

**PARTICIPATING ADDENDUM
to NASPO ValuePoint
For Software Value-Added Reseller Contract
Administered by the State of Arizona
with CDW Government LLC
Master Agreement No. ADSP016-13652
And
The State of Colorado**

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the "Participating Addendum"), is entered into by and between CDW Government LLC. (the "Contractor"), and the State of Colorado (the "State"), collectively known as ("The Parties"). This Participating Addendum covers participation in the Software Value-Added Reseller Contract led by the State of Arizona (the "Master Agreement"), for use by State agencies and other entities located in the State authorized by the State's statutes to utilize State contracts with the prior approval of the State's chief procurement official. The specific Goods provided under the Master Agreement are listed in Exhibit B, Price List. For purposes of this Participating Addendum and all of the attachments thereto, the parties acknowledge and agree that, notwithstanding reference to the defined term "Services" in the State Specific Terms, the Master Agreement and this Participating Addendum apply to the resale by Contractor and purchase by the Ordering Entity of commercial off the shelf software ("COTS") and related warranty and maintenance services incident to such COTS from the applicable licensors of such COTS. The Contractor will not provide, nor will it engage any subcontractors to provide, any professional services such as consulting, configuration, engineering, design, or other type of service requiring description of tasks and deliverables and an agreement such as a statement of work between the parties. As such, any references to Services, or any provisions which relate to the provision of Services, including, but not limited to, ownership of deliverables or work product, access to PII or PHI, shall be inapplicable to this Participating Addendum. Notwithstanding the order of precedence noted in Section 8 hereof, the acknowledgment of the parties in this Section 1 shall take precedence over other provisions and exhibits herein to ensure that it has binding effect.

2. PARTICIPATION

Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by the State's statutes to use State contracts are subject to the prior approval of the 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. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

To the extent not modified by this Participating Addendum, all terms and conditions of the Master Agreement shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.

4. RESERVED

5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing, without a formal amendment to this Participating Addendum no later than 5 days following the date on which the change occurs. The Contractor's primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

Primary Contact for the State:	Primary Contact for the Contractor:
Greg Draughon State Procurement Admin	Jason Schwartz Sales Manager
Department of Personnel & Administration	CDW Government LLC
State Purchasing	230 N Milwaukee Ave
1525 Sherman Street, 3 rd Floor	Vernon Hills, IL 60061
Denver, CO 80203	1-877-325-0934
303-866-4552	jasons@cdw.com
Gregory.Draughon@state.co.us	

6. SUBCONTRACTORS

The Contractor may only use Subcontractors, as defined in Exhibit A, under this Participating Addendum if the State has provided written approval for the Contractor to use that Subcontractor. All such approved Subcontractors authorized in the State of Colorado, as shown on the dedicated Contractor (cooperative contract) website www.cdwg.com, are approved to provide sales and service support to the State and any Purchasing Entity in the State. The Contractor's Subcontractor's participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum, as appropriate.

7. ORDERS

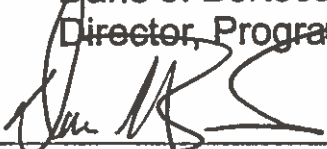


Any Order placed by the State or a Purchasing Entity in the State of Colorado for a Good available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement and this Participating Addendum unless the parties to the Order agree in writing that another contract or agreement applies to such Order or the terms of that Order control to the extent that they conflict with the terms of the Master Agreement or this Participating Addendum.

8. ATTACHED EXHIBITS

All of the exhibits listed in this section are attached to this Participating Addendum and are incorporated herein by reference. In the event of a conflict or inconsistency between this Participating Addendum and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:


- A. Colorado Special Provisions in §13 of Participating Addendum Exhibit A, State Specific Terms
- B. The provisions of the main body of this Participating Addendum
- C. All other sections of Participating Addendum Exhibit A, State Specific Terms
- D. The provision of the Master Agreement
- E. Participating Addendum Exhibit B, Services and Price List

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

<p>CDW Government LLC</p> <p>By: Dario J. Bertocchi Title: Director, Program Sales</p> <p> _____ Signature</p> <p>Date: <u>3/16/2017</u></p>	<p>STATE OF COLORADO Department of Personnel and Administration State Purchasing Office Cindy Lombardi, State Purchasing and Contract Director</p> <p> _____ By: Cindy Lombardi, Director</p> <p>Date: <u>3-23-2017</u></p>
<p>STATE OF COLORADO Governor's Office of Information Technology Suma Nallapati, Secretary of Technology and Chief Information Officer</p> <p> _____ By: Brenda Berlin, Deputy Chief Information Officer and Chief Financial Officer</p> <p>Date: <u>3/24/17</u></p>	

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By:  _____ Name: <u>CLARK M. BOLSER</u></p> <p>Date: <u>3/28/17</u></p>

PARTICIPATING ADDENDUM EXHIBIT A, STATE SPECIFIC TERMS

1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, 24-101-101 *et. seq.* C.R.S., and its associated rules.

