

**PARTICIPATING ADDENDUM
to NASPO ValuePoint
Data Communications
Administered by the State of Utah
with Cisco Systems, Inc.
Master Agreement No. AR3227
And
The State of Colorado
Contract # CMS Record No.**

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 **Cisco Systems, Inc.** (the “Contractor”), and the State of Colorado (the “State”). This Participating Addendum covers participation in the **Data Communications** Master Agreement led by the State of **Utah** (the “Master Agreement”), for use by State agencies and other entities located in Colorado which are authorized by law to utilize State contracts with the prior approval of the State Purchasing Director. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit C Products and Price List** of this agreement.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) located in the State of Colorado authorized by the State’s statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

To the extent not modified by this Participating Addendum and all its exhibits, the Master Agreement and all its terms and conditions 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. LEASE AGREEMENTS Contractor’s Master Agreement which allows for leasing under Attachment A, Section 45 is approved for use by the Participating State. The terms and conditions of the capital lease or financing arrangement will be separately negotiated and set forth in an agreement between the purchaser and either Cisco Capital or its designated financing partner.

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 no later than 10 days following the date on which the change occurs, without a formal amendment to this Participating Addendum. 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:

Brian Swift
Colorado State Purchasing & Contracts Office
1525 Sherman Street, 3rd Floor
Denver, CO 80203
303-866-6146
brian.swift@state.co.us

Primary Contact for the Contractor:

Gigi Feril
Cisco Systems, Inc.
170 West Tasman Dr
San Jose, CA 95134
408-424-0712
nvp-help@cisco.com

Each individual identified in this §5 of the Participating Addendum shall be the primary contact of the designating Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's primary contact at the address set forth above or (C) as an email with read receipt requested to the primary contact at the email address, if any, set forth above. If a Party delivers a notice to another through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Unless otherwise provided in this Participating Addendum, notices shall be effective upon delivery of the written notice.

In addition to the primary contact in this section, the Contractor shall also provide an individual who is ultimately responsible for the creation and submission of the quarterly volume report described in **Exhibit A** of this Participating Addendum. This individual, as named in this section, shall ensure that all required quarterly volume reports are accurate and delivered by the appropriate due date for that quarterly volume report. The Contractor may change this individual or their contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum.

Individual Responsible for Quarterly Volume Report Creation and Submission:

Jumana DiHu
Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134
773-269-6397
nvp-help@cisco.com

6. FULFILLMENT PARTNERS

The Contractor may only use Fulfillment Partners, as defined in **Exhibit A. §4**, under this Participating Addendum if the State has provided written approval for the Contractor to use that Fulfillment Partner. All such approved Fulfillment Partners authorized in the State of Colorado, as shown on the dedicated Contractor website, are approved to provide sales and service support to the State and any Purchasing Entity in the State. The Fulfillment Partner'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 referencing this Participating Addendum placed by a Purchasing Entity in the State of Colorado for a Good or Service available under this Participating Addendum shall be deemed to be a sale (and governed by the prices and other terms and conditions) under 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.

8. ORDER OF PRECEDENCE AND 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 **§20 of Exhibit A**, State Specific Terms
- B. **Exhibit D**, HIPAA Business Associate Agreement
- C. Exhibit E, Information Technology Provisions
- D. The provisions of this Participating Addendum
- E. All other sections of **Exhibit A**, State Specific Terms
- F. **Exhibit B** Statement of Work
- G. **Exhibit C** Products and Price List

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that (i) requires the State to indemnify or hold harmless Contractor or any other party, (ii) is in violation of State law as, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State or (iii) is contrary to any of the provisions incorporated into **Exhibit A, §19** or the main body of this Participating Addendum.

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

<p style="text-align: center;">CONTRACTOR Cisco Systems, Inc.</p> <p>By: _____</p> <p>Title: _____</p> <p>DocuSigned by: <i>Jenn Pate</i> By: _____ 067AE6A88D1D40C... *Signature</p> <p>Date: <u>12/13/2021</u></p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor</p> <p style="text-align: center;">Department of Personnel & Administration State Purchasing and Contracts Office</p> <p>DocuSigned by: <i>Kara Veitch</i> By: _____ Kara Veitch, Executive Director</p> <p>DocuSigned by: <i>John Chapman</i> By: _____ EF45AFDEB51E41A... Sherri Maxwell, State Purchasing and Contracts Director John Chapman, State Purchasing Manager</p> <p>Date: <u>12/14/2021</u></p>
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In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.

STATE CHIEF INFORMATION OFFICER
Governor's Office of Information Technology
~~Anthony Neal Graves~~ **Chief Information Officer and Executive Director**

DocuSigned by:
Laura Calder
By: _____
AAADC6558C9A4BD...
 _____,

Date: 12/14/2021

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.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

DocuSigned by:
Joe Weber
By: _____
AE2B5FC1373241D...

Name: _____
Delegate

Effective Date: 12/14/2021

PARTICIPATING ADDENDUM EXHIBIT A STATE SPECIFIC TERMS

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1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01., and its associated rules.

2. PURPOSE

The Parties are entering into this Participating Addendum for the Contractor to provide Data

Communication Products and Services to Purchasing Entities available under Cisco Systems, Inc. NASPO ValuePoint Master Agreement AR3227.

3. TERM

A. Initial Term - Work Commencement

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall be co-terminus with NASPO ValuePoint Master Agreement **AR3227**. Unless this Participating Addendum is terminated earlier, as described herein, or the State cancels its participation as described in the Master Agreement (the "Term"), the term of the Participating Addendum shall follow the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended (See Section 3.B.).

B. Extension of Term

If the term of NASPO ValuePoint Master Agreement is extended for any reason, 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.

C. End of Term Extension

If this Participating Addendum approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor's primary contact listed in §5 of the Participating Addendum and in accordance with §5 of this Participating Addendum, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Participating Addendum in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Participating Addendum.

