

**STATE OF COLORADO – State Purchasing Office
with
OfficeMax North America, Inc.**

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1. PARTIES.

This contract (hereinafter called "**Price Agreement**") is entered into by and between and the STATE OF COLORADO acting by and through the Department of Personnel & Administration, Division of Finance and Procurement, **State Purchasing Office** (hereinafter called the "State" or "SPO"), and **OfficeMax North America, Inc.** (hereinafter called "Vendor" or Contractor), for purchase of General Office Supplies, Paper and Toner. The Vendor and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

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

3. RECITALS.

- A. **Authority, Appropriation, and Approval.** Authority to enter into this **Price Agreement** exists in CRS §24-102-202, and Colorado Procurement Code R-24-102-202-01. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies of the State.
- B. **Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this **Price Agreement**.
- C. **Purpose.** Vendor is authorized to provide General Office Supplies, Paper and Toner under this **Price Agreement**. This **Price Agreement** authorizes the purchase of such Goods, in accordance with the terms of Orders issued pursuant to this Agreement by eligible entities within the State of Colorado.

The State Purchasing Office has issued this **Price Agreement** to establish the price and terms for purchase of Goods within the State of Colorado by State Agencies (SA), Institutions of Higher Education (IHE), Political Subdivisions (PS), eligible Non-Profit Organizations (NPO), and other eligible entities (including cooperatives, collectively referred to as the "Ordering Entities," defined in Section 4.).

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

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

4. DEFINITIONS.

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

Chief Procurement Official. "Chief Procurement Official" shall mean the Director of the State Purchasing Office, Colorado Department of Personnel and Administration.

Contract. "Contract" is synonymous with "**Price Agreement**" and means this Agreement consisting of attachments and any Orders issued in connection therewith, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

Contract Funds. "Contract Funds" means funds available for payment by the State to Vendor pursuant to this Contract for Orders placed by a State Agency, Institutions of Higher Education and other State departments.

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

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

Exhibits and other Attachments. The following are attached hereto and incorporated by reference herein: **Exhibit A** ((Sample – Option Letter), **Exhibit B** (Pricing List), **Exhibit C** (Sample Summary Vendor Volume Report), **Exhibit D** (Sample - State of Colorado, Contract Management Information FINAL Contractor Performance Evaluation).

Evaluation. "Evaluation" means the process of examining Vendor's Work and rating it based on criteria established in **§6 (Statement of Work) and §19 (Statewide Contract Management System)**.

Goods. "Goods" means tangible material acquired, produced, or delivered by Vendor either separately or in conjunction with Services the Vendor renders.

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

MBE/WBE/SBE/DBE/VBE. "MBE/WBE/SBE/DBE/VBE" means minority-owned, woman-owned, small, disadvantaged, and veteran-owned business enterprises certified as such by the State of Colorado.

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

Order. "Order" means any purchase order, contract, or other authorized commitment voucher used by an Ordering Entity to order the Goods or Services priced in the **Price Agreement**. An Order amended consistent with the requirements of any Ordering Entity shall also be governed by the same terms and conditions presented in this **Price Agreement**.

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

Party or Parties. "Party" means the State or Vendor, and "Parties" means both the State and Vendor.

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

Price Agreement. "Price Agreement" is synonymous with "Contract" and means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein

pursuant to State law, Fiscal Rules, and State Controller Policies. The State Purchasing Office administers price agreements on behalf of State Agencies and other Ordering Entities.

Review. "Review" means examining Vendor's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6 (Statement of Work)**, **§19 (Statewide Contract Management System)**, and in any Order.

Services. "Services" means the services required to be performed by Vendor pursuant to this **Price Agreement** and an Order.

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

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

Subcontractor. "Subcontractor" means, in the event subcontracting by the Vendor is authorized, a third-party, if any, engaged by Vendor to aid in performance of its obligations under this **Price Agreement**.

Work. "Work" means the Goods and associated Services Vendor is required to supply to fulfill its obligations under this **Price Agreement and each Order**.

5. TERM.

A. Initial Term-Work Commencement. The Parties' respective performances under this **Price Agreement** shall commence on the later of either the Effective Date or January 1, 2014. This **Price Agreement** shall terminate on June 30, 2015, or further extended as specified elsewhere herein,

B. Order Terms

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

C. State's Option to Extend. The State may unilaterally require continued performance for a period of four (4) one-year renewals at the same rates and same terms specified in the **Price Agreement**. If the State exercises its option(s), it shall provide written notice to Vendor at least 30 days prior to the end of the current contract term in form substantially equivalent to **Exhibit A (sample Option Letter)**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this **Price Agreement**. The total duration of this **Price Agreement**, including the exercise of any options under this clause, shall not exceed 5 years, unless authorized in writing by the State Purchasing Director.

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

6. STATEMENT OF WORK.

- A. Completion.** Vendor shall complete the Work and its other obligations as described herein and in accordance with any Order issued by an Ordering Entity. The State shall not be liable to compensate Vendor for any Work performed on an Order placed prior to the Effective Date or after the termination of this **Price Agreement**. Further, the State shall not be held liable to compensate Vendor for any Work performed on an Order placed by a non-State Ordering Entity.
- B. Employees.** All persons employed by Vendor or Subcontractors to perform Work under this Price Agreement shall be Vendor's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Price Agreement.
- C. Pricing and Price Changes.** The SPO reserves the right to publish any pricing contained in the Master Agreement (such as **Exhibit B, Pricing List**) on the State Price Agreements website, currently at www.colorado.gov/bids, for use by Ordering Entities.

- i. **Price Changes.** Vendor's pricing must remain firm for the first 12 months of the **Price Agreement**. Vendor may amend pricing once in each 12 month period thereafter. Vendor shall request any price increase in writing to the SPO at least 60 days prior to the anticipated increase, and such request shall justify the increase by describing verifiable Vendor cost increases. Such requests shall contain complete documentation, and cost justifications may be based on Producer Price Index, Consumer Price Index, or similar industry pricing guides. In the event a price increase is accepted and approved through the **Master Agreement**, such price changes must be accepted by the SPO as well and become effective only by amendment of this **Price Agreement**. **However**, Vendor shall pass any price decreases approved through the **Master Agreement** immediately on to Ordering Entities.

