SPO via email within 5 business days of receipt thereof.
- v. **Marketing Notices.** Prior to any distribution, all Contractor marketing notices and literature intended for distribution to Colorado Ordering Entities utilizing the **Addendum** must be submitted to **SPO** for advance written approval. Maintenance of mailing lists and the production and distribution of pre-approved marketing notices and literature is the Contractor's responsibility and shall be at Contractor's expense.
- vi. **Contract Management.** Contractor shall provide contract management and sales support to the State and to each Ordering Entity. Contractor shall designate a representative(s) who shall have primary responsibility for management of this **Addendum**. Contractor shall notify the State's principal representative identified in **§15 (Notices and Representatives)** or successor of any change in designated representative(s).

E. Orders. An Ordering Entity shall place Orders with Contractor for Goods and/or Services on an "as-needed" basis. Orders shall be placed consistent with the terms of IFB-CM-00001-14 and this Addendum during the term specified in **§4 (Term)** above. Each Ordering Entity shall identify and utilize its own appropriate purchasing procedure and documentation. Contractor shall not begin the order process without a valid order number. State Agencies and State-funded Institutions of Higher Education shall ensure that order process begins before a valid purchase order or contract is in place and shall comply with the purchasing requirements described in State Fiscal Rule 2-2-4 (Orders in excess of \$100,000 shall utilize a State contract and encumbrance of Contract Funds). The State of Colorado shall not be liable for payment of Orders placed by non-State Ordering Entities and Contractor shall not seek compensation from the State of Colorado for such Orders. All communications concerning administration of Orders placed shall be furnished solely to the purchasing officer within the Ordering Entity's purchasing office, or to such other individual identified in writing in the Order. All Orders for Goods and/or Services issued pursuant to this **Addendum**, at a minimum, shall include:

- i. Order date, when the Order is being placed by the Ordering Entity;
- ii. A brief description of the Goods and/or Services being purchased, including line item descriptions, item numbers, quantity ordered; quantity to be included in shipments, unit costs, rates (when applicable), and totals;
- iii. The place and requested time of delivery or performance;
- iv. The billing address;
- v. The complete name of the Ordering Entity to include the name, phone number, and address of the Ordering Entity's purchasing officer or representative ;
- vi. The State of Colorado Addendum Number: _____.

Forced Substitutions. Forced substitutions are not allowed. If an ordered Good is out of stock, the Contractor shall notify the Ordering Entity and request prior approval before substituting for the out-of-stock item. Contractor's request to substitute must explain how the substituted Good compares with the out-of-stock item. If a Good is discontinued, Contractor must provide a written substitution policy and notify the State's principal representative identified in **§15 (Notices and Representatives)**

or successor of the policy and change. Any substitution offered must remain within the scope of this **Addendum**.

F. Termination of an Order by Ordering Entities. An Ordering Entity through its designated procurement officer or other authorized representative may terminate an Order for default, which shall not terminate this **Addendum** without notice of termination from the State, and such termination shall be governed by this §5.F.