2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Federal Tax Information (FTI) Data”** means federal or state tax returns, return information, and such other tax-related information as may be protected by State and federal law.
- B. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement
- C. **“Ordering Entity Confidential Information”** means all information, data, records, and documentary materials which are of a sensitive nature and belong to an Ordering Entity regardless of physical form or characteristics, including but not limited to any non-public Ordering Entity records, sensitive Ordering Entity data, protected Ordering Entity data, Ordering Entity personnel records, PII, FTI, PCI, and other information or data concerning individuals, which has been communicated, furnished, or disclosed by an Ordering Entity to Contractor. Notwithstanding the foregoing, Ordering Entity Confidential Information shall not include Ordering Entity Records.
- D. **“Ordering Entity Information”** means the combination of Ordering Entity Confidential Information and Ordering Entity Records.
- E. **“Ordering Entity Records”** means all information, data, records, and documentary materials which are not sensitive and belong to an Ordering Entity regardless of physical form or characteristics, including but not limited to any public Ordering Entity records, non-sensitive Ordering Entity data, and other information or data concerning individuals that is not deemed confidential but nevertheless belongs to an Ordering Entity, which has been communicated, furnished or disclosed by an Ordering Entity to Contractor which (i) is subject to disclosure pursuant to the Colorado Open Records Act, CRS §24-72-200.1, *et seq.*; (ii) is already known to Contractor without restrictions at the time of its disclosure by Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to an Ordering Entity; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any Ordering Entity Confidential Information. Notwithstanding the foregoing, Ordering Entity Records shall not include Ordering Entity Confidential Information.
- F. **“Payment Card Information (PCI) Data”** means any data related to card holders’ names, credit card numbers, or other credit card information as may be protected by State and federal law.
- G. **“State Confidential Information”** means all information, data, records, and documentary materials which are of a sensitive nature and belong to the State regardless of physical form or characteristics, including but not limited to any non-public State records, sensitive State

data, protected State data, State personnel records, PII, FTI, PCI, and other information or data concerning individuals, which has been communicated, furnished, or disclosed by the State to Contractor. Notwithstanding the foregoing, State Confidential Information shall not include State Records.

- H. **“State Fiscal Year”** means the 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- I. **“State Information”** means the combination of State Confidential Information and State Records.
- J. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.
- K. **“State Records”** means all information, data, records, and documentary materials which are not sensitive and belong to the State regardless of physical form or characteristics, including but not limited to any public State records, non-sensitive State data, and other information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to the Colorado Open Records Act, CRS § 24-72-200.1, et seq.; (ii) is already known to Contractor without restrictions at the time of its disclosure by Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information. Notwithstanding the foregoing, State Records shall not include State Confidential Information.
- L. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work. Any term used in this Participating Addendum, including Exhibits, that is defined in another Exhibit or in the main body of the Participating Addendum shall be construed and interpreted as defined in that portion of this Participating Addendum.
- M. **“Effective Date”** means the “Effective Date” of this Participating Addendum shall be the date this Participating Addendum is signed by the Colorado State Controller or Delegate.

3. TERM

A. Initial Term - Work Commencement

The Parties’ respective performances under this Participating Addendum shall commence on the Effective Date and shall terminate on the date on which the NASPO ValuePoint Master Agreement terminates, unless this Contract is terminated earlier as described in this Participating Addendum or the State cancels its participation as described in the Master Agreement (the “Term”).

B. Extension of Term

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

4. PAYMENTS

A. Purchasing Entity Payments

Each Purchasing Entity will make its own payments under any Order that it enters into. The State shall not be liable to the Contractor for any payments due under any Order unless the State is a party to that Order.

B. Administrative Fee Payments

For each Fiscal Year quarter, the Contractor shall remit to the State an administrative fee equal to 1% of the total spent by all Purchasing Entities under this Participating Addendum during that quarter. The Contractor shall remit all administrative fees to the State's Primary Contact identified in this Participating Addendum, and with the payee as "State of Colorado", within 30 days following the Fiscal Year quarter to which the administrative fee applies.

5. REPORTING - NOTIFICATION

A. Volume Reporting

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State within 30 calendar days following the end of the Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form as directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

- i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
 - a. The total spent by each type of Purchasing Entity under this Participating Addendum.
 - b. The total of the list cost of all items purchased by each type of Purchasing Entity under this Participating Addendum.
 - c. The total estimated cost savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list cost minus the total spent for that Purchasing Entity.
 - d. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Participating Addendum.
 - e. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.
 - f. The amount of the total administrative fee due to the State.
 - g. Any additional summary information as requested by the State.
- ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
 - a. The name of the Purchasing Entity who the sale was made to.
 - b. The date of the sale.
 - c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended cost for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list cost for the item calculated by multiplying the

quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list cost.

d. Any other detail information as requested by the State.

B. Additional Operational Reporting

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Participating Entities as requested by the State. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

C. Litigation Reporting

Contractor is a publicly traded entity and must disclose material litigation or threats of litigation to the investing public in accordance with the regulations of the United States Security and Exchange Commission (SEC). If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document, is disclosed as part of Contractor's quarterly SEC reporting requirements and in Contractor's reasonable business discretion is determined to specifically, imminently, and materially interfere with Contractor's ability to perform its obligations under this Contract, Contractor shall notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §5 at the same time such action is disclosed in accordance with the regulations of the SEC.

6. CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with and shall cause each of its Subcontractors to comply with the provisions of this §6 if it becomes privy to State Information or Ordering Entity Information in connection with its performance.

A. Confidentiality

Contractor shall comply with all applicable laws and regulations concerning confidentiality of State Confidential Information or Ordering Entity Confidential Information. Any request or demand to Contractor by any third party for State Information or Ordering Entity Information shall be immediately forwarded to the State's or Ordering Entity's primary contact described in the Participating Addendum or any Order unless otherwise prohibited by applicable law or court order.

B. Disclosure Indemnification

- i. Unauthorized or unlawful disclosure or use of State Confidential Information or Ordering Entity Confidential Information by Contractor or any of its Subcontractors may be cause for legal action by third parties against Contractor, the State, Purchasing Entities, or their respective agents. Contractor shall defend the State, its employees and agents, against any and all third party claims, and indemnify, save, and hold harmless from damages, liabilities, losses, costs, expenses, and reasonable attorneys' fees finally awarded by a court of competent jurisdiction as a result of any breach of this §6. Notification
- ii. Contractor shall execute Non-Disclosure Agreements with its Subcontractors and assigns that meet or exceed all confidentiality obligations contained herein.

C. Use, Security, and Retention

State Information or Ordering Entity Information of any kind shall be stored, processed, or transferred only in, or to, facilities located within the United States, and shall not be distributed or sold to any third party, retained in any files or otherwise, 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, as applicable. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information or Ordering Entity Confidential Information wherever located.

D. Protection

Contractor is responsible for the security of all State Information or Ordering Entity Information provided to it by the State or an Ordering Entity. If Contractor provides physical or logical storage, processing or transmission of, or retains, stores, or is given, State Information or Ordering Entity Information, Contractor shall, and shall cause its Subcontractors to:

- i. provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Addendum or an Order;
- ii. maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), and annual security testing;
- iii. comply with State and federal regulations and guidelines related to security, confidentiality, integrity, availability, and auditing;
- iv. ensure that security is not compromised by unauthorized access to computers, programs, software, databases, or other electronic environments; and
- v. shall promptly report all breaches to a representative of the Office of Information Security (OIS).

Contractor shall provide the State or an Ordering Entity with information about how its access controls are evaluated and tested by auditors on a regular basis through compliance testing. Evidence of compliance and best practices for PCI Level 1, SOC1, and SOC2 compliances is available upon request via 3rd party audit reports.

Neither Contractor nor its Subcontractors shall have any rights to use or access any Office of Information Technology (OIT) or other State agency data or information, except with the prior written approval of OIT or the other State agency.

E. Compliance

Contractor shall review, on a semi-annual basis, all OIS policies and procedures which OIS has promulgated pursuant to CRS §§ 24-37.5-401 through 406 and 8 CCR § 1501-5 and posted at <http://oit.state.co.us/ois>, to ensure compliance with the standards and guidelines published therein.

F. Background Checks

Contractor shall perform, and shall cause its Subcontractors to perform, background checks on all of its respective employees and agents upon hiring provided under the Addendum.

G. Rights in Data, Documents, and Computer Software

- i. Except to the extent specifically provided elsewhere in this Addendum, any State Information or Ordering Entity Information, pre-existing State software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor or Subcontractors in the performance of its obligations under this Addendum or any Order, shall be the exclusive property of the State or Ordering Entity (collectively, "State Materials" or "Ordering Entity Materials"). All State Materials or Ordering Entity Materials shall be delivered to the State or Ordering Entity by Contractor upon written request by the State or Ordering Entity. The State's or Ordering Entity's exclusive rights in such State Materials or Ordering Entity Materials shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, or willingly allow, cause or permit such State Materials or Ordering Entity Materials to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State or Ordering Entity.
- ii. Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State or Ordering Entity as set forth in a State or Ordering Entity approved license agreement: (i) entered into as exhibits to this Contract, (ii) obtained by the State or Ordering Entity from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

H. End of Agreement Data Handling

Upon written request by the State or Ordering Entity made before or within sixty (60) days after the effective date of termination of this Addendum, Contractor will make available to the State or Ordering Entity a complete and secure (i.e. encrypted and appropriately authenticated), download file of all data, including, but not limited to, all State Information or Ordering Entity Information, schema and transformation definitions, and/or delimited text files with documented, detailed schema definitions along with attachments in their native format.

I. Safeguarding PII Data

If Contractor or any of its Subcontractors will or may receive PII Data under the Addendum or any Order, Contractor shall provide for the security of such PII Data, in a manner acceptable to the State or Ordering Entity, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Contractor shall take full responsibility for the security of all PII Data in its possession or in the possession of its Subcontractors, and shall hold the State and Ordering Entities harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.