If price increases exceed what the SPO considers to be normal or expected, the State reserves the right to solicit additional competition and to purchase Goods and Services from other vendors as a result of of such solicitation. Failure to obtain the State's approval of price increases shall void such price increases. If Vendor increases its rates to an Ordering Entity without obtaining a fully executed amendment, this **Price Agreement** may be cancelled, following proper notice for breach under **§15 (Breach)**.

- ii. **Renewal of Agreement.** In the event of renewal of this **Price Agreement**, or any amendment of its terms (including prices), unless otherwise specified in an Order, the Vendor shall provide Goods and/or Services in accordance with the terms of the **Price Agreement** current at the time of the Order, and invoice the Ordering Entity at the pricing in effect at the time the Order was placed.
- D. Performance.** Vendor shall become familiar with individual Ordering Entity rules and regulations, as identified by the Ordering Entity, regarding procurement and fiscal rules, delivery requirements, and other relevant procedures, and shall comply with any Executive Orders of the Governor of the State and any other judicial or administrative decisions regarding the State of Colorado.
- i. **Customer Service Representatives.** Vendor shall provide each Ordering Entity utilizing the **Price Agreement** with contact information for customer service representatives assigned to handle questions and resolve all problems that arise with any Orders. Service representatives shall be available, at a minimum, from 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday (State holidays excepted). Vendor shall also provide a list of customer service contacts to the State's principal representative identified in **§17 (Notices and Representatives)** or successor, and shall provide notice when any updates are made to this list. Customer service representatives shall be available by phone (via local or toll free number), fax, or email during the required times. Vendor shall also provide an emergency number and contact for after hours use. All customer service representatives shall have online access to account information and

be able to provide a timely response to inquiries concerning the status of Orders (shipped or pending), delivery , back-orders, **Price Agreement** pricing, category discounts, product availability, product information, account and billing questions, and **Price Agreement** compliance requirements.

- ii. **Subcontracting.** Subcontracting will be allowed. Vendor is the Prime Vendor and shall be fully accountable to the State for assuring that its Subcontractors comply with the terms of this **Price Agreement** between the State and the Prime Vendor.
- iii. **PERA.** State Ordering Entities are Colorado PERA affiliated employers. In the event billable personal Services are performed by the Vendor, and pursuant to Colorado SB06-235 and CRS §24-51-1101(2), the Vendor must notify in writing (email is acceptable) the State Ordering Entity's representative listed on the Order within fifteen (15) calendar days from the date of receipt of any Order if the Services to be provided are being or will be performed by a PERA retiree (as defined at CRS §24-51-101).
- iv. **Resolution of Performance Issues.** Ordering Entities have the authority and discretion to resolve performance issues with Vendor. Vendor is required to first meet with the Ordering Entity and its purchasing office to resolve issues once an Ordering Entity has given notice of a performance issue. If resolution cannot be reached, then Vendor and the Ordering Entity should contact the SPO in writing to request assistance in reaching resolution to the satisfaction of all parties involved. Vendor's failure to provide satisfactory performance after receiving notice of a performance issue may be sufficient cause for Ordering Entities to give notice of breach to Vendor and terminate Orders they have placed. Vendor shall convey any notice of breach it receives to the SPO via email within 5 business days of receipt thereof.
- v. **URL and Colorado Page.** Vendor shall provide Internet Catalogs for any and all Ordering Entities utilizing the **Price Agreement**, and shall provide a URL link and Colorado "splash" page or landing page with link to the SPO State Price Agreement website currently at www.colorado.gov/bids.
- vi. **Marketing Notices.** Prior to any distribution, all Vendor marketing notices and literature intended for distribution to Colorado Ordering Entities utilizing the **Price Agreement** must be submitted to **SPO** for advance written approval. Maintenance of mailing lists and the production and distribution of pre-approved marketing notices and literature is the Vendor's responsibility and shall be at Vendor's expense.
- vii. **HIPAA.** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104-191 governs the exchange of certain health data and the privacy and security of certain health information. All Work performed by Vendor and its Subcontractors must be in compliance with the Health Insurance Portability and Accountability Act of 1996.

The Ordering Entity is responsible for notifying the Vendor in writing when placing a HIPAA-related Order. HIPAA Standards/Final Rules are posted on the Department of Health and Human Services (DHHS) website:

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>.

- viii. **Training.** Vendor shall provide all necessary training to Ordering Entities at no additional cost on all aspects of ordering, online ordering, product delivery, product returns, and customer service processes. Further, Vendor shall provide Ordering Entities, as applicable, training and information on the use of products, including their energy efficiency; new features; opportunities for manufacturer/certified set up and training; green "EPP"; and other services that are offered or available.

- ix. **Procurement Card.** Vendor shall have the capability to accept procurement "credit" cards. Vendor shall have industry standard security protocol including storage of data, ordering security, and data file security.
- x. **Contract Management.** Vendor shall provide contract management and sales support to the State and to each Ordering Entity. Vendor shall designate a representative(s) who shall have primary responsibility for management of this **Price Agreement**. Vendor shall notify the State's principal representative identified in **§17 (Notices and Representatives)** or successor of any change in designated representative(s).

E. Orders. An Ordering Entity shall place Orders with Vendor for Goods and/or Services on an "as-needed" basis. Orders shall be placed consistent with the terms of this **Price Agreement** during the term specified in **§5 (Term)**. Each Ordering Entity shall identify and utilize its own appropriate purchasing procedure and documentation. Vendor shall not begin Work without a valid order number. State Agencies, State-funded Institutions of Higher Education and other State departments shall ensure that no orders are placed before a valid purchase order or contract is in place and shall comply with the purchasing requirements described in State Fiscal Rule 2-2-4 (Orders in excess of \$100,000 shall utilize a State contract and encumbrance of Contract Funds). The State of Colorado shall not be liable for payment of Orders placed by non-State Ordering Entities and Vendor shall not seek compensation from the State of Colorado for such Orders. All communications concerning administration of Orders placed shall be furnished solely to the purchasing officer within the Ordering Entity's purchasing office, or to such other individual identified in writing in the Order. All Orders for Goods and/or Services issued pursuant to this **Price Agreement**, at a minimum, shall include:

- i. Order date, when the Order is being placed by the Ordering Entity;
- ii. A brief description of the Goods and/or Services being purchased, including line item descriptions, item numbers, quantity ordered; quantity to be included in shipments, unit costs, rates (when applicable), and totals;
- iii. The place and requested time of delivery or performance;
- iv. The billing address;
- v. The complete name of the Ordering Entity to include the name, phone number, and address of the Ordering Entity's purchasing officer or representative. ;
- vi. The State of Colorado Price Agreement Number: **61500YYY22P**.