D. Order Term

Orders may only be placed prior to the expiration or earlier termination of this Participating Addendum, but orders for hardware products may have a delivery date no longer than 120 calendar days beyond that expiration or earlier termination date, and orders. Orders for services and subscriptions may have a performance period not to extend more than three years beyond the expiration or earlier termination date. Regardless of whether this Participating Addendum has expired or has been terminated, the Contractor shall comply with all Orders accepted by Contractor that extend past the expiration or termination, as described in this section, and all requirements of this Participating Addendum necessary to complete outstanding Orders shall survive the expiration or termination of this Participating Addendum until all Orders are complete.

E. Early Termination in the Public Interest

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Participating Addendum by the State for breach by Contractor, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §5 of this Participating Addendum. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Participating Addendum, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in §14.A.i.

iii. Payments

If the State terminates this Participating Addendum in the public interest, all Orders placed prior to termination shall remain in effect and the Purchasing Entities shall pay Contractor according to their orders with the Contractor. The sum of any and all payments under each order shall not exceed the maximum amount payable to Contractor under each order.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Administration Fee**” means the fee that is due to the State for the administration of this Participating Addendum, as described in §7. A. of this **Exhibit A**.
- B. “**Breach of Contract**” means the material failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- C. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- D. “**Ceiling Price**” means the maximum price a Contractor or a Subcontractor may charge for a Good or Service under this Participating Addendum.
- E. “**Chief Procurement Officer**” means the individual to whom the Executive Director of the Department of Personnel & Administration has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- F. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- G. “**Confidential Information**” means any and all information that is normally considered confidential in nature, and includes, but is not limited to all State Records not subject to

disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S. (“CORA”). Confidential Information shall not include information or data which has been communicated, furnished, or disclosed by the discloser to the recipient which (i) is subject to disclosure pursuant to CORA; (ii) is or subsequently becomes publicly available without breach of any obligation owed by recipient to the discloser.

- H. “**Contract**” means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- I. “**Contract Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Participating Addendum.
- J. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- K. “**Customer Content**” means data such as text, audio, video or image files, provided by the State or the Purchasing Entity to Contractor in connection with the State’s or the Purchasing Entity’s use of Contractor’s products and services, and data developed at the State’s or the Purchasing Entity’s specific request related to a statement of work or contract.
- L. “**Customer Feedback**” means technical data or suggestions contained in oral or written communications provided by State regarding modifications or improvements to a Contractor Product or Service. Any PII collected within Customer Feedback shall be treated separately as PII (not as Systems Information).
- M. “**Effective Date**” means the date Contract is signed by the State Controller or their designee.
- N. “**End of Term Extension**” means the time period defined in §3. C. of this Exhibit A.
- O. “**Environmentally Preferable Products**” means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.
- P. “**Effective Date**” means the date on which this Participating Addendum is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Participating Addendum. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- Q. “**Entitlement Information**” means information maintained by Contractor about State’s entitlements to services, licenses and subscriptions to software products.
- R. “**Exhibits**” means the following exhibits attached to this Contract:
 - i. **Exhibit A**, State Specific Terms.
 - ii. **Exhibit B**, Statement of Work.
 - iii. **Exhibit C**, Products and Price List
 - iv. **Exhibit D**, HIPAA Business Associate Agreement
 - v. **Exhibit E**, Information Technology Provisions

- S. **“Extension Term”** means the time period defined in **§3. B.**
- T. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services. Goods includes Products, Embedded Software and Cloud Software as those are defined in the Master Agreement, Attachment A
- U. **“Fulfillment Partner”** has the meaning set forth in the Master Agreement, Attachment A.
- V. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- W. **“Initial Term”** means the time period defined in **§3.A** of this **Exhibit A.**
- X. **“Install Base Information”** means information maintained by Contractor about the types, quantities and location of installed Contractor devices, products, or software releases in State’s network.
- Y. **“Order”** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Participating Addendum from the Contractor, and shall include any modification to such a document.
- Z. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- AA. **“Purchasing Entity”** means any entity or organization located in the State of Colorado that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, government supported institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- DD. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium that: (i) relates to the past, present or future physical or mental health 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) identifies such individual or with respect to which there is a reasonable basis to believe such information can be used to identify such individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

- EE. **“Security Threat Data”** means threat intelligence data, URLs, metadata, netflow data, origin and nature of malware, and other information necessary to enable security features of a Contractor product or service. Any PII collected within Security Threat Data shall be treated separately as PII (not as Systems Information).
- FF. **“Services”** means the services to be performed by Contractor as set forth in this Participating Addendum, and shall include any services to be rendered by Contractor in connection with the Goods.
- GG. **“State Confidential Information”** means Confidential Information disclosed by State to Contractor and not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data 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 CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to 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.
- HH. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- II. **“State Fiscal Year”** means a 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.
- JJ. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA..
- KK. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work. The term “Subcontractor” includes, without limitation, Fulfillment Partners.
- LL. **“Support Data”** means data and information collected and maintained by Contractor when a State user submits requests for support and trouble-shooting services, including information about the hardware and software products and other details about the support incident and interaction. Any PII collected within Support Data shall be treated separately as PII (not as Systems Information).
- MM. **“Systems Information”** mean data generated or collected in connection with State’s use and operation of Contractor’s products and services, and when submitting a request related to support or maintenance. Systems Information is composed of Telemetry Data, Support Data, Install Base Information, Entitlement Information, Customer Feedback and Security Threat Data.
- NN. **“Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information

includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

- OO. **“Telemetry Data”** means data generated by instrumentation and logging systems created through the Sate’s use and operation of a Contractor product or service, including but not limited to: product serial numbers and other identification information, and information characterizing devices connected to a network; data generated by sensors, devices, machinery, product or service features or functionality activated, utilized, or accessed; network policy, hardware modules and software components installed, connections and topology relationships between products; data relating to the existence of cookies, web beacons, and similar applications; the types of Contractor-branded software products installed on a network or device; data related to the usage, origin of use, traffic density and patterns, and behavior or workloads and applications across a network or cloud service. Any PII collected within Telemetry Data shall be treated separately as PII (not as Systems Information).
- PP. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- QQ. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Participating Addendum that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit. Any term not defined in this Participating Addendum shall have the meaning defined in the Master Agreement, if the Master Agreement includes a definition.