- i. **Default.** If Contractor refuses or fails to perform any of its obligations under the provisions of an Order, with such diligence as will ensure its completion within the time specified in the Order, the Ordering Entity's procurement officer may notify Contractor in writing of the non-performance. If such breach is not corrected within thirty (30) days of issuance of notice, or if, due to Contractor's actions or inactions, performance would be of no value to the Ordering Entity, the procurement officer may terminate Contractor's right to proceed with the Order or such part of the Order as to which there has been such delay or a failure to properly perform. Contractor shall continue performance of the Order to the extent it is not terminated.
- ii. **Contractor's Duties.** Notwithstanding termination of the Order, and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the Ordering Entity has an interest (if any).
- iii. **Compensation.** The Ordering Entity may withhold amounts due to Contractor as the procurement officer deems necessary to protect the Ordering Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Ordering Entity for the extra costs incurred in procuring substitute Goods and/or Services.
- iv. **Erroneous Termination for Default.** If after notice of termination of Contractor's right to proceed under the provisions of this §5.F, it is determined for any reason that Contractor was not in breach under the provisions of this section, or that the delay was excusable, the rights and obligations of the Ordering Entity and the Contractor shall be the same as if the notice of termination had been issued pursuant to the termination for the public interest section below.
- v. **Termination of an Order for the Public Interest.** Unless otherwise agreed, the procurement officer, when the interests of the Ordering Entity with the exception of non-governmental Entities, so require, may terminate any Order, in whole or in part, for the public interest of the Ordering Entity, provided only that such termination will not relieve such Ordering Entity from its obligations with respect to any Goods and/or Services already delivered to or used by such Ordering Entity. The procurement officer shall give at least thirty (30) days prior written notice of the termination to Contractor specifying the part of the Order terminated and when termination becomes effective. Termination for the public interest of all or any portion of an Order shall not constitute a breach of this **Contract** by the Ordering Entity.
 - (a) **Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination. Contractor will stop work to the extent specified. Contractor must still complete and deliver to the Ordering Entity the work not terminated (if any) by the notice of termination.
 - (b) **Compensation upon termination of an Order by an Ordering Entity.** Contractor shall be entitled to compensation as follows: Contractor shall submit a termination claim specifying the amounts due because of the termination for the public interest together with cost or pricing data bearing on such claim. Contractor shall be paid an amount which bears the same ratio to the total reimbursement under the Order as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in the Order, less payments previously made. Additionally, if a terminated Order is less than sixty (60) percent

completed, the Ordering Entity may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under such Order) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor under such Order.

6. TAXES and PAYMENTS TO CONTRACTOR.

A. Taxes and Tax Exemption Status.

The State and State Agencies are exempt from all federal excise taxes under the United States of America Internal Revenue Code (IRC) Chapter 32 (No. 84-730123K) and from all Colorado State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when Goods are purchased or Services are rendered to benefit the State. Contractor is hereby notified that when products or services are purchased for the benefit of State Ordering Entities, some Political Subdivisions (e.g., City and County of Denver) may require payment of sales or use taxes even though the product or service is provided to the State or a State Ordering Entity. These sales or use taxes will not be reimbursed by the State Ordering Entity, nor will any prices or rates in this Contract be adjusted on account of such taxes.

For the purpose of establishing this **Addendum**, the SPO's FEIN is 84-0644739, however different Ordering Entities may have their own Federal Employer Identification Numbers. The State's tax exemption number is 98-02565-0000, however, different Ordering Entities may have their own tax exemption numbers as well. The Contractor shall be responsible for requesting and obtaining each Ordering Entity's FEIN and tax exemption number and documentation at the time an Order is placed or upon Contractor's request. The State is not liable for any taxes assessed against Contractor for franchise or licensing, or related to the income of the Contractor. No taxes of any kind shall be charged to the State.

B. Payments to Contractor

An Ordering Entity issuing a valid Order shall be bound by the terms and conditions of this **Contract**, including, without limitation, the obligation to pay Contractor for Goods and/or Services in accordance with the provisions of this **§6**, using the methods set forth below.

The State of Colorado shall not be liable for payment of Orders placed by a non-State Ordering Entity nor shall the Contractor seek compensation from the State of Colorado for such Orders.

i. Invoicing/Billing. Contractor shall have an accounting and billing system and provide Ordering Entities with an invoice when purchases are made. Contractor shall invoice Ordering Entities for acceptable Goods delivered and/or Services performed and accepted by the Ordering Entity at the price listed in IFB-CM-00001-14. A statement showing transactions for a period is not an invoice, though the Contractor may provide such documents as information to the Ordering Entity on a regular basis or upon the request of the Ordering Entity. Unless otherwise specified in the Order, the Ordering Entity will pay Contractor based on submission of invoices to the Ordering Entity detailing the dates, quantity, and description of Goods delivered and/or Services performed, the billing rate, and Order number. Incorrect payments to Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments under Orders or other contracts between the Ordering Entity and the Contractor.