J. Safeguarding FTI Data

If Contractor or any of its Subcontractors will or may receive FTI Data under the

Addendum or any Order, Contractor shall provide for the security of the FTI Data, in a manner acceptable to the State or Ordering Entity and in accordance with State and federal law and, for State Agencies, the Confidentiality of Taxpayer Information Certification which is attached hereto and incorporated herein by this reference as **Attachment 1**. Security safeguards shall include, without limitation, supervision by responsible employees, approval of Subcontractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of Contractor's or its Subcontractor's obligations under the Addendum or any Order, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications and inspections. Contractor shall comply with the requirements of IRS Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, revised and effective January 1, 2014, found at: <http://www.irs.gov/pub/irs-pdf/p1075.pdf> and incorporated herein by this reference.

K. Safeguarding PCI Data

If Contractor or any of its Subcontractors will or may receive PCI Data under the Addendum or any Order, Contractor shall provide for the security of the PCI Data, in accordance with PCI Data Security Standard (DSS) 1.1. Security safeguards shall include, without limitation, supervision by responsible employees, approval of Subcontractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of Contractor's or its Subcontractor's obligations under the Addendum or any Order, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications and inspections.

L. Safeguarding CJI Data

If Contractor or any of its Subcontractors will or may receive CJI Data under this Contract, Contractor shall provide for the security of CJI Data in accordance with the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Security Policy, Version 5.3, dated 8/4/2014, found online at: <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center> and incorporated herein by this reference.

M. Transition of Services

Upon expiration or earlier termination of this Addendum or any Services provided hereunder, Contractor or Subcontractors shall accomplish a complete transition of the Services from Contractor to the State or Ordering Entity or any replacement provider designated solely by the State or Ordering Entity without any interruption of or adverse impact on the Services or any other services provided by third parties hereunder. Contractor shall cooperate fully with the State or Ordering Entity or such replacement provider, and promptly take all steps required to assist in effecting a complete transition of the Services as designated by the State or Ordering Entity. All work related to such transfer of Services shall be performed at no additional cost beyond what would be paid for the Services hereunder.

N. License or Use Audit Rights

Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once (1) per Fiscal Year to request via written notice ("Audit Request") that the State or Ordering Entity certify its compliance with any applicable license or use restrictions and limitations ("Audit") contained in this Addendum or any Order. The State

or Ordering Entity shall complete the Audit and provide certification of its compliance to Contractor ("Audit Certification") within one hundred twenty (120) days following the State's or Ordering Entity's receipt of the Audit Request. If upon receipt of the State's or Ordering Entity's Audit Certification, the Parties reasonably determine: (i) the State's or Ordering Entity's use of licenses, use of software, use of programs, or any other use during the Audit period exceeded the use restrictions and limitations contained in this Addendum or any Order ("Overuse") and (ii) that the State or Ordering Entity would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State or Ordering Entity identifying any Overuse or required Maintenance and request that the State or Ordering Entity brings its use into compliance with such use restrictions and limitations.

7. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor or its Subcontractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the Work. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State or a Participating Entity, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Participating Addendum or any Order.

B. Apparent Conflicts of Interest

Contractor acknowledges that with respect to this Participating Addendum, even the appearance of a conflict of interest will be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain and instruct its subcontractor to refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Contractor's obligations under this Participating Addendum..

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor or its Subcontractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor or its Subcontractor 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 constitutes a breach of this Participating Addendum.

8. BREACH

A. Defined

The failure of a Party to perform any of its material obligations in accordance with this Participating Addendum, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor or its Subcontractor, or the appointment of a receiver or similar officer for Contractor or its Subcontractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved party shall give written notice of breach to the other Party's primary contact described in this Participating Addendum. If the notified Party does not cure the breach within 30 days after receipt of written notice, or, if a cure cannot be completed within 30 days but cure of the breach has not begun within 30 days and has not been pursued with due diligence, the State may exercise any of the remedies set forth in §9 of this Exhibit A. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in the Contract in order to protect the public interest of the State.

9. REMEDIES

A. State's Remedies

If Contractor, or its Subcontractor is in breach under any provision of this Participating Addendum, the State, following the notice and cure period set forth in §8.B. of this Exhibit A, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum and any remedies available by law or equity. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's, or its Subcontractor uncured breach, the State may terminate this entire Participating Addendum or any part of this Participating Addendum. Contractor shall continue performance of this Participating Addendum to the extent not terminated, if applicable.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor, or its Subcontractor in which the State has an interest. At the State's request, Contractor shall return materials owned by the State that Contractor, or its Subcontractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the State at the State's request.

b. Payments

The State shall reimburse Contractor only for accepted Goods and Services received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, or its Subcontractor.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor, or its Subcontractor shall promptly cease performing Work 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.

b. Removal

Demand immediate removal from Work under this Participating Addendum of any of Contractor's, or its Subcontractor's employees, agents, or Subcontractors whom the State deems unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum, Contractor, following the notice and cure period set forth in §8.B. of this Exhibit A and the dispute resolution process in §10 of this Exhibit A shall have the remedies available to it at law and equity.

10. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum, or any Order to which the State is a party, which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §10.A of this Exhibit A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Participating Addendum or any Order to which the State is a party by the State to the purchasing director of Department of Personnel & Administration, State Purchasing Office for resolution in accordance with the provisions of §§24-109-101, 24-109-106, 24-109-107, and 24-109-201 through 24-109-206 C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the purchasing director, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

11. RIGHTS IN WORK PRODUCT

Unless otherwise modified by another Exhibit to this Participating Addendum, the State or Ordering Entity shall have all rights to title and ownership granted to it by the Master Agreement.

12. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, and offices shall be controlled and limited by the provisions of the Governmental Immunity Act, C.R.S. §24-10-101, et seq., the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, C.R.S. §24-30-1501, et seq..

13. GENERAL PROVISIONS

A. Binding Effect

All provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

B. Counterparts

This Participating Addendum may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

C. Venue

The exclusive venue for all suits or actions related to this Participating Addendum shall be in the State of Colorado, in the City and County of Denver.

D. Modification

Except as otherwise provided in this Participating Addendum, any modification to this Participating Addendum shall not be effective unless agreed to in writing by the Parties, executed and approved in accordance with applicable Colorado State law and State fiscal rules and policies.

E. Severability

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect.

F. Survival of Certain Participating Addendum Terms

Any provision of this Participating Addendum that imposes an obligation after termination or expiration of the Participating Addendum shall survive the termination or expiration of the Participating Addendum.

G. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under C.R.S. §§39-26-701, et seq.(Colorado Sales Tax Exemption Identification Number 98-02565). Contractor shall collect no excise, sales, or use tax from the State, and the State shall have no liability to Contractor for such taxes regardless of whether any political subdivision of the state imposes such taxes on the Contractor. Some Purchasing Entities may be subject to taxes for Orders, but in no event shall the State have liability to the Contractor for any such taxes. Contractor shall be solely responsible for any exemptions from the collection of excise,

sales or use taxes Contractor may wish to have in place in connection with this Participating Addendum.

H. Third Party Beneficiaries

Except for the Parties' respective successors and assigns permitted under this Participating Addendum, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or ordering entity other than the Parties.

I. Standard and Manner of Performance

Contractor shall perform its obligations under this Participating Addendum in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

J. Additional Insured

The Contractor shall ensure that the State is added as an additional insured for all insurance required under the Master Agreement.

14. COLORADO SPECIAL PROVISIONS

Notwithstanding anything to the contrary in this Participating Addendum, these in the event of a conflict, these special provisions shall supersede and control over all terms of the Master Agreement and all other terms of this Participating Addendum.

A. CONTROLLER'S APPROVAL. C.R.S. §24-30-202(1).

This Participating Addendum shall not be valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. C.R.S. §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 Participating 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, C.R.S. §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

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 Participating 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 i. provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, ii. provide proof thereof when requested by the State, and iii. be solely

responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall 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 Participating 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 Participating Addendum, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED.

The State does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Participating 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 Participating 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 Participating 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 Participating Addendum, including, without limitation, immediate termination of this Participating Addendum and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. C.R.S. §§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 Participating 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. C.R.S. §§24-30-202(1) and 24-30-202.4.

Subject to C.R.S. §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: **i.** unpaid child support debts or child support arrearages; **ii.** unpaid balances of tax, accrued interest, or other charges specified in C.R.S. §39-21-101, et seq.; **iii.** unpaid loans due to the Student Loan Division of the Department of Higher Education; **iv.** amounts required to be paid to the Unemployment Compensation Fund; and **v.** other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR SERVICES. C.R.S. §8-17.5-101, et seq.

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Participating 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 Participating Addendum, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to C.R.S. §8-17.5-102(5)(c), Contractor shall not knowingly employ or Participating Addendum with an illegal alien to perform work under this Participating Addendum or enter into a Participating Addendum with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or Participating Addendum with an illegal alien to perform work under this Participating Addendum. Contractor i. shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Participating Addendum is being performed, ii. 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 Participating Addendum, iii. shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and iv. shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §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 C.R.S. §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Participating Addendum for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. §24-76.5-101, et seq.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she i. is a citizen or otherwise lawfully present in the United States pursuant to federal law, ii. shall comply with the provisions of C.R.S. §24-76.5-101 et seq., and iii. has produced one form of identification required by C.R.S. §24-76.5-103 prior to the effective date of this Contract.

ATTACHMENT 1 – CONFIDENTIALITY OF TAXPAYER INFORMATION CERTIFICATION

This **Attachment 1 – Confidentiality of Taxpayer Information Certification** is part of that certain Participating Addendum by and between CDW Government LLC (“Contractor”) and the State of Colorado acting by and through the State Purchasing and Contracts Office, Department of Personnel & Administration (“State” or “SPCO”). Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Participating Addendum.

The State has legal responsibilities to safeguard the confidentiality of taxpayer information obtained and used in the course of this Addendum or any Order for the State or Ordering Entity. As a contractor providing services to and for the benefit of the State or Ordering Entity, Contractor is required to uphold these responsibilities as a condition of being allowed access to taxpayer information. These obligations apply to information that is discussed, collected, or maintained verbally, in paper, or in electronic format.