5. STATEMENT OF WORK

Contractor shall complete the Work as described in this Participating Addendum and in accordance with the provisions of Exhibits A, B, C and D, and with any agreed terms in a Purchasing Entity’s Order. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.

A. Ordering and Order Fulfillment

- i. Ordering
 - a. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.
 - b. Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.
 - c. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity’s Orders.

- d. Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this Exhibit A.
- e. If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.
- f. Contractor's internet-based portal and electronic catalogs shall clearly designate that they are part of this Participating Addendum and shall have a link to the State's designated web location, as determined by the State.
- g. If Contractor's catalog will be either hosted on or accessed through the State's e-Commerce system, when available, then Contractor shall comply with all policies, procedures and directions from the State in relation to hosting its catalog on or making its catalog accessible through that system. Contractor shall ensure that all information made available through the State's e-Commerce system is accurate and complies with this Participating Addendum.

6. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

- i. Contractor shall allow the State and Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the State or Purchasing Entity.
- ii. The State shall not pay any amount to Contractor under this Participating Addendum unless the State issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity that is not the State, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by a Purchasing Entity that is not the State.

B. Payment Procedures

i. Invoices

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity's Order. Contractor shall not invoice the State under any Order unless the State issued that Order. Contractor shall allow 45 days for the State and Purchasing Entities to pay an invoice following the receipt of the invoice, unless the State or a Purchasing Entity specifically agrees to a shorter time in an Order. State law and regulations provide that State payments made within 45 days are not considered delinquent, and unless otherwise agreed, State Purchasing Entities will pay interest on any unpaid balance beginning on the 45th day at the rate of 1% per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Contractor shall invoice State Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest rate. (§ 24-30-202(24), C.R.S., as amended.)

ii. Payment Disputes

Unless different procedures are specified in an Order, if Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the Purchasing Entity issuing the Order in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by that Purchasing Entity. The Purchasing Entity will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the Purchasing Entity's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the Purchasing Entity has concluded its review, and the Purchasing Entity shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iii. Available Funds-Contingency-Termination of Order

Purchasing Entities, except for authorized non-profit entities, are prohibited by law from making commitments beyond the term of the current Purchasing Entity's Fiscal Year. Payment to Contractor beyond the current Purchasing Entity's Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (See Colorado Special Provision). If federal funds, non-State funds or funds from any other source constitute all or some of the Contract Funds, the Purchasing Entity's obligation to pay Contractor shall be contingent upon such funding continuing to be made available for payment. Orders under this Participating Addendum shall be made only from Contract Funds, and the Purchasing Entity's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other Purchasing Entity funds are not appropriated, or otherwise become unavailable to fund an Order under this Participating Addendum, the Purchasing Entity may, upon written notice, terminate the Order, in whole or in part, without incurring further liability. The Purchasing Entity shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination of Order. A State Purchasing Entity Order termination shall otherwise be treated as if the Order was terminated in the public interest as described in §3. E. of this Exhibit A.

The Purchasing Entity may effect such termination by giving Contractor a written notice of termination, to the Contractor's primary contact in accordance with §5 of the Participating Addendum, and by paying to Contractor any amounts which are due and have not been paid through the last day of the Fiscal Year for which appropriated funds are available. The Purchasing Entity shall endeavor to give notice of such termination not less than 30 days prior to the day of non-availability of funds, and shall notify Contractor of any anticipated termination.

iv. Discount and Delinquency Period

Any applicable cash discount period or delinquency period for the amounts shown on an invoice shall begin on the date the Purchasing Entity receives the invoice, or from the date of receipt of Goods or Services at the specified destination by an authorized Purchasing Entity representative, whichever is later.

7. PAYMENTS TO STATE

Administrative Fees

- A. Each State Fiscal Year quarter, Contractor shall, using a form as directed by the State, calculate an Administrative Fee equal to 1% of the total net sales (less credits) made under Orders during that State Fiscal Year quarter. Contractor shall pay the State the Administrative Fee for each State Fiscal Year quarter within 45 days following the end of that State Fiscal Year quarter.
- B. Contractor shall remit all administrative fees to the State's primary contact identified in §5 of the Participating Addendum and with the payee as "State of Colorado".

8. 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's primary contact identified in §5 of this Participating Addendum within 45 calendar days following the end of the State 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 price of all items purchased by each type of Purchasing Entity under this Participating Addendum.
 - c. The total estimated price savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list price of all items purchased by each type of Purchasing Entity minus the total spent for that type of Purchasing Entity.
 - d. [reserved].
 - e. The total net sales for all products and services sold by Fulfillment Partner, and the amount of the total administrative fee due to 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 price for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list price 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 price.
 - d. Any other detail information as requested by the State, provided Contractor collects such data.

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 45 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing, provided that in any case Contractor can reasonably access the data for the additional reporting and complete the requests without an undue burden on its resources.

C. [RESERVED]

D. Litigation Reporting

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 relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall, within a reasonable time after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact identified in §5 of the Participating Addendum .

E. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact in accordance with §5 of the Participating Addendum, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds. Contractor hereby gives notice that all of Contractor Services, including maintenance, support, advanced, and professional Services may be delivered remotely from outside the United States or Colorado. Contractor will make available to the State prior to any purchase information about Contractor products and services and their locations of storage of State Records, in order to enable the State to purchase the applicable product or service where the storage location of State Records is located within the United States. If a Purchasing Entity elects to purchase a Good or Service with a FEDRAMP authorization to operate, then State Records associated with that purchase will remain in the United States for the term of that purchase.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records") performed by the Contractor and any Subcontractors, that are required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date 3 years after the date this Participating Addendum expires or is terminated, (ii) final payment under this Participating Addendum is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 15 Business Days' notice from the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Participating Addendum using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Periodic Business Reviews

- i. The State may schedule periodic business reviews to review Contractor's performance under this Participating Addendum.
- ii. Contractor shall ensure personnel assigned to the Participating Addendum are available for these meetings with the State as scheduled by the State.
- iii. Contractor's primary contact designated in §5 of this the Participating Addendum shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