The terms and conditions on any invoice, statement, Contractor time sheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the State or any Ordering Entity. The Contractor's and Ordering Entities' rights and obligations shall be governed solely by the terms and conditions of this **Addendum**. Any Ordering Entity employee's signature on Contractor's forms shall be effective only to

establish receipt of Goods or Services. The Contractor shall provide a toll free number for Ordering Entity inquiries on billing problems.

- ii **Remittance.** Ordering Entities will remit payments by mail or as otherwise agreed by Contractor and such Ordering Entity. The Ordering Entity shall send payments to Contractor at the address shown on the invoice if it is the same address recorded in this **Addendum** or subsequently provided to SPO in writing. **Contractor** must provide notice within 5 business days of a change to the SPO in writing (email is acceptable) in the event the remittance information changes.
- iii **Payment By State Ordering Entities ; Interest.** State law and regulations provide that the State will pay vendors within forty-five **(45) days after** receipt of an invoice for products or services provided by a vendor and previously accepted by a State Ordering Entity, unless otherwise agreed to by special conditions specified in the Order. A State Ordering Entity liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, the State Ordering Entity will pay interest on the unpaid balance beginning on the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full, provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Contractor shall invoice State Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid, and the applicable interest date. (Section 24-30-202(24), C.R.S., as amended.)
- iv. **Payment By Colorado Political Subdivisions, Non-Profits, or Other Authorized Entities:** For Orders placed by non-State Ordering Entities (Political Subdivisions, Non-Profits, or other authorized entities), terms for Payment shall be specified in the written Orders. Contractor shall invoice non-State Ordering Entities directly. Ordering Entities generally remit payment in a timely manner within forty-five (45) days of invoice; however, it is the Contractor's responsibility to confirm all payment terms with each non-State Ordering Entity at the time an Order is placed.
- v. **Maximum Amount.** State Ordering Entities shall place Orders with the Contractor using a purchase order or state contract as required by State law and regulations. All other Ordering Entities shall place Orders with a purchase order or other contracting document acceptable to the Contractor. The maximum amount payable by the Ordering Entity under this **Addendum** shall be determined by the amount of Orders placed and other contracting documents. No Contract Funds will be encumbered by the State Department of Personnel & Administration against this **Addendum** unless an Order is placed by that agency. Ordering Entities shall state the maximum amount available for the purchase of Goods and/or Services under each Order.
- vi. **Advance, Interim and Final Payments.** Any advance payment allowed under any Order issued by a State Agency against this **Addendum** shall comply with State Fiscal Rules and be made in accordance with the provisions of this **Addendum** and such Order .Other Ordering Entities may have their own fiscal procedures regarding advance payments, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.
- vii. **Available Funds-Contingency-Termination.** State Ordering Entities are prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, **§20** hereof. If federal funds are used to fund Work ordered by State Ordering Entities under this **Addendum**, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such Contract Funds. State Ordering Entities shall only make payments for Work ordered by a State Ordering Entity under this **Addendum** from available State Ordering Entity Contract Funds that have been encumbered for that Work, and the State Ordering Entity's liability for such payments shall be limited to the amount remaining of such encumbered Contract Funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund any Work ordered

by a State Ordering Entity under this **Addendum**, the State Ordering Entity may terminate the Order immediately, in whole or in part, without further liability in accordance with the provisions hereof.

A Colorado Political Subdivision Ordering Entity, may have its own fiscal requirements regarding available funds for payment of Orders, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.

viii. Erroneous Payments. At the State's sole discretion, State Ordering Entity payments made to the Contractor in error for any reason, including, but not limited to, omission, error, fraud, or defalcation, overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction (set-off) from subsequent payments under this **Addendum** or other contracts, grants or agreements between the State and Contractor or by other appropriate methods, or collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

Non-State Ordering Entities may have their own fiscal requirements regarding erroneous payments, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.

ix. Discount/Delinquency Period. Any applicable cash discount period or delinquency period shall start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable Goods or Services at the specified destination by an authorized Ordering Entity representative; whichever is later.