Delivery. Unless otherwise agreed in writing, any Goods and/or Services ordered pursuant to this **Price Agreement** shall be delivered freight on board (F.O.B.) destination to the location specified in the Order. The Ordering Entity shall not be deemed to have accepted any Goods and/or Services until such has been inspected in accordance with the specifications and is accepted by the Ordering Entity. Title to Goods shall pass to the Ordering Entity upon acceptance of delivered items.

Retail Store Purchases/Will Call. In the event the Vendor has Colorado physical store locations, the Vendor shall stock commonly ordered items at Vendor's branch locations. Vendor shall provide a list of Colorado branch locations and ones that provide a will call service. Vendor shall notify the State's principal representative identified in **§17 (Notices and Representatives)** or successor of any changes in the locations. Ordering Entities shall be able to place Orders at will call store locations, make payment for those items on site, and have those items included in the reporting described at **§8 (Reporting - Notification)**.

Forced Substitutions. Forced substitutions are not allowed. If an ordered Good is out of stock, the Vendor shall notify the Ordering Entity and request prior approval before substituting for the out-of-stock item. Vendor's request to substitute must explain how the substituted Good compares with the out-of-stock item. If a Good is discontinued, Contractor must provide a written substitution policy and

notify the State's principal representative identified in **§17 (Notices and Representatives)** or successor of the policy and change. Any substitution offered must remain within the scope of this **Price Agreement**.

- F. Termination of an Order by Ordering Entities.** An Ordering Entity through its designated procurement officer or other authorized representative may terminate an Order for default, which shall not terminate this **Price Agreement**, without notice of termination from the State, and such termination shall be governed by this **§6.F**.
- i. **Default.** If Vendor refuses or fails to perform any of its obligations under the provisions of an Order, with such diligence as will ensure its completion within the time specified in the Order, the Ordering Entity's procurement officer may notify Vendor in writing of the non-performance. If such breach is not corrected within thirty (30) days of issuance of notice, or if, due to Vendor's actions or inactions, performance would be of no value to the Ordering Entity, the procurement officer may terminate Vendor's right to proceed with the Order or such part of the Order as to which there has been such delay or a failure to properly perform. Vendor shall continue performance of the Order to the extent it is not terminated.
 - ii. **Vendor's Duties.** Notwithstanding termination of the Order, and subject to any directions from the procurement officer, Vendor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Vendor in which the Ordering Entity has an interest (if any).
 - iii. **Compensation.** The Ordering Entity may withhold amounts due to Vendor as the procurement officer deems necessary to protect the Ordering Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Ordering Entity for the extra costs incurred in procuring substitute Goods and/or Services.
 - iv. **Erroneous Termination for Default.** If after notice of termination of Vendor's right to proceed under the provisions of this **§6.F**, it is determined for any reason that Vendor was not in breach under the provisions of this section, or that the delay was excusable, the rights and obligations of the Ordering Entity and the Vendor shall be the same as if the notice of termination had been issued pursuant to the termination for the public interest section below.
 - v. **Termination of an Order for the Public Interest.** Unless otherwise agreed, the procurement officer, when the interests of the Ordering Entity, so require, may terminate any Order, in whole or in part, for the public interest of the Ordering Entity, provided only that such termination will not relieve such Ordering Entity from its obligations with respect to any Goods and/or Services already delivered to or used by such Ordering Entity. The procurement officer shall give at least thirty (30) days prior written notice of the termination to Vendor specifying the part of the Order terminated and when termination becomes effective. Termination for the public interest of all or any portion of an Order shall not constitute a breach of this **Price Agreement** by the Ordering Entity.
 - (a) **Vendor's Obligations.** Vendor shall incur no further obligations in connection with the terminated Order on the date set in the notice of termination. Vendor will stop Work to the extent specified. Vendor must still complete and deliver to the Ordering Entity the portion of the Order not terminated (if any) by the notice of termination.
 - (b) **Compensation.** Upon termination of an Order by an Ordering Entity, Vendor shall be entitled to compensation as follows: Vendor shall submit a termination claim specifying the amounts due because of the termination for the public interest together with cost or pricing data bearing on such claim. Vendor shall be paid an amount which bears the same ratio to the total reimbursement under the Order as Vendor's obligations that were satisfactorily performed bear to the total obligations set forth in the Order, less payments previously made. Additionally, if a terminated Order is less than sixty (60) percent completed, the Ordering Entity may reimburse Vendor for a portion of actual out-of-pocket expenses (not otherwise

reimbursed under such Order) incurred by Vendor which are directly attributable to the uncompleted portion of Vendor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Vendor under such Order.

- G. Internet Ordering, E-Commerce and Web Catalog, Electronic Data Storage, and Catalogs.** Maintenance of its internet, e-commerce and web catalog, electronic data storage, and catalogs is the Vendor's responsibility and shall be at Vendor's expense.
- i. **Internet Ordering.** Vendor shall provide internet catalogs accessible to all Ordering Entities; provide a URL link and Colorado "splash" page or landing page with link to the SPO State Price Agreement website currently at www.colorado.gov/bids; designate market basket items in its on-line catalogs for ease of ordering; identify a symbol or marking used to identify market basket items; and designate all environmental preferable products (EPP) in their on-line catalogs and identify the symbol used for to mark these EPP products.
 - ii. **Electronic Data Storage.** Vendor must have the capability of electronic data storage and a back-up system in the unlikely event that the main information storehouse becomes unusable. Vendor shall have industry standard security protocol including storage of data, ordering security, and data file security.
 - iii. **Catalogs.** Vendor must provide paper and/or computer media catalogs to any Ordering Entity, upon request for the duration of this contract.

7. TAXES and PAYMENTS TO VENDOR.

A. Taxes and Tax Exemption Status.

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

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

B. Payments to Vendor

An Ordering Entity issuing a valid Order shall be bound by the terms and conditions of this **Price Agreement**, including, without limitation, the obligation to pay Vendor for Goods and/or Services in accordance with the provisions of this **§7**, using the methods set forth below.

