

PARTICIPATING ADDENDUM (PA)
WESTERN STATES CONTRACTING ALLIANCE (WSCA)
SMALL PACKAGE DELIVERY SERVICES
 Administered by the State of Utah (hereinafter "Lead State")

MASTER PRICE AGREEMENT
 (hereinafter "WSCA Master Agreement")
 Utah Cooperative Contract Number: MA065

FedEx Corporate Services, Inc.,
 as agent for Federal Express Corporation and FedEx Ground System, Inc.
 ("FedEx")
 (hereinafter "Contractor")

And

State of Colorado
 (hereinafter "Participating State")

This Participating Addendum is entered into by the State of Colorado (hereinafter "the Participating State") and FedEx Corporate Services, Inc., as agent for Federal Express Corporation and FedEx Ground System, Inc. (FedEx) (hereinafter "Contractor" and together with the Participating State, the "Parties") pursuant to that certain State Cooperative Contract for Small Package Delivery Services, Contract MA454, between Contractor and the State of Utah, on behalf of the Western States Contracting Alliance ("WSCA"), for the purchase of small package delivery services by State Agencies, and other entities located in the Participating State authorized by the Participating State's statutes to utilize State contracts. This Participating Addendum and the exhibits attached hereto shall be collectively referred to as this "Addendum". The Parties agree as follows:

1. Scope: Contractor is authorized to provide FedEx brand equipment and services under the WSCA Master Agreement. This addendum authorizes the purchase of such equipment and services in accordance with the terms of the WSCA Master Agreement by the Participating State and other eligible entities with the State of Colorado.
2. Participation: Use of specific WSCA cooperative contracts by State Agencies, Political Subdivisions, non-profits and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective state's Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the state's Chief Procurement Official.
3. Participating State Modifications or Additions to the WSCA Master Agreement: State of Colorado Provisions set forth in Exhibit A to this Addendum are incorporated herein and made a part hereof by this reference.
4. Primary Contacts: The primary government contact individuals for this Addendum are as follows (or their named successors):

Lead State

Name: Daniel R. Reisner, Freight Manager
 Address: State of Utah, Department of Administrative Services
 Division of Purchasing & General Services
 3150 State Office Building, Capitol Hill
 Salt Lake City, Utah 84114-1061
 Phone: 801-538-3216
 Fax: 801-538-3882
 E-mail: dreisner@utah.gov

Contractor

Name: Patty Hale, Manager, FedEx Worldwide Government Sales
FedEx Corporation Services, Inc.
Address: 6625 Lenox Park Blvd., 3rd Floor
Memphis, Tennessee 38115
Phone: 901-224-2967
Fax: 901-224-2960
Email: pahale@fedex.com

Participating State

Name: Christine Weber, C.P.M., CPPB
State Purchasing Agent
Address: State Purchasing Office
633 17th Street, Suite 1520, Denver, CO 80202
Phone: 303-866-6146
Fax: 303-866-6016
E-mail: christine.weber@state.co.us

All notices required under this Addendum shall be delivered to the Parties' representatives at the addresses specified above.

5. Master Price Agreement Numbers: All Orders issued by Purchasing Entities within the jurisdiction of this Addendum shall include the State Participating Addendum number: **91559YYY02M/WSCA** and the WSCA Master Agreement number: **MA454**.

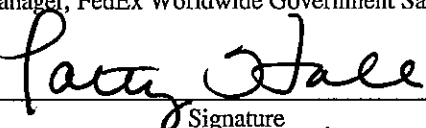

This Addendum and the WSCA Master Agreement, together with their respective exhibits and attachments, set forth the entire agreement between the Parties with respect to the subject matter hereof and all previous communications, representations or agreements, whether oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the WSCA Master Agreement, shall not be added to or incorporated into this Addendum or the WSCA Master Agreement or their respective exhibits and attachments, by any subsequent 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 WSCA Master Agreement shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State. The provisions of this Addendum, the WSCA Master Agreement, and their respective exhibits and attachments, shall have the order of precedence set forth in Exhibit A.

[Section Below Has Purposely Been Left Blank]

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

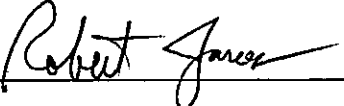
THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM

* 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>CONTRACTOR FedEx Corporate Services, Inc., as agent for Federal Express Corporation and FedEx Ground System, Inc. ("FedEx")</p> <p>By: Patty Hale Title: Manager, FedEx Worldwide Government Sales</p> <p> Signature</p> <p>Date: <u>9/14/2011</u></p>	<p>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:  By: Signature - NPA representative 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</p> <p>Date: <u>9.19.11</u></p>
	<p>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.