7. REPORTING – NOTIFICATION.

Reports, Evaluations, and Reviews required under this **§7** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§18 (Statewide Contract Management System)**, as applicable. Contractor's failure to provide these reports shall constitute cause for cancellation of this **Addendum** and may disqualify Contractor from the award of future awards by the State.

A. Volume Reports. The State intends to use the centralized method of volume reporting. Contractor shall furnish sales/volume reports 15 days after the end of each calendar quarter. 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 must provide SPO a report detailing the total sales to all Ordering Entities within the State each reporting period. The Volume detail report, for the quarter being reported, shall contain the following: identify the date of sale, Ordering Entity name, the items purchased, quantity, unit price, extended cost (quantity x unit price), list price per unit, extended list cost (quantity x list price /unit), and savings (extended cost minus extended list cost). Additionally, Contractor must provide a summarized report in a form substantially equivalent to **Exhibit B (sample Summary Volume Report)** attached hereto and incorporated herein; and in a format requested by the SPO such as an Excel spreadsheet. Reports to be sent via email to the Primary Contact identified in **§15 (Notices and Representatives)** or assigned successor. Specifically, the reports must include:

- i. Total Sales Dollars: Total spent by each Ordering Entity group (State Agencies (SA), Institutions of Higher Education (HE), other State entities that are not SAs (SE), Political Subdivisions (PS), and eligible Non-Profit organizations (NP) as a result of this **Addendum** every quarter. Then total spent by all groups.
- ii. Total Regular (List) Cost of Total Sales: Total of the extended list cost by each entity group for SA, HE, SE, PS, and NP. Then total cost for all groups.

- iii. Total Estimated Cost Savings: Total estimated cost savings (total sales minus extended list cost = savings) by each entity group for SA, HE, SE, PS, and NP. Then total savings for all groups.
- iv. Total Paid by Procurement Card: If applicable, total sales made by a procurement “credit” card by each entity group for SA, HE and SE. Then totaled for all groups.
- v. Total Green Sales: Total Green sales, meaning sale of *Environmentally Preferable Products*, by each entity group for SA, HE, SE, PS, and NP. Then total EPP sales for all groups. (Environmentally Preferable Products, including applicable discount savings, as such are defined in the State’s Environmentally Preferable Purchasing Policy. *Note*: in most cases, “Green” products have been third party registered or certified as such by EPA, NFP, Energy Star, LEED, etc.)

Any modifications made to the volume report requirements will be a collaborative effort between the Contractor and the State. The sales information needs of the State, however, shall be the primary factor considered in determining any permitted modification of reporting requirements.

On a quarterly basis, the State shall assist the Contractor in identifying the Ordering Entity as a SA, HE, SE, PS, or NP. Once identified, the Contractor shall make adjustments to the customer’s account profile. In the event a quarterly report submitted by the Contractor contains discrepancies, when notified by the State, the Contractor shall make necessary modifications and resubmit reports in a timely manner, as needed.

Additional Reports. Contractor also shall provide a comprehensive sales history at the end of each calendar year of this **Addendum** or within 15 days of request from the State Purchasing Office. The comprehensive sales reports shall set forth, at a minimum, the name of each Ordering Entity, the Orders placed, the quantity of Goods and/or Services purchased, a description of the Goods and/or Services, the unit price or hourly rate charged, the extended dollar amount spent, and the overall total amount spent for the period.

If requested, Contractor also shall provide detailed reports of the type described above to any Ordering Entity under this **Addendum**.