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

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

The terms and conditions on any invoice, statement, Vendor time sheet, or other form, including, but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the State or any Ordering Entity. The Vendor's and Ordering Entities' rights and obligations shall be governed solely by the terms and conditions of this **Price Agreement**. Any Ordering Entity employee's signature on Vendor's forms shall be effective only to establish receipt of Goods or Services. The Vendor shall provide a toll free number for Ordering Entity inquiries on billing problems.

- ii. **Remittance.** Ordering Entities will remit payments by mail or via State procurement credit cards or as otherwise agreed by Vendor and such Ordering Entity. The Ordering Entity shall send payments to Vendor at the address shown on the invoice if it is the same address recorded in this **Price Agreement** or subsequently provided to SPO in writing. Vendor must provide notice within 5 business days of a change to the SPO in writing (email is acceptable) in the event the remittance information changes.
- iii. **Payment By State Ordering Entities; Interest.** Vendor shall allow Ordering Entities a minimum of thirty (30) days after receipt of an invoice to pay for products or services provided by Vendor. State law and regulations provide that State payments made within forty-five days are not considered delinquent, and unless otherwise agreed, State Ordering Entities will pay interest on any unpaid balance beginning on the forty-sixth day at the rate of one percent per month on any unpaid balance until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Vendor shall invoice State Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid, and the applicable interest date. (Section 24-30-202(24), C.R.S., as amended.)
- iv. **Payment By Colorado Political Subdivisions, Non-Profits, or Other Authorized Entities:** For Orders placed by non-State Ordering Entities (Political Subdivisions, Non-Profits, or other authorized entities), terms for Payment shall be specified in the written Orders. Vendor shall invoice non-State Ordering Entities directly. Ordering Entities generally remit payment in a timely manner within forty-five (45) days of invoice; however, it is the Vendor's responsibility to confirm all payment terms with each non-State Ordering Entity at the time an Order is placed.
- v. **Maximum Amount.** State Ordering Entities shall place Orders with the Vendor using a purchase order or state contract as required by State law and regulations. All other Ordering Entities shall place Orders with a purchase order or other contracting document acceptable to the Vendor. The maximum amount payable by the Ordering Entity under this **Price Agreement** shall be determined by the amount of Orders placed and other contracting documents. No Contract Funds will be encumbered by the State Department of Personnel & Administration

against this **Price Agreement** unless an Order is placed by that agency. Ordering Entities shall state the maximum amount available for the purchase of Goods and/or Services under each Order.

- vi. **Advance, Interim and Final Payments.** Any advance payment allowed under any Order issued by a State Agency against this **Price Agreement** shall comply with State Fiscal Rules and be made in accordance with the provisions of this **Price Agreement** and such Order. Other Ordering Entities may have their own fiscal procedures regarding advance payments, which may be agreed upon in writing between the non-State Ordering Entity and the Vendor.
- vii. **Available Funds-Contingency-Termination.** State Ordering Entities are prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Vendor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, **§21** hereof. If federal funds are used to fund Work ordered by State Ordering Entities under this **Price Agreement**, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such Contract Funds. State Ordering Entities shall only make payments for Work ordered by a State Ordering Entity under this **Price Agreement** from available State Ordering Entity Contract Funds that have been encumbered for that Work, and the State Ordering Entity's liability for such payments shall be limited to the amount remaining of such encumbered Contract Funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund any Order placed by a State Ordering Entity under this **Price Agreement**, the State Ordering Entity may terminate the Order immediately, in whole or in part, without further liability in accordance with the provisions hereof.

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

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

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

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

8. REPORTING – NOTIFICATION.

Reports required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State, as applicable. Vendor's failure to provide these reports shall constitute cause for cancellation of this **Price Agreement** and may disqualify Vendor from the award of future awards by the State.

- A. Performance, Progress, Personnel, and Funds.** Vendor shall submit a report to each Ordering Entity upon expiration or sooner termination of this **Price Agreement**. In addition, Vendor shall comply with all reporting requirements, if any set forth in any Order.
- B. Volume Reports.** The State intends to use the centralized method of volume. Vendor shall furnish the SPO sales/volume reports 15 days after the end of each calendar quarter. The quarter periods are: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31; of any given year.

Vendor must provide SPO a report detailing the total sales to all Ordering Entities within the State each reporting period. The Volume detail report, for the quarter being reported, shall contain the following: identify the date of sale, Ordering Entity name, the items purchased, quantity, unit price, extended cost (quantity x unit price), list price per unit, extended list cost (quantity x list price /unit), and savings (extended cost minus extended list cost). Additionally, Vendor must provide a summarized report in a form substantially equivalent to **Exhibit C (sample Summary Volume Report)** attached hereto and incorporated herein; and in a format requested by the SPO such as an Excel spreadsheet. Reports to be sent via email to the Primary Contact identified in **§17 (Notices and Representatives)** or assigned successor. Specifically, the reports must include:

- i. **Total Sales Dollars:** Total spent by each Ordering Entity group (State Agencies (SA), Institutions of Higher Education (HE), other State entities that are not SAs (SE), Political Subdivisions (PS), and eligible Non-Profit organizations (NP) as a result of this **Price Agreement** every quarter. Then total spent by all groups.
- ii. **Total Regular (List) Cost of Total Sales:** Total of the extended list cost by each entity group for SA and SE, IHE, PS, and NPO. Then total cost for all groups.
- iii. **Total Estimated Cost Savings:** Total estimated cost savings (total sales minus extended list cost = savings) by each entity group for SA and SE, IHE, PS, and NPO. Then total savings for all groups.
- iv. **Total Paid by Procurement Card:** Total sales made by a procurement "credit" card by each entity group for SA and SE and IHE. Then totaled for all groups.
- v. **Total Green Sales:** Total Green sales, meaning sale of *Environmentally Preferable Products*, by each entity group for SA and SE, IHE, PS, and NPO. Then total EPP sales for all groups. (Environmentally Preferable Products, including applicable discount savings, as such are defined in the State's Environmentally Preferable Purchasing Policy. *Note:* in most cases, "Green" products have been third party registered or certified as such by EPA, NFP, Energy Star, LEED, etc.)
- vi. **Amount of Administration Fee:** The Administration Fee due to Colorado in accordance with **§9 (Administration Fees)**.