10. CONFIDENTIAL INFORMATION-STATE RECORDS**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum or as necessary to perform obligations under this Participating Addendum, as permitted by law, or as approved in writing by the State. Contractor (and its Subcontractors as applicable) shall provide for the security of State Records in a manner at least as protective as Contractor protects its own similar information. If State discloses to Contractor or any of its Subcontractors the following types of data, to the extent applicable, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's primary contact as identified in §5 of the Participating Addendum.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Participating Addendum. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Participating Addendum, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations and shall maintain a secure environment to ensure confidentiality of all State Confidential Information wherever located. Upon the expiration or termination of this Participating Addendum, at State's request Contractor shall return State Records provided to Contractor or destroy such State Records and, upon written request, certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will maintain measures designed to protect the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of an Incident or any imminent threat of occurrence of any Incident affecting the security, confidentiality, integrity, or availability of State Records provided to Contractor, it shall notify the State without undue delay, but in no event later than 48 hours following Contractor's confirmation of the Incident at OIT_CISO@state.co.us and reasonably cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns or Subcontractors are the cause or source of the Incident, to the extent caused by Contractor or Contractor's agents, employees, assigns or Subcontractors, Contractor shall be responsible for the cost of legally required notifications to each person who may have been impacted by the Incident. After an Incident, Contractor shall take reasonable steps determined by Contractor to reduce the risk of incurring a similar type of Incident in the future, which may include, but is not limited to, developing and implementing a remediation plan.

E. Data Protection and Handling

Contractor shall ensure that all State Records in the possession of Contractor or any Subcontractors are protected by measures reasonably designed to provide for the security of the State Records and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the PII disclosed to the third-party service provider; and reasonably designed to help protect the PII from unauthorized access, use, modification, disclosure, or destruction. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with

§§24-73-101 *et seq.*, C.R.S., as such are enshrined in statute at the time of execution of this agreement.

G. Systems Information

Notwithstanding anything to the foregoing in this Agreement, Contractor may use, disclose and retain Systems Information in accordance with Contractor's Systems Information Data Brief located at <https://www.cisco.com/c/en/us/about/trust-center/data-management.html> (with current direct link at:

<https://trustportal.cisco.com/c/r/ctp/trust-portal.html#/1604543672547988>).

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Participating Addendum. 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 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.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Participating Addendum.

12. INSURANCE

Contractor shall obtain and maintain insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for Goods or Services or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. All insurance policies required by this Participating Addendum shall be issued by insurance companies that have an A.M. Best's rating of at least A-, VIII.

A. Workers' Compensation

Workers' Compensation insurance as required by state statute, and employers' liability insurance covering all Contractor employees acting within the course and scope of their employment. Insurance must stay in place and in effect even if the contract terms expires, until all product or terms of the contract are completed and satisfied up to 120 days after contract term expires.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with limits as follows:

- i. \$2,000,000 each occurrence;
- ii. \$4,000,000 general aggregate; and
- iii. \$2,000,000 products and completed operations aggregate.

C. Automobile Liability

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

D. Network Security/Privacy/Cyber Insurance

Liability insurance covering all loss of State Confidential Information, such as PII, PCI, PHI, Tax Information, and CJL, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- i. \$2,000,000 each claim; and
- ii. \$5,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each claim; and
- ii. \$1,000,000 general aggregate.

It is agreed that Contractor may satisfy requirements D and E with one and the same insurance policy, provided that such insurance policy has limits of at least \$6,000,000 each claim and \$6,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The CGL and Auto insurance shall include the State as additional insured for liabilities that fall within Contractor's indemnity obligations under this Agreement and that are covered by such insurance.

H. Primacy of Coverage

Coverage required of Contractor shall be primary to any insurance or self-insurance program carried by the State.

I. Cancellation

In the event any of the insurance required herein is cancelled or non-renewed, Contractor shall (a) provide the State with at least 30 days prior notice of such cancellation or nonrenewal, and (b) replace such insurance so that no lapse in coverage occurs. Contractor

also shall provide a revised Certificate of Insurance evidencing that no lapse in coverage occurred.

J. Subrogation Waiver

All insurance policies secured or maintained by Contractor in relation to this Participating Addendum shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers, for liabilities that fall within Contractor's indemnity obligations under this Agreement.

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Participating Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Participating Addendum, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State one or more certificates of insurance as evidence that Contractor is maintaining the insurance required in this Participating Addendum within 7 Business Days following the Effective Date. No later than 10 days after the expiration date of Contractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State certificates of insurance as evidence that it is maintaining the insurance required by this **§12**.

- M. If Contractor uses a Subcontractor in connection with this Agreement, Contractor shall require such Subcontractor to maintain the types and amounts of insurance that Contractor deems reasonable in light of the Goods and/or Services to be provided by such Subcontractor, provided that Contractor shall require such Subcontractor to maintain at least the following insurance: Workers' Compensation with limits required by statute, Employer's Liability with limits of \$1,000,000; Commercial General Liability with limits of \$1,000,000 per occurrence/aggregate; and, if Subcontractor uses autos in connection with this Agreement, Commercial Auto Liability with limits of \$1,000,000 per accident.

13. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§14** for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion in order to protect the public interest of the State, 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

this Participating Addendum; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect. In the event of terminations contemplated under this Section 13, Contractor shall have the remedies contemplated in Section 3.E.

14. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum and fails to cure such breach, the State, following the notice and cure period set forth in §13, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum or at law. 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 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 any.

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 under §3. E.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of 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 shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Purchasing Entity shall be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest or the State's best interest.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in §13 and the dispute

resolution process in **§15** shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

C. Purchasing Entity's Remedies

- i. If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in §14. A. ii above, all remedies listed here in §14.C and all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.
- ii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.
- iii. Payments and Damages
 - a. Notwithstanding anything to the contrary, Purchasing Entities shall only pay Contractor for accepted Work received as of the date of termination.
 - b. Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages.