Contractor understands that in the course of its provision of services as a contractor for the State or Ordering Entity, Contractor’s employees, or its Subcontractor’s may receive or learn of taxpayer information that is confidential by law. The confidentiality of all taxpayer information provided by the State or Ordering Entity, or learned in the course of Contractor’s duties as a contractor for the State, shall be maintained at all times in accordance with safeguards set forth under CRS § 39-21-113(4) as amended, 1 CCR 201-1 Regulation 39-21-113(4) as amended, 26 CFR § 6103 and the associated US Treasury Regulations as amended, and IRS Publication 1075. This confidential taxpayer information shall not be disclosed, re-disclosed, distributed, sold, or shared with any third party nor used in any way except as expressly authorized by the State or Ordering Entity. Information compiled, hosted, and retained on electronic media or in databases for the use of the State or Ordering Entity shall be secured and adhere to the standards of protection set forth under federal and State safeguards for the protection of electronically-stored taxpayer information.

Disclosure of such confidential taxpayer information may be cause for legal action against Contractor and any involved third party. Contractor shall immediately notify the State or Ordering Entity of any breach of security resulting in any inadvertent or intentional disclosure of confidential taxpayer information. The State or Ordering Entity shall not be in any way responsible for defense of any action against Contractor for a disclosure of confidential taxpayer information. No disclosure shall be made by Contractor to a Subcontractor or third party without the express written consent of the State or Ordering Entity.

Contractor shall not retain any confidential taxpayer information once Contractor has completed legal services under the terms of the Addendum or any Order for the State or Ordering Entity, and shall return all confidential promptly upon written notice and demand from the State or Ordering Entity.

Contractor hereby acknowledges that it shall remain in compliance with all State and federal laws and the aforementioned terms and conditions pertaining to the protection, security, and confidentiality of taxpayer information provided by the State or Ordering Entity or learned of in the course of its duties as a contractor for the State or Ordering Entity.

ATTACHMENT 2 – HIPAA BUSINESS ASSOCIATE ADDENDUM

This **Attachment 2 – HIPAA Business Associate Addendum** is part of that certain Participating Addendum by and between Insert Contractor's Name ("Contractor") and the State of Colorado acting by and through the State Purchasing and Contracts Office, Department of Personnel & Administration ("State" or "SPCO"). Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Participating Addendum. For purposes of this Addendum, the State is referred to as "Covered Entity" or "CE" and Contractor is referred to as "Associate." Unless the context clearly requires a distinction between the Participating Addendum and this Addendum, all references herein to "the Participating Addendum" or "this Participating Addendum" include this Addendum.

RECITALS

A. CE wishes to disclose certain information to Associate pursuant to the terms of the Participating Addendum, some of which may constitute Protected Health Information ("PHI") (defined below).

B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Participating Addendum in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 USC § 1320d-1320d-8 ("HIPAA") as amended by the American Recovery and Reinvestment Act of 2009 ("ARRA")/HITECH Act (PL 111-005), and its implementing regulations promulgated by the US Department of Health and Human Services, 45 CFR Parts 160, 162, and 164 (the "HIPAA Rules") and other applicable laws, as amended.

C. As part of the HIPAA Rules, the CE is required to enter into a written contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, §§ 160.103, 164.502(e), and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this Addendum.

The parties agree as follows:

1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Rules at 45 CFR Parts 160, 162, and 164, as amended. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the provisions of this Participating Addendum, the HIPAA Rules shall control. Where the provisions of this Participating Addendum differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Participating Addendum shall control.
- b. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR § 164.501.

- c. “Protected Information” shall mean PHI provided by CE to Associate or created, received, maintained, or transmitted by Associate on CE’s behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment, and health care operations, Protected Information under this Participating Addendum does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access, and amendment of Associate’s PHI.
- d. “Subcontractor” shall mean a third party to whom Associate delegates a function, activity, or service that involves CE’s Protected Information, in order to carry out the responsibilities of this Addendum.

2. Obligations of Associate.

- a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate’s obligations under this Participating Addendum and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Rules if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in **Attachment 2.1** to this Addendum. Associate accepts full responsibility for any penalties incurred as a result of Associate’s breach of the HIPAA Rules.
- b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Rules if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Participating Addendum; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 CFR § 164.502(j)(1). To the extent that Associate discloses Protected Information to a third-party Subcontractor, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances through execution of a written agreement with such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that such third party will notify Associate within two (2) business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.
- c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Participating Addendum. Associate shall comply with the requirements of the HIPAA Security Rule at 45 CFR §§ 164.308, 164.310, 164.312, and 164.316. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate’s operations and the nature and scope of its activities. Associate shall review, modify, and update the documentation of,

its safeguards as needed to ensure continued provision of reasonable and appropriate protection of Protected Information.