Vendor shall also be required to provide Colorado specific reporting in the form set forth on the website of the State Purchasing Office: www.colorado.gov/bids. Any modifications made to the volume report requirements will be a collaborative effort between the Vendor and the State. The sales information needs of the State, however, shall be the primary factor considered in determining any permitted modification of reporting requirements.

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

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

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

- C. Litigation Reporting.** Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this **Price Agreement** or which may affect Vendor's ability to perform its obligations hereunder, Vendor shall notify the SPO in writing (email is preferable) of such action and deliver copies of such pleadings to the State's principal representative as identified in **§17**. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the State Department of Personnel & Administration.
- D. Noncompliance.** Vendor's failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of State funds and/or termination as provided under this **Price Agreement**.
- E. Subcontracts.** Vendor shall submit to the SPO or the State's principal representative copies of any and all subcontracts entered into by Vendor to perform its obligations hereunder upon request by the State. Any and all subcontracts entered into by Vendor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado and that Subcontractors shall comply with the terms of this **Price Agreement**, which terms shall be incorporated by reference in the subcontracts.

9. ADMINISTRATION FEES.

- A. Fees and Due Dates.** The Colorado General Assembly has authorized the State Purchasing Office to collect a fee for the administration of statewide contracts. On a quarterly basis, Vendor shall return to the State a **fee of 1.00 %** (.0100 multiplication factor) of the total sales within the State by all Ordering Entities during that quarter, to assist with the cost of contract administration by the State. The Vendor shall remit the administration fee to the State within **fifteen (15) days** of the end of each quarter.

Fees shall be made payable to the Colorado State Treasurer by a check submitted to the State's Primary Contact identified in **§17 (Notices and Representatives)** or successor. The quarter periods and report/payment submission dates of any given year are:

<u>Quarter End Dates</u>	<u>Payment and Report Due Dates</u>
January 1 to March 31	April 15
April 1 to June 30	July 15
July 1 to September 30	October 15
October 1 to December 31	January 15.

- B. Mandatory or Permissive Agreement.** This Statewide Price Agreement shall be "**permissive**". State Agencies subject to the State's Procurement Code are not required to satisfy requirements through this statewide **Price Agreement**, the decision to do so shall be at the discretion of each Ordering Entity .

This "**permissive**" statewide **Price Agreement** is not an exclusive price agreement to a specific vendor, and the State of Colorado reserves the right to create multiple "**permissive**" price

agreements. While Political Subdivisions, eligible Non-Profit Organizations, and other authorized entities may place Orders under this **Price Agreement**, whether the agreement is designated as "mandatory" or "permissive", the decision to do so shall be at the discretion of each non-State Agency Ordering Entity.

10. VENDOR RECORDS.

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

11. CONFIDENTIAL INFORMATION-ORDERING ENTITY RECORDS.

Vendor shall comply with the provisions of this §11 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

- A. Confidentiality.** Vendor shall keep all State and Ordering Entity records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for Ordering Entity records and information in the possession of Vendor shall be immediately forwarded to the State's principal representative.
- B. Notification.** Vendor shall notify its agent, employees, Subcontractors and assigns who may come into contact with State and Ordering Entity records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.
- C. Use, Security, and Retention.** Confidential information of any kind shall not be distributed or sold to any third party or used by Vendor or its agents in any way, except as authorized by this **Price Agreement** or approved in writing by the State or the Ordering Entity. Vendor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Vendor or its agents, except as permitted in this **Price Agreement** or approved in writing by the Ordering Entity or the State.
- D. Disclosure-Liability.** Disclosure of State or Ordering Entity records or other confidential information by Vendor for any reason may be cause for legal action by third parties against Vendor, the State or their respective agents. Vendor shall indemnify, save, and hold harmless the State, the Ordering Entity, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Vendor, or its employees, agents, Subcontractors, or assignees pursuant to this **§11**.

12. CONFLICTS OF INTEREST.

Vendor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Vendor's obligations hereunder. Vendor acknowledges that with respect to this **Price Agreement**, even the appearance of a conflict of interest is harmful to the State's interests.

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

13. REPRESENTATIONS AND WARRANTIES.

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

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

and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this **Price Agreement**, or any part thereof, and to bind Vendor to its terms. If requested by the State, Vendor shall provide the State with proof of Vendor's authority to enter into this **Price Agreement** within 15 days of receiving such request.

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

Vendor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of such licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Vendor to properly perform the terms of this **Price Agreement** is a material breach by Vendor and may constitute grounds for termination of this **Price Agreement**.

- D. Doing Business in Colorado.** Vendor and its subcontractors and authorized dealer/distributors, if applicable, shall register with the Colorado Secretary of State in accordance with Colorado Revised Statute (CRS) 7-90-801, and must obtain a rating of "good standing" status and maintain it throughout the term of this **Price Agreement**. A copy of Vendor's Articles of Incorporation and/or Bylaws may be requested by the State.
- E. Federal Employer Identification Number (FEIN).** Vendor shall submit to the State its F.E.I.N. prior to order issuance and as directed by the Office of the State Controller. Vendor shall also provide a completed W-9, Taxpayer Identification form, to the State.

14. INSURANCE.

Vendor and its Subcontractors shall obtain and maintain insurance as specified in this §14 at all times during the term of this **Price Agreement**. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Vendor and the State.

A. Vendor

- i. **Public Entities.** If Vendor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Vendor shall maintain at all times during the term of this **Price Agreement** such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Vendor shall show proof of such insurance satisfactory to the State, if requested by the State. Vendor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.
- ii. **Non-Public Entities.** If Vendor is not a "public entity" within the meaning of the GIA, Vendor shall obtain and maintain during the term of this **Price Agreement** insurance coverage and policies meeting the same requirements set forth in §14(C) with respect to Subcontractors that are not "public entities".