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By:  Signature</p> <p>Date: <u>9-20-11</u></p>

STATE OF COLORADO

Exhibit A with FedEx

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1. EFFECTIVE DATE and NOTICE OF NON-LIABILITY

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 of Colorado (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

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in Exhibit A to this Addendum and the WSCA Master Agreement. The following terms as used herein shall be construed and interpreted as follows:

- A. Chief Procurement Official.** "Chief Procurement Official" shall mean the Director of the State Purchasing Office, Colorado Department of Personnel and Administration.
- B. Contract.** "Contract" shall mean the integrated agreement consisting of this Addendum, the WSCA Master Agreement, their respective attachments, and any Orders issued in connection therewith.
- C. 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 (C.R.S. 24-103-207.5, May 21, 2007).

- E. Executive Director.** "Executive Director" shall mean the Executive Director of the Colorado Department of Personnel and Administration.
- F. Institution of Higher Education.** "Institution of Higher Education" shall mean a university or college located in the State of Colorado, which is supported by the State.
- G. Order.** "Order" shall mean any purchase order, contract, or other authorized agreement used to order User Equipment or Services under this Addendum. An Order amended consistent with the requirements of any Purchasing Entity and accepted by Contractor shall be governed by the terms and conditions of the original Order, except as amended.
- H. Political Subdivision.** "Political Subdivision" shall mean any Colorado governmental entity such as cities, towns, counties, libraries, etc. Political Subdivisions of the State of Colorado may either (i) execute a separate addendum with Contractor, but to the extent any terms of such addendum incorporate additional terms, Contractor shall not be obligated to execute or accept such addendum or (ii) issue an Order in accordance with the terms of this Addendum.
- I. Purchasing Entity.** "Purchasing Entity" shall mean both the Ordering Entity and the Customer, and any State agency, department, institution, political subdivision, or non-profit entity that places an order under this Addendum.
- J. Services.** "Services" shall mean the services (other than products, supplies, and equipment) priced in the WSCA Master Agreement which can be ordered by State Agencies and Political Subdivisions.
- K. State Agency.** "State Agency" shall mean any department, agency, or Institution of Higher Education of the State of Colorado, not including Political Subdivisions of the State of Colorado.
- L. State Purchasing Agent.** "State Purchasing Agent" shall mean the Participating State's purchasing agent identified in Section 5 of this Addendum, or such other purchasing agent as the Participating State's Chief Procurement Office may designate, from time to time, by written notice to Contractor and the Lead State.
- M. State Purchasing Office.** "State Purchasing Office" shall mean the Colorado State Purchasing Office, Colorado Department of Personnel & Administration, Division of Finance and Procurement.
- N. User Equipment.** "User Equipment" shall refer to any hardware, software, equipment or other products available for purchase under this Addendum. User Equipment has the same meaning as "supplies", "products", or "commodities".

3. TERM and ORDER

The requirements provided herein are in addition to those in the WSCA Master Agreement.

A. Initial Term-Work Commencement

The Parties' respective performances under this Addendum shall commence on the sooner of either the Effective Date or October 31, 2011. The term of this Addendum is set forth in the WSCA Master Agreement. This Addendum shall terminate on August 27, 2012, or the termination of the WSCA Master Agreement, unless terminated sooner, with the option to extend for four (4) additional one (1) year terms concurrently with the extension of the term of the WSCA Master Agreement.

Continuation of this Addendum beyond the initial term is a State prerogative and not a right of the Contractor. This prerogative will be exercised only when such continuation is clearly in the best interest of the State. Should the State exercise its prerogative, the Contractor will be contacted to confirm mutual interest and to verify pricing for the renewal period.

B. Orders

Orders may be placed consistent with the terms of this Addendum during the period specified above.

All Orders for services or equipment pursuant to this Addendum, at a minimum, shall include:

- i. The services or equipment being delivered;
- ii. The place and requested time of delivery;
- iii. A billing address;
- iv. The name, phone number, and address of the Purchasing Entity's representative;
- v. The price, or in the case of Services ordered on an hourly basis, the cost per hour and the ceiling amount of the Order for Services being ordered;
- vi. The WSCA Master Agreement Number: **MA454**; and
- vii. The State of Colorado Price Agreement Number: **91559YYY02M/WSCA**.