- d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Participating Addendum within five (5) business days of becoming aware of such use or disclosure.
- e. Associate's Rights. If Associate uses one or more Subcontractors or agents to provide services under the Participating Addendum, and such Subcontractors or agents receive or have access to Protected Information, each Subcontractor or agent shall sign an agreement with Associate containing the same provisions as this Addendum and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from such Subcontractors or agents in the event of any violation of such Subcontractor or agent agreement. The agreement between Associate and the Subcontractor or agent shall ensure that the Subcontractor or agent agrees to at least the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.
- f. Access to Protected Information. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate shall make Protected Information maintained by Associate or its agents or Subcontractors in such Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the HIPAA Rules, including, but not limited to, 45 CFR § 164.524. If such Protected Information is maintained by Associate in an electronic form or format, Associate must make such Protected Information available to CE in a mutually agreed upon electronic form or format.
- g. Amendment of PHI. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate or its agents or Subcontractors shall make such Protected Information available to CE for amendment within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, and shall incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the HIPAA Rules, including, but not limited to, 45 CFR § 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or Subcontractors, Associate must notify CE in writing within five (5) business days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or Subcontractors shall be the responsibility of CE.
- h. Accounting Rights. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate and its agents or Subcontractors shall make available to CE within ten (10) business days of notice by CE, the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the HIPAA Rules, including, but not limited to, 45 CFR § 164.528. In the event that the request for an accounting is delivered directly to Associate or its agents or

Subcontractors, Associate shall within five (5) business days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

- i. Governmental Access to Records. Associate shall keep records and make its internal practices, books, and records relating to the use and disclosure of Protected Information available to the Secretary of the US Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's or Associate's compliance with the HIPAA Rules. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary when the Secretary is investigating CE. Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of Associate's policies, procedures, or practices to determine whether Associate is complying with the HIPAA Rules, and permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including Protected Information, that are pertinent to ascertaining compliance.
- j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use, and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Rules including, but not limited to 45 CFR §§ 164.502(b) and 164.514(d).
- k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to Protected Information.
- l. Retention of Protected Information. Except upon termination of the Participating Addendum as provided in Section 4(d) of this Addendum, Associate and its Subcontractors or agents shall retain all Protected Information throughout the term of this Participating Addendum and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.
- m. Associate's Insurance. Associate shall maintain insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Participating Addendum (e.g. occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
- n. Notice of Privacy Practices. Associate shall be responsible for reviewing CE's Notice of Privacy Practices, available on CE's external website, to determine any requirements applicable to Associate per this Participating Addendum.
- o. Notification of Breach. During the term of this Participating Addendum, Associate shall notify CE within two (2) business days of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall not initiate notification to affected individuals per the

HIPAA Rules without prior notification and approval of CE. Information provided to CE shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed during the breach. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

- p. Audits, Inspection, and Enforcement. Within ten (10) business days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies, and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing, and location of such an inspection; and (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Participating Addendum.
- q. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of Protected Information transmitted pursuant to the Participating Addendum, in accordance with the standards and requirements of the HIPPA Rules.
- r. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 CFR § 164.522, Associate will restrict the use or disclosure of an individual's Protected Information. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of CE.

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

use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR § 164.522.

4. Termination.

- a. Material Breach. In addition to any other provisions on the Participating Addendum regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of this Participating Addendum and shall provide grounds for immediate termination of this Participating Addendum by CE pursuant to the provisions of the Participating Addendum covering termination for cause, if any. If the Participating Addendum contains no express provisions regarding termination for cause, the following terms and conditions shall apply:
- (1) Default. If Associate refuses or fails to timely perform any of the provisions of this Participating Addendum, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Participating Addendum. Associate shall continue performance of this Participating Addendum to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.
 - (2) Associate's Duties. Notwithstanding termination of this Participating Addendum, and subject to any directions from CE, Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.
 - (3) Compensation. Payment for completed supplies delivered and accepted by CE shall be at the Participating Addendum Price. In the event of a material breach under paragraph 4a, CE may withhold amounts due Associate as CE deems necessary to protect CE against loss from third-party claims of improper use or disclosure and to reimburse CE for the excess costs incurred in procuring similar goods and services elsewhere.
 - (4) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this Participating Addendum had been terminated for convenience, as described in this Participating Addendum.
- b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Participating Addendum pursuant to Section 4(a), then CE shall take reasonable steps to cure such breach or end such violation. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either (i) terminate the Participating Addendum, if feasible or (ii) if termination of this Participating Addendum is not feasible, CE shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services. If Associate knows of a pattern of activity or practice of a Subcontractor or agent that constitutes a material breach or violation of the Subcontractor's or agent's obligations under the written agreement between

Associate and the Subcontractor or agent, Associate shall take reasonable steps to cure such breach or end such violation, if feasible.

- c. Judicial or Administrative Proceedings. Either party may terminate the Participating Addendum, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

- d. Effect of Termination.

- (1) Except as provided in paragraph (2) of this subsection, upon termination of this Participating Addendum, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.
 - (2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d), and 2(e) of this Addendum to such Protected Information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

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

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

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

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

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

10. Amendment.

- a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules and other applicable laws relating to the confidentiality, integrity, availability, and security of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information and that it is Associate's responsibility to receive satisfactory written assurances from Associate's Subcontractors and agents. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Rules or other applicable laws. CE may terminate this Participating Addendum upon thirty (30) days' written notice in the event (i) Associate does not promptly enter into negotiations to amend this Participating Addendum when requested by CE pursuant to this Section, or (ii) Associate does not enter into an amendment to this Participating Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules.
- b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

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

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

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

14. Survival of Certain Participating Addendum Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 4(d) ("Effect of Termination") and Section 12 ("No Third-Party Beneficiaries") shall survive termination of this Participating Addendum and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the

Associate. This Addendum shall remain in effect during the term of the Participating Addendum including any extensions.