- B. Litigation Reporting.** Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this **Addendum** or which may affect Contractor’s ability to perform its obligations hereunder, Contractor shall notify the SPO in writing (email is preferable) of such action and deliver copies of such pleadings to the State’s principal representative as identified in **§15**. If the State’s principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the State Department of Personnel & Administration.
- C. Noncompliance.** Contractor’s failure to provide reports and notify the State in a timely manner in accordance with this **§7** may result in the delay of payment of State funds and/or termination as provided under this **Addendum**.
- D. Mandatory or Permissive Agreement.** This Addendum shall be a “**mandatory**” **Price Agreement** and State Agencies subject to the State’s Procurement Code shall be required to satisfy requirements through this **Addendum**. Exceptions may be granted by the Director of the State Purchasing Office upon 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 for Vehicles. While Political Subdivisions, eligible Non-Profits, and other authorized entities may place Orders under this **Addendum**, whether the agreement is designated as

“mandatory” or “permissive”, the decision to do so shall be at the discretion of each non-State Agency Ordering Entity.

8. CONTRACTOR RECORDS.

- A. Maintenance and Record Retention Period.** Contractor shall make, keep, maintain, and allow inspection and monitoring by the Ordering Entity of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of three years after the date this **Addendum** expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending **Addendum** matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the “Record Retention Period”).
- B. Inspection.** Contractor shall permit the State, the Ordering Entity, the federal government, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this **Addendum** during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this **Addendum**, including any extensions or renewals. If the Work fails to conform to the requirements of this **Addendum**, the State may require Contractor promptly to bring the Work into conformity with **Addendum** requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take action necessary to ensure that future performance conforms to **Addendum** requirements, and may exercise the remedies available under this **Addendum**, at law or in equity, in lieu of or in conjunction with such corrective measures.
- C. Monitoring.** Contractor shall permit the State, the Ordering Entity, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this **Addendum** using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.
- D. Final Audit Report.** If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this **Price Agreement Addendum**, Contractor shall submit a copy of the final audit report to the State's principal representative at the address specified herein. Contractor shall ensure the provisions of this paragraph apply to any subcontract related to performance under the Contract. Contractor shall, at Contractor's sole expense, reconstruct any records not preserved or retained as required by this paragraph.

9. CONFIDENTIAL INFORMATION-ORDERING ENTITY RECORDS.

Contractor shall comply with the provisions of this §9 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

- A. Confidentiality.** Contractor shall keep all State and Ordering Entity records and information confidential at all times and comply with all laws and regulations concerning confidentiality of

information. Any request or demand by a third party for Ordering Entity records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

- B. Notification.** Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with State and Ordering Entity records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.
- C. Use, Security, and Retention.** Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this **Addendum** or approved in writing by the State or the Ordering Entity. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this **Addendum** or approved in writing by the Ordering Entity or the State.
- D. Disclosure-Liability.** Disclosure of State or Ordering Entity records or other confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, the Ordering Entity, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this **§9**.

10. 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 State's interests.

Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict may constitute a breach of this **Addendum**.

11. REPRESENTATIONS AND WARRANTIES.

Contractor makes the following specific representations and warranties for the benefit of the State and Ordering Entities on the date hereof and as of each Order effective date, each of which was relied on by the State in entering into this **Addendum**, and will be relied upon by the State in entering into this Contract and by each Ordering Entity in placing Task Orders with Contractors.

- A. Standard and Manner of Performance.** Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this **Addendum** and in any Order.
- B. Legal Authority – Contractor Signatory.** Contractor warrants that it possesses the legal authority to enter into this **Addendum** and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its

undersigned signatory to execute this **Addendum**, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this **Addendum** within 15 days of receiving such request.

C. Licenses, Permits, Etc. Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this **Addendum**, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this **Addendum** shall hold all required licenses or certifications, if any, to perform their responsibilities.

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 licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this **Addendum** is a material breach by Contractor and may constitute grounds for termination of this **Addendum**.

D. Doing Business in Colorado. Contractor and its subcontractors and authorized dealer/distributors, if applicable, shall register with the Colorado Secretary of State in accordance with Colorado Revised Statute (CRS) 7-90-801, and must obtain a rating of "good standing" status and maintain it throughout the term of this **Addendum**. A copy of Contractor's Articles of Incorporation and/or Bylaws may be requested by the State.