Orders must be placed pursuant to the WSCA Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Addendum. Contractor is reminded that financial obligations of State Agencies 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, 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 from any indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Addendum may not be placed after the expiration or termination of this Addendum, notwithstanding the term of any such indefinite delivery order agreement.

4. MODIFICATIONS TO WSCA MASTER AGREEMENT

For the purposes of this Addendum, the WSCA Master Agreement is modified as follows:

- A. Payment.** WSCA Master Agreement Attachment A PAYMENT is deleted in its entirety and **Section 5. PAYMENT** of this Exhibit A is substituted in lieu thereof.
- B. Taxes.** WSCA Master Agreement Attachment A TAXES is deleted in its entirety and **Section 6. TAXES** of this Exhibit A is substituted in lieu thereof.
- C. Remedies.** The portion of WSCA Master Agreement Attachment A DEFAULT AND REMEDIES that reads "Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract:" is deleted in its entirety and the following is inserted in lieu thereof:

"The provisions of the State of Colorado Participating Addendum shall govern all defaults and remedies under such Participating Addendum and all orders issued by Purchasing Entities thereunder. Any of the following shall constitute cause to declare the contract in default:"

Section 7. REMEDIES of this Exhibit A is added in addition to the remaining portion of WSCA Master Agreement Attachment A DEFAULT AND REMEDIES.
- D. Rates.** Any changes to WSCA Master Agreement Attachment A FedEx Multiple National Carrier Rates – Non MBG, available at www.fedex.com will not be contrary to law or regulation. Colorado Chooses FedEx Non-MBG rates plus a 1% State of Colorado Administrative Fee, effective August 28, 2011, as incorporated herein.

5. PAYMENT

All Purchasing Entities issuing valid Orders will be bound by the terms and conditions of the Contract, including, without limitation, the obligation to pay Contractor for Services and User Equipment.

- A. Discounts.** Any applicable cash discount period or delinquency period will start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable User Equipment or Services at the specified destination by an authorized representative of the Purchasing Entity, whichever is later.
- B. Payments.** Payments shall be submitted to Contractor at the address shown on the invoice, as long as Contractor has exercised due diligence in notifying the Participating State and the Purchasing Entity of any changes to that address. The Purchasing Entity shall fully pay each invoice within 30 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the Purchasing Entity. Uncontested amounts not paid by the Purchasing Entity within 45 days may 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 Purchasing 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.
- C. Remittance.** Payments from State Agencies will be remitted by mail or via the Participating State's "Purchasing Card." Payments from other Purchasing Entities will be remitted by mail or as otherwise agreed by Contractor and such Purchasing Entity.

6. TAXES

It is hereby recognized and acknowledged by Contractor that the Participating State and each State Agency is tax-exempt and is 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 also not liable for any taxes of Contractor for franchise or related to the income of the Contractor. 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 or a State Agency, some Political Subdivisions require Contractor to pay sales or use taxes even though the ultimate product or service is provided to the Participating State or a State Agency. These sales or use taxes will not be reimbursed by the Participating State or State Agency, nor will any prices or rates in the WSCA Master Agreement or this Addendum be adjusted on account of such taxes. Contractor will accord the same tax free treatment to Political Subdivisions to the extent that they establish like exemption from taxes.

7. REMEDIES

In addition to other remedies provided for in the WSCA Master Agreement, this Addendum or any Order, and without limiting its remedies otherwise available at law, the Purchasing Entity may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in the Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by contractor. These remedial actions are as follows:

- A. Suspend Performance.** Suspend Contractor's performance pending necessary corrective action as specified in writing by the Purchasing Entity without Contractor's entitlement to adjustment in price/cost or schedule; and/or
- B. Withhold Payment.** Withhold payment to Contractor until the necessary Services or corrections in performance are satisfactorily completed or the Order has been terminated; and/or
- C. Removal of Contractor Employee/Agent.** Request the removal from work on the Order of employees or agents of Contractor whom the Purchasing Entity justifies as being incompetent,

careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract is contrary to the public interest; and/or

D. Deny Payment. Deny payment for those Services or obligations which have not been performed and which due to circumstances caused by Contractor cannot be performed or if performed would be of no value to the Purchasing Entity. Denial of the amount of payment for such non-performed Services or obligations must be reasonably related to the amount of work or performances lost to the Purchasing Entity and must be described in writing.

E. Termination. Terminate the Order for default.

The above remedies are cumulative and the Purchasing Entity, in its sole discretion, may exercise any or all of them individually or simultaneously.