- B. Professional Liability.** The Vendor named in this **Price Agreement** promises and agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$500,000 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form, that

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

- C. **Vendors – Subcontractors.** Vendor shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this **Price Agreement**, to include insurance requirements substantially similar to the following:
- i. **Worker’s Compensation.** Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of Vendor or Subcontractor employees acting within the course and scope of their employment.
 - ii. **General Liability.** Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent Vendors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Vendor and/or Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Vendor a certificate or other document satisfactory to Vendor showing compliance with this provision.
 - iii. **Automobile Liability.** Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
 - iv. **Additional Insured.** The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Vendor and any Subcontractors hereunder.
 - v. **Primacy of Coverage.** Coverage required of Vendor and Subcontractor shall be primary over any insurance or self-insurance program carried by Vendor or the State.
 - vi. **Cancellation.** The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Vendor and Vendor shall forward such notice to the State in accordance with **§17 (Notices and Representatives)** within seven days of Vendor’s receipt of such notice.
 - vii. **Subrogation Waiver.** All insurance policies in any way related to this **Price Agreement** and secured and maintained by Vendor or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Vendor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- D. **Certificates.** In accordance with **§17 (Notices and Representatives)**, Vendor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this **Price Agreement**. No later than 15 days prior to the expiration date of any such coverage, Vendor and each Subcontractor shall deliver to the State certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this **Price Agreement** or any subcontract, Vendor and each Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§14**.

15. BREACH.

- A. **Defined.** In addition to any breaches specified in other sections of this **Price Agreement**, the failure of the Vendor, the State or an Ordering Entity to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Vendor, or the appointment of a receiver or similar officer for Vendor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.
- B. **Notice and Cure Period.** In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party and to the State in the manner provided in **§17 (Notices and Representatives)**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State or an Ordering Entity may exercise any of the remedies set forth in **§16 (Remedies)**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this **Price Agreement** in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

16. REMEDIES.

If Vendor is in breach under any provision of this **Price Agreement**, the State and an Ordering Entity shall have all of the applicable remedies listed in this **§16** in addition to all other remedies set forth in other sections of this **Price Agreement** and under applicable law, following the notice and cure period set forth in **§15 (Breach)**. The State and any Ordering Entity may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

- A. **Contract Termination for Cause and/or Breach.** The State may terminate this entire **Price Agreement** or any part thereof, or any Order in response to Vendor's uncured breach. Exercise by the State of this right shall not be a breach of its obligations hereunder. Vendor shall remain responsible for performance of this **Price Agreement** and any Orders to the extent not terminated, if any.
- i. **Obligations and Rights.** To the extent specified in any termination notice, Vendor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding Orders and subcontracts with third parties. However, Vendor shall complete and deliver to individual Ordering Entities all Orders not cancelled by the State termination notice and may incur obligations as are necessary to do so within this **Price Agreement's** terms. At the sole discretion of the State or the Ordering Entity, Vendor shall assign to the individual Ordering Entities all of Vendor's right, title, and interest in Goods and/or Services created pursuant to any terminated Orders as of the effective date of their termination.

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

- ii. **Payments.** The Ordering Entity shall reimburse Vendor only for accepted performance up to the date of termination of an Order. If, after termination of an Order by the State, it is determined that Vendor was not in breach or that Vendor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations

of the Parties shall be the same as if this **Price Agreement** had been terminated in the public interest, as described herein.

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

B. Contract Early Termination in the Public Interest. The State is entering into this **Price Agreement** for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this **Price Agreement** ceases to further the public policy of the State, the State, in its sole discretion, may terminate this **Price Agreement** in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's or any Ordering Entity's obligations hereunder. This subsection shall not apply to a termination of this **Price Agreement** by the State for cause or breach by Vendor, which shall be governed by **§16(A)** or as otherwise specifically provided for herein.

- i. **Method and Content.** The State shall notify Vendor of such termination in accordance with **§17 (Notices and Representatives)**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this **Price Agreement**.
- ii. **Obligations and Rights.** Upon receipt of a termination notice, Vendor shall be subject to and comply with the same obligations and rights set forth in **§16(A)(i)**.
- iii. **Payments.** If this **Price Agreement** is terminated by the State pursuant to this **§16(B)**, Vendor shall be paid by respective Ordering Entities for all outstanding Orders an amount which bears the same ratio to the total reimbursement under those Order as Vendor's obligations that were satisfactorily performed bear to the total obligations set forth in each Order, less payments previously made. Additionally, if an Order is less than 60% completed, the Ordering Entity may reimburse Vendor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Vendor which are directly attributable to the uncompleted portion of Vendor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Vendor by an Ordering Entity hereunder.

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

- i. **Suspend Performance.** Suspend Vendor's performance with respect to all or any portion of this **Price Agreement** pending necessary corrective action as specified by the State without entitling Vendor to an adjustment in price/cost or performance schedule. Vendor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Vendor after the suspension of performance under this provision.
- ii. **Withhold Payment.** Withhold payment to Vendor until corrections in Vendor's performance are satisfactorily made and completed.
- iii. **Deny Payment.** Deny payment for those obligations not performed that, due to Vendor's actions or inactions, cannot be performed or, if performed, would be of no value to the State;

provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

- iv. **Removal.** Notwithstanding any other provision herein, the State may demand immediate removal of any of Vendor's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this **Price Agreement** is deemed to be contrary to the public interest or the State's best interest.
- v. **Intellectual Property.** If Vendor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this **Price Agreement**, Vendor shall, at the State's option (a) obtain for the State or Vendor the right to use such products and services; (b) replace any product involved in the performance of the Services with non-infringing products, or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove or discontinue any infringing Services or products and refund the price paid therefore to the State. Non-State Ordering Entities may include other remedies in the terms of the Orders they place.

17. NOTICES and REPRESENTATIVES.

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

State:

Brooke Dunn, Strategic Sourcing Specialist
State of Colorado Department of Personnel & Administration Division of Finance and Procurement State Purchasing Office
1525 Sherman Street
Denver, CO 80203
Office: 303-866-6147 FAX: 303-894-7445
brooke.dunn@state.co.us

Vendor:

Randy Madson, Vice President
OfficeMax North America, Inc.
263 Shuman Blvd.
Naperville, IL 60563
630-438-7800

18. GOVERNMENTAL IMMUNITY.

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM.

If the maximum amount payable to Vendor by State Ordering Entities under this **Price Agreement** is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§19** applies.