A Purchasing Entity may deny payment to Contractor for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

15. DISPUTE RESOLUTION

A. Order Disputes, Termination and Resolution

- i. If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with **§5** of the Participating Addendum. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contract of any Order.
- ii. A Purchasing Entity may terminate an Order if Contractor was in material breach of that Order. Termination of an Order shall not terminate any other Order or this Participating Addendum.

B. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum which cannot be resolved by the designated Participating

Addendum primary contacts, as identified in §5 of the Participating Addendum, or through a dispute on an Order 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.

C. Resolution of Controversies arising under this Participating Addendum

If the initial resolution described in §15.B. fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office as described in in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, 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.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

To the extent Contractor will create any Work Product that would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, or that would otherwise require Contractor to assign any right, title, interests, perpetual licenses or ownership in any way of the Work Product, such will be identified specifically in a transaction-level statement of work executed by Contractor and the Purchasing Entity prior to the commencement of any services that would create the Work Product.

17. OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT

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. However, Contractor shall complete and deliver to Purchasing Entities all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum’s terms. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the appropriate Purchasing Entity has an interest. At the State or Purchasing Entity’s request, Contractor shall return materials owned by the Purchasing Entity that Contractor possesses at the time of any termination. If Contractor has agreed in a statement of work to create Word Product as contemplated in Section 16 above, Contractor shall deliver all then-completed and in-progress Work Product to the appropriate Purchasing Entity at the State or Purchasing Entity’s request.

18. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. To the extent applicable, Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract information in the State’s contract management system (“Contract Management System” or “CMS”). Contractor’s performance shall be subject to evaluation and

review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

19. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Participating Addendum are personal and may not be transferred or assigned without the prior, written consent of the State, such consent not to be unreasonably withheld. Any attempt at assignment or transfer without such consent shall be void; provided further that Contractor may assign or transfer to any entity that is owned or controlled by Contractor, an entity that owns or controls Contractor, or any entity that is under common ownership or control of Contractor by a third party. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Participating Addendum.

B. Subcontracts

All subcontracts entered into by Contractor in connection with this Participating Addendum shall comply with all applicable federal and state laws and regulations.

C. Binding Effect

Except as otherwise provided in **§19.A.**, all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Participating Addendum and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Participating Addendum are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Participating Addendum to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

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

G. Entire Understanding

This Participating Addendum represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Participating Addendum. Prior or contemporaneous additions, deletions, or other changes to this Participating Addendum shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Participating Addendum, any modification to this Participating Addendum shall only be effective if agreed to in a formal amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Participating Addendum, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Participating Addendum to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Participating Addendum.

K. 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, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of this Participating Addendum.

L. Survival of Certain Contract Terms

Any provision of this Participating Addendum that imposes an obligation on the Contractor or a Purchasing Entity after termination or expiration of this Participating Addendum shall survive the termination or expiration of this Participating Addendum and shall be enforceable by the other Party.

M. 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 §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Contractor shall honor any tax exemption that any Purchasing Entity has, and shall not charge any Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

N. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in §19.A, this Participating Addendum does not and is not intended to confer any rights or

remedies upon any person or entity other than the Parties. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Participating Addendum, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Participating Addendum and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

i. Hardware Products. Contractor warrants that from the date of shipment by Contractor to a Purchasing Entity, and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the warranty card accompanying the product or at <https://www.cisco.com/go/warranty>, the hardware Product will be free from defects in material and workmanship, under normal use. This limited warranty extends only to the original user of the product. Purchasing Entity's sole and exclusive remedy and the entire liability of Contractor and its suppliers under this limited warranty will be, at Contractor's or its service center's option, (i) shipment of a replacement within the period and according to the replacement process described in the warranty card (if any) or if no warranty card, as described at <https://www.cisco.com/go/warranty>, or (ii) a refund of the purchase price, if the hardware Product is returned to the party supplying it to Purchasing Entity, if different than Contractor, freight and insurance prepaid. Contractor replacement parts, used in the replacement of hardware Products, may be new or equivalent to new. Contractor's obligations hereunder are conditioned upon the return of affected products, in accordance with Contractor's then-current return procedures. This limited warranty does not apply if the hardware Product (i) has been altered, except by Contractor or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (iv) is licensed or provided for beta, evaluation, testing or demonstration purposes.

ii. Embedded Software Products. Contractor warrants that Embedded Software will substantially conform to the applicable documentation of the Embedded Software for the longer of (i) ninety (90) days following the date the Embedded Software is made available to the Purchasing Entity for use or (ii) as otherwise set forth at <http://www.cisco.com/go/warranty>. This warranty does not apply if the Embedded Software, the hardware Product supplied by Contractor, or any other equipment upon which the Embedded Software is authorized to be used: (i) has been altered, except by Contractor or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (iv) is licensed for beta, evaluation, testing or demonstration purposes or other

circumstances for which there is not payment of a purchase price or license fee; or (v) has not been provided by an authorized reseller of Contractor. Cisco will use commercially reasonable efforts to deliver Embedded Software free from any viruses, programs, or programming devices designed to modify, delete, damage or disable the Embedded Software or data. At Contractor's option and expense, Contractor shall repair, replace, or cause the refund of the license fees paid for the non-conforming Embedded Software. This remedy is conditioned on Purchasing Entity reporting the non-conformance in writing to Contractor within the warranty period. Purchasing Entity may be required to return the Embedded Software, the Contractor hardware product, and/or Documentation as a condition of this remedy. This is Purchasing Entity's sole and exclusive remedy under this warranty for Embedded Software. Except as set forth herein, Embedded Software are provided "as is". Contractor does not warrant that Embedded Software will operate uninterrupted or error-free or that all errors will be corrected. In addition, Contractor does not warrant that the Embedded Software or any equipment, system or network on which the Embedded Software is used will be free of vulnerability to intrusion or attack.