E. Federal Employer Identification Number (FEIN). Contractor shall submit to the State its F.E.I.N. prior to order issuance and as directed by the Office of the State Controller. Contractor shall also provide a completed W-9, Taxpayer Identification form, to the State.

12. INSURANCE.

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this **§12** 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 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 State, if requested by the 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 **§12(C)** with respect to Subcontractors that are not "public entities".

B. Professional Liability. The Contractor named in this **Addendum** promises and agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$500,00 per

occurrence and \$1,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this **Addendum**. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this **Addendum** and for at least two years beyond the completion and acceptance of the work under this **Addendum**, or, alternatively, a two year extended reporting period must be purchased.

- C. **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 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 shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance 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 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 State in accordance with **§16 (Notices and Representatives)** 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 State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
 - viii. **Garage Liability including Garage Keepers Legal Liability.** In the event the Contractor provides daily or overnight storage of Ordering Entity vehicles, this term shall apply. A certificate evidencing coverage with a minimum limit of \$100,000 and to include loss of use of State operated vehicle(s).
- D. **Certificates.** In accordance with **§15 (Notices and Representatives)**, Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the 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 Subcontractor shall deliver to the

State certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this **Addendum** or any subcontract, Contractor and each Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§12**.

13. BREACH.

Defined. In addition to any breaches specified in other sections of this **Addendum**, the failure of the Contractor, the State or an Ordering Entity to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

Notice and Cure Period. In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party and to the State in the manner provided in **§15 (Notices and Representatives)**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State or an Ordering Entity may exercise any of the remedies set forth in **§14 (Remedies)**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this **Addendum** in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

14. REMEDIES.

If Contractor is in breach under any provision of this **Addendum**, the State and an Ordering Entity shall have all of the applicable remedies listed in this **§14** in addition to all other remedies set forth in other sections of this **Addendum** and under applicable law, following the notice and cure period set forth in **§13 (Breach)**. The State and any Ordering Entity may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Contract Termination for Cause and/or Breach. The State may terminate this entire **Addendum** or any part thereof, or any Order in response to Contractor's uncured breach. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall remain responsible for performance of this **Addendum** and any Orders to the extent not terminated, if any.

- i. **Obligations and Rights.** To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding Orders and subcontracts with third parties. However, Contractor shall complete and deliver to individual Ordering Entities all Work and Services not cancelled by the State termination notice and may incur obligations as are necessary to do so within **this Pricing Agreement's** terms. At the sole discretion of the State or the Ordering Entity, Contractor shall assign to the individual Ordering Entities all of Contractor's right, title, and interest in Work Product created pursuant to any terminated Orders as of the effective date of their termination.

Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which any individual Ordering Entities have an interest. All materials owned by an Ordering Entity that are in the possession of Contractor shall be immediately returned to the Ordering Entity. All Work Product, at the option of the Ordering Entity, shall be delivered by Contractor to the Ordering Entity and shall become the property of the Ordering Entity.

- ii. **Payments.** The Ordering Entity shall reimburse Contractor only for accepted performance up to the date of termination of an Order. If, after termination of an Order by the State, it is

determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this **Addendum** had been terminated in the public interest, as described herein.

- iii. **Damages and Withholding.** Notwithstanding any other remedial action by the State or Ordering Entity, Contractor shall remain liable to the State or the Ordering Entity as may be appropriate for any damages sustained by the State or the Ordering Entity by virtue of any breach under this **Addendum** by Contractor. An Ordering Entity may withhold any payment to Contractor for the purpose of mitigating the Ordering Entity's damages, until such time as the exact amount of damages due to the Ordering Entity from Contractor is determined. The Ordering Entity may withhold any amount that may be due Contractor as the Ordering Entity deems necessary to protect its against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or Services. Contractor shall be liable for excess costs incurred by the Ordering Entity in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Contract Early Termination in the Public Interest. The State is entering into this **Addendum** for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this **Addendum** ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Addendum in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's or any Ordering Entity's obligations hereunder. This subsection shall not apply to a termination of this **Addendum** by the State for cause or breach by Contractor, which shall be governed by **§14(A)** or as otherwise specifically provided for herein.