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

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

Should the final performance Evaluation and Review determine that Vendor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the State Purchasing Office, and showing of good cause, may debar Vendor and prohibit Vendor from bidding on future contracts. Vendor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Vendor, by the Executive Director, upon a showing of good cause.

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

20. GENERAL PROVISIONS.

- A. Assignment and Subcontracts.** Vendor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Vendor or the State are subject to all of the provisions hereof. Vendor shall be solely responsible for all aspects of subcontracting arrangements and performance.
- B. Binding Effect.** Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
- C. Captions.** The captions and headings in this **Price Agreement** are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

- D. Counterparts.** This **Price Agreement** may be executed in multiple identical original counterparts, all of which shall constitute one agreement.
- E. Entire Understanding.** This **Price Agreement** represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.
- F. Indemnification.** Vendor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Vendor, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
- G. Jurisdiction and Venue.** All suits or actions related to this **Price Agreement** shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
- H. Modification**
- i. **By the Parties.** Except as specifically provided in this **Price Agreement**, modifications of this **Price Agreement** shall not be effective unless agreed to in writing by the Parties in an amendment to this **Price Agreement**, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules. Modifications permitted under this **Price Agreement**, other than amendments, shall conform to the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.
 - ii. **By Operation of Law.** This **Price Agreement** is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this **Price Agreement** on the effective date of such change, as if fully set forth herein.
- I. Order of Precedence.** The provisions of this **Price Agreement** shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this **Price Agreement** and its exhibits and attachments, including, but not limited to, those provided by Vendor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
- i. **§21 of the Price Agreement, Colorado Special Provisions;**
 - ii. **The remaining provisions of the main body of this Price Agreement;**
 - iii. **Exhibit B, Pricing List; and**
 - iv. **The provisions of each Order.**
- Any conflict or inconsistency between the terms of an Order and this **Price Agreement** shall be resolved by giving effect first to the documents in the order of precedence above and finally to the terms of the Order.
- J. Severability.** Provided this **Price Agreement** can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this **Price Agreement** in accordance with its intent.

- K. Survival of Certain Price Agreement Terms.** Notwithstanding anything herein to the contrary, provisions of this **Price Agreement** requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Ordering Entity if Vendor fails to perform or comply as required.
- L. Third Party Beneficiaries.** Enforcement of this **Price Agreement** 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 **Price Agreement** are incidental to the **Price Agreement**, and do not create any rights for such third parties.
- M. Waiver.** Waiver of any breach under a term, provision, or requirement of this **Price Agreement**, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- N. CORA Disclosure.** To the extent not prohibited by federal law, this **Price Agreement** and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.
- O. Public Information.** The disclosure of Vendor information by the State, a State Agency, Institution of Higher Education, other State department or a Political Subdivision shall be governed by the Colorado Open Records Act, CRS §24-72-200.1, et seq.
- P. Sex Offender Registry Check.** If in the course of doing business a Vendor's employee and its subcontractors, and/or authorized dealers/distributors visits a State facility that has as clients children under the age of 21 on the premises, Vendor shall complete a sex offender registry check on each such employee prior to such employee going to any such State facility. In the event a Vendor's employee is on the registry, such employee shall not be sent to a State facility and will not be admitted to such facility. Link to access the Colorado Department of Public Safety's website: <http://cdpsweb.state.co.us/> (Reference CRS §16-22-110, Sex Offender Registry.)
- Q. Bid Information and Distribution System (BIDS) and Registration.** The Awarded Vendor must maintain current registration throughout the term of the **Price Agreement**. BIDS and its registration information may be linked through the Colorado Department of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office (SPO) link at www.colorado.gov/bids.
- R. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ("ARRA") and FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2004 ("FFATA").** If or when an Ordering Entity places an Order using ARRA or FFATA Contract Funds, the Ordering Entity shall immediately notify the SPO and Vendor, and such Order shall include the "State of Colorado Supplemental Provisions for Contracts, Grants, and Purchase Orders Using Funds Provided Under the American Recovery and Reinvestment Act of 2009" or the "State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to the Federal Funding Accountability and Transparency Act of 2006," as applicable, and as such provisions may be modified from time to time. The ARRA provisions are available on the website of the Colorado State Controller at: <http://www.colorado.gov/osc>, and the FFATA provisions are available on the website of the Colorado State Controller at: <http://www.colorado.gov/osc>. The State and the Ordering Entity agree to comply with all federal and State reporting requirements for the use of ARRA and FFATA funds. Vendor shall provide the required report to the Ordering Entity with the invoice presented to the Ordering Entity for payment. The Parties acknowledge that Vendor, for purchases under this Price Agreement, is not a subcontractor or subgrantee, but a provider of goods and related services.

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

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

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

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

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

D. **INDEPENDENT CONTRACTOR.** Vendor shall perform its duties hereunder as an independent Vendor and not as an employee. Neither Vendor nor any agent or employee of Vendor shall be deemed to be an agent or employee of the State. Vendor 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 Vendor or any of its agents or employees.

Unemployment insurance benefits will be available to Vendor and its employees and agents only if such coverage is made available by Vendor or a third party. Vendor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Price Agreement. Vendor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Vendor shall (a) provide and keep in force Workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

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

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

G. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this **Price Agreement** or incorporated herein by reference shall be null and void.

H. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. State or other public funds payable under this **Price Agreement** shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Vendor hereby certifies and warrants that, during the term of this **Price Agreement** and any extensions, Vendor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Vendor is in violation of this provision, the State

may exercise any remedy available at law or in equity or under this **Price Agreement**, including, without limitation, immediate termination of this **Price Agreement** and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

J. **VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. *[Not applicable to intergovernmental agreements]* Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

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

L. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS §24-76.5-101. Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this **Price Agreement**.

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22. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p align="center">CONTRACTOR OfficeMax North America, Inc.</p> <p>By: <u>Randy Modson</u> Title: <u>V.P. Sales</u></p> <p><u>[Signature]</u> *Signature</p> <p>Date: <u>12/23/13</u></p>	<p align="center">STATE OF COLORADO John W. Hickenlooper, Governor Department of Personnel & Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director</p> <p>By: <u>[Signature]</u> By: Carol Pfarr, Division Director Signatory avers to the State Controller or delegate that Contractor has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: <u>1/2/14</u></p>
<p>2nd Contractor Signature if Needed</p> <p>By: _____ Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: [Signature]

Date: 1/2/14

Exhibit A
OPTION LETTER

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
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1) **OPTIONS:**

a. Option to renew only for subsequent one-year terms.

b. In accordance with Section(s) 5C of the Original Price Agreement between the State of Colorado, Department Of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office, and INSERT NAME the State hereby exercises its option for an additional term beginning INSERT START DATE AND ENDING DATE.