iii. Cloud Software Products. Unless otherwise provided for in the applicable Cloud Offer Description for a specific Cloud Software Product, Contractor warrants that it will provide the Cloud Software in accordance with the Cloud Offer Description using commercially reasonable skill and care. Upon prompt notification by Purchasing Entity of Contractor's breach of this warranty, to the extent permitted by applicable law, Contractor will, at Contractor's option, (i) repair or replace the Cloud Software or (ii) refund fees paid to Contractor for the period in which the Cloud Software did not materially comply with the Cloud Offer Description. This is Purchasing Entity's sole and exclusive remedy under this warranty for Cloud Software.

iv. Services. Contractor warrants that Services will be performed in a workmanlike manner and, where applicable, will materially comply with the applicable Service Description or transactional statement of work. Purchasing Entity must promptly notify Contractor of a breach of this warranty. Purchasing Entity's sole and exclusive remedy for any breach of this warranty shall be, at Contractor's option, (i) re-performance of the Services or (ii) termination of the applicable Service, and return of the portion of the fees paid to Contractor by Purchasing Entity for such non-conforming Services.

v. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 19.Q, CONTRACTOR HEREBY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES FOR THE HARDWARE PRODUCTS, EMBEDDED SOFTWARE, CLOUD SOFTWARE, OR SERVICES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD.

R. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Participating Addendum, at its sole expense, all licenses, certifications, permits, and

other authorizations required to perform its obligations under this Participating Addendum, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Participating Addendum.

S. Indemnification

i. General Indemnification

Contractor shall defend and indemnify the State as set forth in Section 40.A of Attachment A of the Master Agreement.

ii. Intellectual Property Indemnification

Contractor shall defend and indemnify the State as set forth in Section 40.B of Attachment A of the Master Agreement, with Section 40.B.1 replaced with the following:

“The Contractor’s obligations under this Section 40.B shall not apply to the extent any Intellectual Property Claim is based on:

- (a) Contractor’s compliance with any designs, specifications, requirements, or instructions provided by any Indemnified Party or a third party on the Indemnified Party’s behalf; or
- (b) The modification of the Contractor’s Product by anyone other than Contractor except when the modification was done by an entity acting on Contractor’s behalf, or the modification by Indemnified Party was required Contractor by and with the knowledge and approval of the Contractor; or
- (c) The amount or duration of use made of Contractor’s Product, or services offered by Indemnified Party to external or internal customers of the Indemnified Party, or revenue earner by Indemnified Party;
- (d) The combination or use of Contractor’s Product with third party products, software, or business processes, except when the combination or use was not the cause of the infringement, and Contractor’s Product is allegedly infringing alone.

20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State’s Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials

shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; 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, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

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 shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. 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. Contractor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this Contract. 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 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, JURISDICTION, AND VENUE.

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. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property of the State caused by the negligence or willful misconduct of Contractor; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. . Subject to the foregoing, all liability of Contractor shall be limited as set forth in Sections 40.C and 40.D of Attachment A of the Master Agreement.

H. SOFTWARE PIRACY PROHIBITION.

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/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

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 AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., 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 §§39-21-101, *et seq.*, C.R.S.; (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. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will 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 verification program established pursuant to §8-17.5-102(5)(c), C.R.S., 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 (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable

requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department 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 Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., 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. §§24-76.5-101, *et seq.*, C.R.S.

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

EXHIBIT B STATEMENT OF WORK

1. GOODS AND/OR SERVICES

For a description of what the Participating Addendum will provide, see Exhibit B of the Master Agreement AR3227, "Description of Products, Price, and Services"

2. OTHER PROJECT REQUIREMENTS

A. Delivery of Goods and Performance of Services

- i. Contractor shall provide all Goods and perform all Services described in each Order, as accepted by Contractor.
- ii. Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. Delivery of Goods shall be free on board ("F.O.B.") destination to the location specified in the Order.
- iii. If a good in an Order is out of stock, Contractor may only provide a substitute good if it has notified the Purchasing Entity for that Order, in writing, that the good is out of stock and has received the Purchasing Entity's approval to provide the substitute good. Purchasing Entities may request additional information comparing the substitute good with the original good in the Purchasing Entity's sole discretion.

B. Additional Terms

Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Participating Addendum or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish receipt of Goods or completion of Services and shall not make any such term of that form enforceable.

EXHIBIT C PRODUCTS AND PRICE LIST

1. Contractor has been awarded the following categories:

- DATA COMMUNICATIONS

2. The products and price list is located on the Contractor's dedicated State website, hosted and maintained by the Contractor, and is incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the lead state and shall be effective when published on the dedicated state website.

www.cisco.com/c/en/us/solutions/industries/government/us-government-solutions-services/resources/government-contracts-funding-vehicles/state-local-government-contracts/naspo-valuepoint-datacom-AR3227.html

3. Pricing

A. Price Lists

The State may publish any pricing information under this Participating Addendum, including, without limitation the pricing information shown in this Exhibit C, Products and Price List, on the State's website and any other website as the State determines is necessary or efficient to facilitate the use of this Participating Addendum by Purchasing Entities.

B. Price Decreases and Ceiling Prices

The prices listed in this Exhibit C are Ceiling Prices, and Contractor may offer lower prices to Purchasing Entities, and Purchasing Entities may negotiate lower prices with Contractor, without the review or approval of the State. Contractor shall not allow a Subcontractor to charge an amount greater than the Ceiling Price for any Order.

EXHIBIT D – HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as “Covered Entity” and the Contractor is referred to as “Business Associate”. Unless the context clearly requires a distinction between the Contract and this Agreement, all references to “Contract” shall include this Agreement.

1. Purpose

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information (“PHI”). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) enacted under the American Recovery and Reinvestment Act of 2009 (“ARRA”) Pub. L. No. 111-5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and all other applicable laws and regulations, all as may be amended.

2. Definitions

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

- a. Business Associate. “Business Associate” shall have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and shall refer to Contractor.
- b. Covered Entity. “Covered Entity” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and shall refer to the State.
- c. Information Technology and Information Security. “Information Technology” and “Information Security” shall have the same meanings as the terms “information technology” and “information security”, respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

3. Obligations and Activities of Business Associate

a. Permitted Uses and Disclosures

- i. Business Associate shall use and disclose PHI only to accomplish Business Associate’s obligations under the Contract or as otherwise Required by Law.
- i. To the extent Business Associate carries out one or more of Covered Entity’s obligations

under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.

- ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
 - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
 - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
 - iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
- b. Minimum Necessary.** Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the Services, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).
- c. Impermissible Uses and Disclosures**
- i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
 - ii. Business Associate shall, upon request, make available to Covered Entity information to inform and enable Covered Entity to procure Business Associate's products and services that do not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States.
- d. Business Associate's Subcontractors**
- i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.
 - ii. Business Associate shall provide to Covered Entity, on Covered Entity's written request, a list of Subcontractors for the respective Services with the identities of those Subcontractors.
 - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, sample copies of the standard business associate agreements between Business Associate and Subcontractors.
- e. Access to System.** If Business Associate needs access to a Covered Entity Information Technology system to perform its obligations under the Contract or this Agreement, Business Associate shall comply with any and all policies regarding the use of Covered Entity's Information Technology

system provided to Contractor at the time of granting access to such system, and including but not limited to any policies promulgated by the Office of Information Technology and available at <http://oit.state.co.us/about/policies>.

- f. Access to PHI.** Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.
- g. Amendment of PHI**

 - i.** Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
 - ii.** Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
- h. Accounting Rights.** Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
- i. Restrictions and Confidential Communications**

 - i.** Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:

 - A.** a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
 - B.** a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
 - ii.** Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
 - iii.** Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.
- j. Governmental Access to Records.** Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.
- k. Audit, Inspection and Enforcement**

 - i.** Business Associate shall have the right to require Business Associate to provide copies of a written assessment performed by an independent third party which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity PHI Business Associate receives, manipulates, stores and distributes, if Business Associate maintains such third party assessment. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.

- ii. Business Associate, upon forty-two (42) calendar days written notice from Covered Entity, shall reasonably cooperate with Covered Entity's requests for legally required security audits to audit Business Associate's compliance with applicable HIPAA Rules, subject to mutual agreement on the time, duration, place, scope, and manner of the audit. Such audit may last no more than five (5) business days. If the audit determines that Business Associate's conduct does not sufficiently protect the PHI so as to be in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate will take such steps as may be reasonably agreed upon between the parties to address material deficiencies and areas of non-compliance as soon as may be practicable based on their criticality.

l. Appropriate Safeguards

- i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
- ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
- iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
- iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

m. Safeguard During Transmission

- i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
- ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with an industry recognized encryption algorithm, such as FIPS-compliant encryption algorithm.

n. Reporting of Improper Use or Disclosure and Notification of Breach

- i. Business Associate shall, as soon as reasonably possible, but promptly without unreasonable delay (but in no case more than 48 hours) after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.
- ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
- iii. Business Associate shall, as soon as reasonably possible, but promptly without unreasonable delay (but in no case more than 48 hours) after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.

- iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.
- v. The parties acknowledge and agree that this Section v. constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents for which no additional notice to Covered Entity is required. “**Unsuccessful Security Incidents**” shall include pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-in attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Health Information.

o. Business Associate’s Insurance and Notification Costs

- i. Where a Breach is proximately and solely caused by Business Associate’s failure to comply with the terms of this Agreement, Business Associate shall bear costs of a Breach response including, without limitation, notifications, subject to liability limits in this Agreement. Business Associate shall maintain, at its own expense cyber liability coverage (or its equivalent) as set forth in Exhibit A (State Specific Terms) Section 12.D.
- ii. Business Associate shall provide Covered Entity access to a technical support team accessible 24 hours per day, 7 days per week to assist with incident handling if and as applicable.
- iii. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

p. Subcontractors and Breaches

- i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
- ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.

q. Data Ownership

- i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt Covered Entity’s PHI that the Business Association has encrypted and maintains in encrypted form, or shall provide such PHI in unencrypted usable form.

- r. **Retention of PHI.** Except upon termination of this Agreement as provided in Section 5 below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h above, for a period of six years.

4. Obligations of Covered Entity

- a. **Safeguards During Transmission.** Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.
- b. **Notice of Changes**
 - i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.
 - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. Termination

a. Breach

- i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contractor service where the breach occurred, or this Agreement, or both if such breach of this Agreement is not curable or remains uncured thirty (30) days after notice.
- ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

b. Effect of Termination

- i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.
- ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. Injunctive Relief

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business

Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

7. RESERVED

8. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

9. Amendment

- a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.

- i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall collaborate in good faith to determine the actions necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
- ii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract or this Agreement consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.

Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:

- A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or

- 10. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law. **Assistance in Litigation or Administrative Proceedings**

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent reasonably requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to reasonably assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide reasonable assistance to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party

11. Interpretation and Order of Precedence

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

12. Survival

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this Agreement and shall be enforceable by Covered Entity but only to the extent that Business Associate maintains Covered Entity PHI.

EXHIBIT E, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

21. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall, to the extent applicable, protect such Information Technology resources and State Records in accordance with this Exhibit. Contractor shall be responsible for the compliance with the Contract by any Subcontractor performing work in connection with the Contract.
- B. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. Information Technology is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
 - i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.; and
 - ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form.
- C. Where Contractor stores or processes State Records, Contractor shall, and shall cause its Subcontractors to meet all of the following:
 - i. Implement appropriate physical and logical protection for all hardware, software, and applications that store or process State Records designed to prevent the loss, destruction, falsification, unauthorized access, or unauthorized release of State Records, in accordance with regulatory requirements and the requirements of this Contract.
 - ii. Implement and maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving threats. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing as such are applicable to Contractor as a provider of Goods and Services.
 - iii. Maintain applicable controls and processes designed to ensure that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - iv. If Contractor becomes aware of an Incident or any imminent threat of occurrence of any Incident affecting the security, confidentiality, integrity, or availability of State Records provided to Contractor, it shall notify the State’s Office of Information Security (“OIS”) without undue delay, but in no event

later than 48 hours following Contractor's confirmation of the Incident at OIT_CISO@state.co.us.