- i. **Method and Content.** The State shall notify Contractor of such termination in accordance with **§15 (Notices and Representatives)** . The notice shall specify the effective date of the termination and whether it affects all or a portion of this **Addendum**.
- ii. **Obligations and Rights.** Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.
- iii. **Payments.** If this **Addendum** is terminated by the State pursuant to this **§14(B)**, Contractor shall be paid by respective Ordering Entities for all outstanding Orders an amount which bears the same ratio to the total reimbursement under those Order as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in each Order, less payments previously made. Additionally, if an Order is less than 60% completed, the Ordering Entity may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor by an Ordering Entity hereunder.

C. Remedies Not Involving Contract Termination. The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

- i. **Suspend Performance.** Suspend Contractor's performance with respect to all or any portion of this **Addendum** pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.
- ii. **Withhold Payment.** Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

- iii. **Deny Payment.** Deny payment for those obligations not performed that, due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.
- iv. **Removal.** Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this **Addendum** is deemed to be contrary to the public interest or the State's best interest.
- v. **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 State's option (a) obtain for the State or Contractor the right to use such products and services; (b) replace any product involved in the performance of the Services with non-infringing products, or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove or discontinue any infringing Services or products and refund the price paid therefore to the State. Non-State Ordering Entities may include other remedies in the terms of the Orders they place.

15. NOTICES and REPRESENTATIVES.

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative or named successor at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Notices to Ordering Entities shall be as provided for in the Order accepted by the Contractor. Unless otherwise provided herein, all notices shall be effective upon receipt.

Participating State:

Cyndie Miller, Purchasing Agent
State of Colorado, Department of Personnel & Administration Division of Finance and Procurement State Purchasing Office
633 17 th Street, Suite 1520
Denver, CO 80202
Office: 303-866-6104
cyndie.miller@state.co.us

Contractor:

16. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this **Addendum** shall be the exclusive property of the the Ordering Entity and, all Work Product shall be delivered to an Ordering Entity by Contractor upon completion of an Order or termination thereof. The Ordering Entity's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works, and to amend, update or alter such Work Product as the Ordering Entity deems appropriate. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the Ordering Entity. Ordering Entities shall have the right to exercise all incidents of ownership of the Work Product without any further obligation to Contractor other than compensation for Services rendered as set forth herein.

17. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

18. STATEWIDE CONTRACT MANAGEMENT SYSTEM.

If the maximum amount payable to Contractor by State Ordering Entities under this **Addendum** is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§18** applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system. Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this **Addendum**, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System.

Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this **Addendum** shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established by State Ordering Entities and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the **Addendum** term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the State Purchasing Office, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS

§§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

At the end of the current contract term or sooner in the even the **Addendum** is terminated prior to the full term, the Contractor shall complete and submit a performance evaluation in a form substantially equivalent to **Exhibit D (sample - State of Colorado, Contract Management Information, FINAL Contractor Performance Evaluation)** attached hereto and incorporated herein.

19. GENERAL PROVISIONS.

- A. Assignment and Subcontracts.** Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.
- B. Binding Effect.** Except as otherwise provided in **§19(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
- C. Captions.** The captions and headings in this **Addendum** are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.
- D. Counterparts.** This **Addendum** may be executed in multiple identical original counterparts, all of which shall constitute one agreement.
- E. Entire Understanding.** This **Addendum** represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.
- F. Indemnification.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
- G. Jurisdiction and Venue.** All suits or actions related to this **Addendum** shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
- H. 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 the Parties in an amendment to this **Addendum**, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules. Modifications permitted under this **Addendum**, other than 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** is 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.
- I. **Order of Precedence.** The provisions of this **Addendum** shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this **Addendum** and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
- i. **§22 of the Addendum, Colorado Special Provisions;**
 - ii. **The remaining provisions of the main body of this Addendum;**
 - iii. **IFB-CM-0001-14 ;**
 - iv. **The provisions of each Order.**

Any conflict or inconsistency between the terms of an Order and this **Addendum** shall be resolved by giving effect first to the documents in the order of precedence above and finally to the terms of the Order.