15. Representatives and Notice.

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

State/Covered Entity Representative

Name: _____
Title: _____
Department and Division: _____
Address: _____

Contractor/Business Associate Representative

Name: _____
Title: _____
Department and Division: _____
Address: _____

ATTACHMENT 2.1 – HIPAA BAA ATTACHMENT

This Attachment 2.1 – HIPAA BAA Attachment is part of that certain Participating Addendum by and between CDW Government LLC (“Contractor”) and the State of Colorado acting by and through the State Purchasing and Contracts Office, Department of Personnel & Administration (“State” or “SPCO”). Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Participating Addendum.

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the Contract, and is effective as of the Effective Date of the Contract (the “Attachment Effective Date”). This Attachment may be amended from time to time as provided in § 10(b) of the Addendum.

1. Additional Permitted Uses. In addition to those purposes set forth in § 2(a) of the Addendum, Associate may use Protected Information as follows: None. Associate will not use Protected Information under this Addendum.

2. Additional Permitted Disclosures. In addition to those purposes set forth in § 2(b) of the Addendum, Associate may disclose Protected Information as follows: None. Associate will not disclose Protected Information under this Addendum.

3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract: None. Associate will not receive any Protected Information in the performance of its obligations; further, as the Participating Addendum is for the provision of software products only, no services, therefore there will be no subcontractors.

4. Receipt. Associate’s receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows, and Associate’s obligations under the Addendum shall commence with respect to such PHI upon such receipt: Associate will not be deemed to receive Protected Information; this Participating Addendum is for the resale of software products only and Associate will not create, receive, maintain or have any access to any Protected Information that would trigger any obligations under this Addendum.

5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: None.

6. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]* As agreed in Section 1 of the Participating Addendum, the Contractor will not provide, nor will it engage any subcontractors to provide, any professional services such as consulting, configuration, engineering, design, or other type of service requiring description of tasks and deliverables and an agreement such as a statement of work between the parties. As such, any references to Services, or any provisions which relate to the

provision of Services, including, but not limited to, ownership of deliverables or work product, access to PII or PHI, shall be inapplicable to this Participating Addendum.

PARTICIPATING ADDENDUM EXHIBIT B, PRICE LIST

Publishers		Mark up from reseller costs
KEY ITEMIZED	ADOBE	0.97%
	CITRIX	0.97%
	MICROSOFT	-1.26%
	NOVELL	0.97%
	SYMANTEC	0.97%
	VMWARE	0.88%
OTHER ITEMIZED	AL SQUARED	2.20%
	AIRWATCH MOBILE DEVICE MANAGEMENT VMWARE	1.13%
	ALLIANCE ENTERPRISES	2.20%
	APPLE	2.20%
	ATTACHMATE – MICROFOCUS	1.25%
	AUTODESK	2.20%
	AUTONOMY – HP	2.20%
	BAKBONE – DELL	1.13%
	BARRACUDA	2.20%
	BOMGAR REMOTE SOFTWARE	0.75%
	CA TECHNOLOGIES	2.20%
	CISCO	2.20%
	COMPUTRONIX USA	1.13%
	COMPUWARE	2.20%
	COREL	2.20%
	DOUBLETAKE	2.20%
	EMC	2.20%
	ENCHOICE	2.20%
	ESET	2.20%
	ESRI	2.20%
	FREEDOM SCIENTIFIC	2.20%
	GUARDIAN EDGE – SYMANTEC	2.20%
	GW MICRO	2.20%
	IBM	2.20%
	ICM CONVERSIONS	2.20%
	INFOR	2.20%
	INTERMEDIX EMSYSTEMS	2.20%
	HP	2.20%
	HUMANWARE	2.20%
	INFORMATION BUILDERS	2.20%
	KRONOS SOFTWARE	2.20%
	LANDESK	2.20%
	LASERFISCHE	2.20%
	LIQUIDWARE STATUSPHERE	2.20%
	MICROFOCUS INC	2.20%
	MINJET	2.20%
	MPS	2.20%

MQSOFTWARE – BMC SOFTWARE	2.20%
NCIRCLE	0.00%
NETOP	1.25%
NUANCE	2.20%
ORACLE	2.20%
OSAM	2.20%
PASSPORT	1.25%
PATCHLINK	1.25%
PROOFPOINT	2.20%
RSASECURITY	2.20%
REFERENCIA SYSTEMS	2.20%
SAP AMERICA	2.20%
SAS	1.25%
SOLUTIONS SOFTWARE	1.13%
SOPHOS	2.20%
SPLUNK SOFTWARE	2.20%
STASEEKER NETWORK INFRASTRUCTURE MONITORING	2.20%
STELLEMENT – ORACLE	1.25%
SUNGUARD	1.13%
SYBASE	1.25%
TECHSMITH	1.25%
TREND MICRO	1.25%
TRUSTWARE	0.25%
ULTRABAC	1.13%
VORMETRIC	1.13%
WEBSense	0.88%
any other non-listed publisher	2.20%