- D. When performing customized services, comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology ("OIT"), including change management, project lifecycle methodology and governance, technical standards, documentation, and other requirements as set forth in a transaction-specific statement of work for the customized services, which may include applicable requirements posted at www.oit.state.co.us/about/policies.
- i. Contractor shall perform pre-employment background checks on all of its respective employees performing services or having access to State Records provided under this Contract, and shall require Subcontractors to perform the same for the employees of Subcontractors. Where Contractor is performing on-site services under a transaction-level statement of work, at the request of the State as a condition of access to onsite facilities, Contractor will have its applicable employees submit to background checks to be performed by the State, so that State can determine which employees will be granted onsite access. State will keep the results of the background checks confidential, and will not disclose to Contractor the results. State will only advise whether an employee is not permitted access to State facilities.

22. DATA HANDLING

- A. Upon request, Contractor will make available to the State information about Contractor products and services and their locations of storage of State Records, in order to enable the State to purchase the applicable product or service where the storage location of State Records is located within the United States. If a Purchasing Entity elects to purchase a Good or Service with a FEDRAMP authorization to operate, then the State Records associated with that purchase will remain in the United States of America for the term of that purchase.
- B. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State complete download file(s) of all Customer Content Records.
- i. Upon request, Contractor shall provide the State with information regarding encryption and authentication, if any, of such download file(s). [RESERVED].
- ii. Upon the termination of Contractor's provision of data processing services, Contractor shall, upon request by the State, destroy all such Customer Content and certify to the State that it has done so. If Contractor retains all or part of the State Records provided by the State to Contractor, Contractor shall maintain the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. During the terms of service where Contractor is storing Customer Content or any Subcontractor is storing Customer Content on behalf of Contractor, Contractor shall not interrupt or obstruct the

State's ability to access and retrieve Customer Content stored by Contractor or any Subcontractor.

- C. During the Term of this Participating Addendum, the State retains the right to use the established operational services to access and retrieve Customer Content stored on Contractor's infrastructure at its sole discretion and at any time.

23. DELIVERY AND ACCEPTANCE

- D. For any customized Work or Deliverables, other than the purchase or license of commercially available goods or software, to be performed in accordance with a transaction-level statement of work, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State, according to the criteria set forth in the transactional statement of work. Unless the transactional statement of work sets specific timelines, such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. .

24. RESERVED

25. RESERVED

26. COMPLIANCE

- A. In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:
- i. All information security and privacy obligations applicable to Contractor imposed by any federal, state, or local statute or regulation, or by any agreed-upon industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:
 - a. Health Information Portability and Accountability Act (HIPAA)
 - b. IRS Publication 1075
 - c. Payment Card Industry Data Security Standard (PCI-DSS)
 - d. FBI Criminal Justice Information Service Security Addendum
 - e. CMS Minimum Acceptable Risk Standards for Exchanges
 - f. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration
 - ii. Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and may show compliance by making available the Voluntary Product Accessibility Templates (VPATs) contemplated therein to the Purchasing Entity prior to purchase. Contractor shall make product information available via VPATs so the State can determine whether specific Contractor

products enable the State to comply with the requirements promulgated pursuant to §§24-85-101, et seq., C.R.S., including the State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>. All Contractor VPATs are maintained and provided at the following weblinks:

<https://www.cisco.com/c/en/us/about/accessibility.html>

<https://www.cisco.com/c/en/us/about/accessibility/all-voluntary-product-accessibility-templates.html>

- B. Contractor shall implement and maintain appropriate administrative, physical, technical, and procedural safeguards designed to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C. Contractor shall cooperate with reasonable requests by the State for reasonable access for required security audits, no more than once annually and subject to mutual agreement on the time, duration, scope, and manner of the audit. Such audit shall be upon 30 Business days notice, and shall not extend for more than 5 Business Days. Contractor shall provide the State with information reasonably required to assess Contractor's compliance with the requirements of this Contract, including this Exhibit. To the extent Contractor maintains the following in the normal course of business, such information shall include:
- i. copies of third-party audit reports and certifications it maintains, such as SOC2 Type II audit; or
 - ii. letters of attestation regarding the performance of security penetration tests, as applicable to specific Contractor products and services.

Contractor shall make (i) and (ii) above available to the State in Contractor's Trust Portal (<https://trustportal.cisco.com>), and more specifically as follows:

(i) is available at the following direct link: <https://trustportal.cisco.com/c/r/ctp/trust-portal.html?doctype=ISO|SOC>; and

(ii) is available at the following direct link: <https://trustportal.cisco.com/c/r/ctp/trust-portal.html?doctype=Penetration%20Test>.

27. TRANSITION OF SERVICES

UPON REQUEST BY THE STATE PRIOR TO EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT OR ANY SERVICES PROVIDED IN THIS CONTRACT, CONTRACTOR SHALL PROVIDE REASONABLE AND NECESSARY ASSISTANCE TO ACCOMPLISH A COMPLETE TRANSITION OF THE SERVICES FROM CONTRACTOR TO THE STATE OR ANY REPLACEMENT PROVIDER DESIGNATED SOLELY BY THE STATE, WITH THE GOAL TO AVOID INTERRUPTION OF OR ADVERSE IMPACT ON THE REPLACEMENT SERVICES TO BE PROVIDED BY THE SUCCESSOR PROVIDER. CONTRACTOR SHALL COOPERATE REASONABLY WITH THE STATE OR ANY SUCCESSOR PROVIDER IN EFFECTING A COMPLETE TRANSITION OF THE SERVICES DESIGNATED BY

THE STATE. UNLESS AGREED OTHERWISE, SUCH SERVICES RELATED TO SUCH TRANSITION SHALL BE PERFORMED AT NO ADDITIONAL COST BEYOND WHAT WOULD BE PAID FOR THE SERVICES IN THIS CONTRACT.

28. LICENSE OR USE AUDIT RIGHTS

- A. To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
- B. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.

If upon receipt of the State's Audit Certification, the Parties reasonably determine that: (i) the State'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 Contract ("Overuse") and (ii) the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and the State shall bring its use into compliance with such use restrictions and limitations.