Except as otherwise provided for by law or this Addendum, the rights and remedies of the Purchasing Entities shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages.

8. TERMINATION

A. Termination for the Public Interest.

- i. Participating Addendum. This Participating Addendum may be terminated by either the Participating State or Contractor upon sixty (60) days prior written notice. Such notice shall be effective upon receipt of written notice. Upon notice of termination, no Orders may be accepted by Contractor with performance periods extending beyond the effective date of termination. However, subject to the right of the Purchasing Entity to terminate, or as otherwise agreed between the Purchasing Entity and Contractor, Contractor will perform obligations consistent with the Contract for Orders in effect on the effective date of the termination.
- ii. Orders. Unless otherwise agreed, the Procurement Officer, when the interests of the Purchasing Entity so require, may terminate any Order, in whole or in part, for the public interest of the Purchasing Entity, provided only that such termination will not relieve such Purchasing Entity from its obligations with respect to any User Equipment or Services already delivered to or used by such Purchasing 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 Purchasing Entity.
- iii. 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 Purchasing Entity the work not terminated (if any) by the notice of termination.
- iv. Compensation. Contractor shall be entitled to compensation as follows:
 - (a) 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.

B. Termination for Default. The State Purchasing Office may terminate this Participating Addendum or a Purchasing Entity through its designated procurement officer (or other authorized representative) may terminate an Order for default, and such termination shall be governed by this provision.

- i. Default. If Contractor refuses or fails to timely perform any of its obligations under the provisions of this Order, with such diligence as will ensure its completion within the time specified in the Order, the procurement officer may notify Contractor in writing of the non-performance, and if not corrected within thirty (30) days of issuance of such notice, such 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 contract 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 purchasing agency has an interest (if any).
- iii. Compensation. Payment for completed User Equipment delivered and accepted by the Purchasing Entity and for acceptable Services performed and accepted by the Purchasing Entity shall be at the Contract price. The Purchasing Entity may withhold amounts due to Contractor as the procurement officer deems to be necessary to protect the Purchasing Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Purchasing Entity for the excess costs incurred in procuring similar goods and services.
- iv. Erroneous Termination for Default. If after notice of termination of Contractor's right to proceed under the provisions of this paragraph, it is determined for any reason that Contractor was not in default under the provisions of this paragraph, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for the public interest section.

9. VOLUME REPORTING

A. Volume Reports

The Participating State intends to use the centralized method of volume reporting directly to WSCA/NASPO as it is proposed by WSCA/NASPO.

Contractor shall furnish sales 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 a report detailing the total sales to Purchasing Entities within the Participating State. Specifically, the reports must include:

- (1) The total dollars spent by State Agencies in conjunction with the WSCA Master Agreement;
- (2) The total estimated dollars saved by State Agencies on the WSCA Master Agreement for that period;
- (3) The total dollars spent by Institutions of Higher Education in conjunction with the WSCA Master Agreement;
- (4) The total estimated dollars saved by Institutions of Higher Education on the WSCA Master Agreement for that period;
- (5) The total dollars spent by Political Subdivisions and non-profit entities in conjunction with the WSCA Master Agreement;
- (6) The total estimated dollars saved by Political Subdivisions and non-profit entities on the WSCA Master Agreement;
- (7) The dollar value of purchases paid for with the Participating State's procurement card as opposed to traditional methods of payment; and

- (8) The total dollars spent by each of these aforementioned entities on Environmentally Preferable products, including applicable discount savings, as such item is defined in the 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 State Purchasing Office: <https://www.gssa.state.co.us/PriceAwd.nsf/Forms+Info+Pages?OpenView>.

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

Contractor also shall be required to 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 the quantity of services and user 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.

If requested, Contractor also shall provide detailed reports to any State Agency, Political Subdivision, or non-profit entity eligible to be a Purchasing Entity under this Addendum.

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 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 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.

11. INSURANCE

Contractor shall, and shall cause its subcontractors to, 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 with an A.M. Best rating of A-VII or better.

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 §11(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 User Equipment 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 the Participating State's statutes, and Employer's Liability Insurance covering all of Contractor's or subcontractor's 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, Contractor or 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 Participating 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 subcontractors 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 unless the carriers endeavor to provide at least 30 days prior written notice to Contractor and the Participating State. Contractor shall forward such notice to the Participating State by certified mail and in accordance with §4 of this Addendum.

vii. Subrogation Waiver

All insurance policies in any way related to this Contract 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.