- J. **Severability.** Provided this **Addendum** can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this **Addendum** in accordance with its intent.
- K. **Survival of Certain Addendum Terms.** Notwithstanding anything herein to the contrary, provisions of this **Addendum** requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Ordering Entity if Contractor fails to perform or comply as required.
- L. **Third Party Beneficiaries.** Enforcement of this **Addendum** and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this **Addendum** are incidental to the **Addendum**, and do not create any rights for such third parties.
- M. **Waiver.** Waiver of any breach under a term, provision, or requirement of this **Addendum**, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- N. **CORA Disclosure.** To the extent not prohibited by federal law, this **Addendum** and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.
- O. **Public Information.** The disclosure of Contractor information by the State, a State Agency or a Political Subdivision shall be governed by the Colorado Open Records Act, CRS §24-72-200.1, et seq.
- P. **Sex Offender Registry Check.** If in the course of doing business a Contractor's employee and its subcontractors, and/or authorized dealers/distributors visits a State facility that has as clients children under the age of 21 on the premises, Contractor shall complete a sex offender registry check on each such employee prior to such employee going to any such State facility. In the event a Contractor's employee is on the registry, such employee shall not be sent to a State facility and will not be admitted to such facility. Link to access the Colorado Department of Public Safety's website: <http://cdpsweb.state.co.us/> (Reference CRS §16-22-110, Sex Offender Registry.)

Q. Bid Information and Distribution System (BIDS) and Registration. The Awarded Vendor must maintain current registration throughout the term of the **Addendum**. BIDS and its registration information may be linked through the Colorado Department of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office (SPO) link at www.bidscolorado.com .

20. COLORADO SPECIAL PROVISIONS *(Effective 1/1/09).*

These Special Provisions apply to all State Agencies and State-funded Institutions of Higher Education contracts and Orders except where noted in italics.

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1). This **Addendum** shall not be valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY. No term or condition of this **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.

D. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees.

Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Addendum. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (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 the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this **Addendum**. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this **Addendum**, to the extent capable of execution.

G. 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.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this **Addendum** shall not be used for the acquisition, operation, or maintenance of

computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this **Addendum** and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this **Addendum**, including, without limitation, immediate termination of this **Addendum** and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this **Addendum**. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. **VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. *[Not applicable to intergovernmental agreements]* Subject to 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 child support 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.

K. **PUBLIC CONTRACTS FOR SERVICES.** CRS §8-17.5-101. *[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this **Addendum** and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this **Addendum**, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this **Addendum** or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this **Addendum**. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this **Addendum** is being performed, (b) shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this **Addendum**, (c) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall 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 Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this **Addendum** for breach and, if so terminated, Contractor shall be liable for damages.

L. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS §24-76.5-101. Contractor, 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 one form of identification required by CRS §24-76.5-103 prior to the effective date of this **Addendum**.

EXHIBIT A

SAMPLE OPTION LETTER

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
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- 1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.
 - a. Option to renew only *(for an additional term)*

- 2) **REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:
 - a. **For use with Option 1(a):** In accordance with Section 3.A of the Original Contract between the State of Colorado, Insert Name of Department or Higher Ed Institution , and Contractor's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at the same rates and same terms specified in the Original Contract, as amended. Unless specified in this Option Letter, there shall be no change to the current contract value as a result of this extension to the term.

- 3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or , whichever is later.

STATE OF COLORADO John W. Hickenlooper GOVERNOR Name of Agency or IHE
By: Insert Name & Title of Person Signing for Agency or IHE
Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Option Letter 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 Robert Jaros, CPA, MBA, JD
By: _____ Date: _____
Print Name: _____ -or- Delegated Signatory

SAMPLE