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

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Department of Personnel & Administration
Division of Finance and Procurement
State Purchasing Office
Kathy Nesbitt, Executive Director

By: Carol Pfarr, Division Director

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Bob Jaros, CPA, MBA, JD

By: _____

Date: _____

Exhibit C



STATE OF COLORADO
VENDOR QUARTERLY
SUMMARY VOLUME REPORT

State Purchasing Office
633 17th Street, Suite 1520
Denver, Colorado 80202

Revised - 9/17/13

Vendor Name:	
Contact Person:	
E-Mail Address:	
Phone:	
Date:	
Price Agreement Number:	
Commodity or Service:	

← Fill In Highlighted Areas

Reporting Period (Please select the correct period): July - September ▾

Reporting Year (Please select the correct year): 2013 ▾

	Total Sales Dollars This Quarter ¹	Regular (List) Pricing of Total Sales ²	Estimated Cost Savings ³		Total Paid By Commercial Credit Card ⁴		Total Green Sales ⁵	
State Agencies & other State Departments			\$ -	0%		0%		0%
Higher Education			\$ -	0%		0%		0%
Political Subdivisions ⁶			\$ -	0%		0%		0%
Non-Profit ⁷			\$ -	0%		0%		0%
Total	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%
Colo. Admin. Fee ⁸								

Purchasing Agent Contact information: (Please select the appropriate Agent and e-mail this form):
 Brooke Dunn (303) 866-6147 Brooke.Dunn@state.co.us ▾

1	Total Sales Dollars this Quarter - Please attach detailed reports/data to support these amounts.
2	Regular (List) Pricing of Total Sales - Price before discounts are applied as a direct result of this price agreement.
3	Estimated Cost Savings - Savings to the State as a direct result of this price agreement.
4	Total Paid by Commercial Credit Card - Reflects the portion of total sales and percentage that was paid by Credit Card.
5	Total Green Sales - Reflects the portion of total sales and percentage that has Environmentally Preferable Attributes. Note: third-party certified or registered (no self-certifying allowed).
6	Political Subdivisions - Examples include City/County/Local Governments, School Districts, Fire Depts., Special Districts, etc.
7	Non-Profits - Organizations annually qualified by the State Purchasing Office based on C.R.S. 24-110-207.5.
8	Colorado Administration Fee - only applicable to price agreements where the State is collecting a fee.

Vendor Comments:

SPO Use Only
 Comments: test/test
 Date entered into LotusNotes:



Exhibit D
State of Colorado
Contract Management Information
FINAL Contractor Performance Evaluation
Colorado Revised Statutes §24-102-205(6)

Upon completion of each personal services contract with a value over \$100,000, the individual selected by the state agency or institution of higher education (IHE), pursuant to CRS §24-103.5-101(3), to monitor the contractor's work under the contract (Contract Monitor) shall complete this FINAL Contractor Performance Evaluation (Evaluation) and submit the completed Evaluation to the contractor for review and comment pursuant to CRS §24-103.5-101(6). This Evaluation and contractor's response, if any, shall be added to the statewide Contract Management System (CMS) within 30 days after contract completion and become publically available as part of the State's searchable website. Soliciting state agencies and IHEs are required to review completed Evaluations prior to making future contract awards to ensure that the prospective contractor meets applicable responsibility. A contractor who disputes any information contained in an Evaluation may exercise the contract rights set forth in CRS §§24-109-106, 107, 201 or 202.

Completing this Form

- Before completing this Evaluation, the Contract Monitor shall ensure that ALL applicable fields in CMS are completed upon conclusion of the contract.
- The Contract Monitor or Procurement Staff shall submit the completed Evaluation to the contractor for review and comment within 30 days of contract completion.
- The state agency or IHE shall maintain this Evaluation and contractor's response, if any, as part of its official contract file and shall post the Evaluation on CMS within 30 days of contract completion.
- This Evaluation shall remain a part of CMS for at least 5-years following the date it is attached to the CMS contract record. C.R.S. §24-105-102(4).
- If the contract is for construction services with a value of \$500,000 or more, the Contract Monitor *also* shall complete the form entitled "Construction Contractor Final Performance Evaluation Report".
- This Evaluation is not required for contracts under Medicare, the "Colorado Medical Assistance Act", Articles 4 to 6 of Title 25.5, CRS, the "Children's Basic Health Plan Act", Article 8 of Title 25.5, CRS, or the "Colorado Indigent Care Program", Part I of Article 3 of Title 25.5, CRS.

CMS Identification Number: _____ Contract Completion Date: _____

Name of State Agency / IHE: _____

Name of Contractor / Grantee: _____

Name of Project / Program: _____

>>Contractor Performance – evaluation conducted after completion of services <<

Contractor met requirements related to Quality	Yes	<input type="checkbox"/>	No*	<input type="checkbox"/>
Contractor met requirements related to Cost	Yes	<input type="checkbox"/>	No*	<input type="checkbox"/>
Contractor met requirements related to Timeliness	Yes	<input type="checkbox"/>	No*	<input type="checkbox"/>
*Briefly indicate area(s) of non-compliance and steps taken to remedy				
Indicate number and dates of interim performance evaluation worksheets completed for this contract				
Overall Rating of Contractor Performance	Below Standard	Standard	Above Standard	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>>The following to be completed by the State following submittal to Contractor for review <<

Provided contractor with opportunity to review Evaluation? (Date sent: _____)	Yes	<input type="checkbox"/>	No*	<input type="checkbox"/>
Contractor submitted response to Evaluation? (Date rebuttal received: _____)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Contractor disputed Evaluation? (Date Dispute received: _____)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
*If No, Explain	_____			

By signing below, I acknowledge that I have completed this Final Contractor Performance Evaluation in accordance with C.R.S. §24-102-205(6)

_____ Signature		_____ Title	
Print Name _____	Date _____	Phone _____	_____