C. Certificates

Contractor shall provide and shall cause 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 subcontractor shall deliver to the Participating State 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 subcontract, Contractor shall supply and shall require each subcontractor to supply, within 10 days of such request, to the Participating State a certificate of insurance evidencing compliance with the provisions of this §11.

12. STATE CONFIDENTIAL INFORMATION

Contractor shall comply with the provisions of this §12 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 other records or information concerning individuals. To facilitate Contractor's efforts to protect Confidential Information, it shall be marked as "confidential" by the State or designated as "confidential" by the State at the time of disclosure. 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 Confidential 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 State Confidential Information in the possession of Contractor shall be immediately forwarded to the State Purchasing Agent.
- B. Notification.** Contractor shall notify its agent, employees, subcontractors and assigns who may come into contact with State 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 Participating State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State 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 Participating State.
- D. Disclosure-Liability.** Disclosure of State Confidential Information by Contractor for any reason may be cause for legal action by third parties against Contractor, the Participating State, a Purchasing Entity or their respective agents. Contractor shall indemnify, save, and hold harmless the Participating State, the Purchasing Entities and their respective 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 §12.

13. 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 Contract, without reimbursement by the Participating State. Additionally, all employees, agents, and subcontractors of Contractor performing Services under this Contract 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 licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of the Contract is a material breach by Contractor and constitutes grounds for termination of this Addendum.

14. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum aggregate amount payable to Contractor under this Addendum is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §14 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 Colorado 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, Colorado State law, including CRS §24-103.5-101, and Colorado 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 herein 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, 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 showing of good cause.

15. GENERAL PROVISIONS

A. 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.

B. 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 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.

C. 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, the WSCA Master Agreement and their respective 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. Section 17 of Exhibit A (American Recovery and Reinvestment Act OF 2009 ("ARRA"));
- ii. Section 18 of Exhibit A (Colorado Special Provisions);
- iii. The remaining portions of Exhibit A;
- iv. The remaining portions of this Addendum;
- vi. WSCA Master Agreement;
- vii. An Order.

D. Taxes. The Participating State and State Agencies are exempt from all federal excise taxes under 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 materials are purchased or services are rendered to benefit the Participating State or State Agencies; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the Participating State or a State Agency. Contractor shall be solely liable for paying such taxes as the Participating State is prohibited from paying or reimbursing Contractor for such taxes.

E. Litigation Reporting. Within 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 State Purchasing Agent of such action and deliver copies of such pleadings to the State Purchasing Agent. If a State Purchasing Agent is not then serving, such notice and copies shall be delivered to the Chief State Procurement Official.

F. 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 Participating State. Any attempt at assignment, transfer, or 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.

G. 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.

H. Survival of Certain Contract 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 Participating State if Contractor fails to perform or comply as required.

I. 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.

16. STATE OF COLORADO 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 15 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 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 15th day after the end of the quarter.

Contractor shall be permitted to adjust the Master Contract pricing to include the Participating State's administration fee by adding the fee to the Master Contract price of small package delivery services and equipment 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 may order from State price agreements, their use is discretionary with the Political Subdivision whether the agreement is designated as "mandatory" or "permissive".

17. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ("ARRA").

If or when a Purchasing Entity places an Order using ARRA funds, the Purchasing Entity shall immediately notify the Participating State and Contractor and such Order shall include the "State of Colorado Supplemental Provisions for Contracts, Grants, and Purchase Orders Using Funds Provided Under the American Recovery and Reinvestment Act of 2009," as such provisions may be modified from time to time. The provisions are available on the website of the Colorado State Controller at: http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm. The Participating State and the Purchasing Entity agree to comply with all federal and state reporting requirements for the use of ARRA funds. Contractor shall provide the required report to the Purchasing Entity with the invoice presented to the Purchasing Entity for payment. The Parties acknowledge that Contractor, for purchases under this Addendum, is not a subcontractor or subgrantee, but a provider of goods and related services.

18. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Colorado State contracts except where noted in italics. For purposes of this Addendum, references to: (a) "this Contract" shall be deemed to be references to "this Addendum"; and (b) the "State" shall be deemed to be references to the "Participating State".

- A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).** This Contract 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 the Contract 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 shall 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 Contract. Contractor shall not have authorization, express or implied, to bind the State to any contract, 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 Contract. 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 Contract, 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 contract 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 Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract,

including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

- I. EMPLOYEE FINANCIAL INTEREST. 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 Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
- J. VENDOR OFFSET. 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 shall perform work under this Contract and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State 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 Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract 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 Contract, (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 Contract 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 Contract.

SPs Effective 1/1/09