

**PARTICIPATING ADDENDUM
to NASPO ValuePoint
Public Safety Communication Support Equipment
Administered by the State of Washington
with Alcatel-Lucent USA, Inc.
Master Agreement No. 05715
And
The State of Colorado
Participating Addendum No. 2017-133**

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the "Participating Addendum"), is entered into by and between Alcatel-Lucent USA, Inc. (the "Contractor"), and the State of Colorado (the "State"). This Participating Addendum covers participation in the Public Safety Communication Support Equipment led by the State of Washington (the "Master Agreement"), for use by State agencies and other entities located in the State authorized by the State's statutes to utilize State contracts with the prior approval of the Chief Procurement Officer. The specific Goods and Services provided under the Master Agreement are listed in Exhibit B, Products, Services and Price List.

2. PARTICIPATION

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

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

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

4. RESERVED

5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

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

Primary Contact for the State:
Nikki Kalen, State Procurement
Administrator
State Purchasing & Contracts Office
1525 Sherman Street, 3rd Floor
Denver, Co 80203
(303) 866-5671
nikki.kalen@state.co.us

Primary Contact for the Contractor:
Scott Mehal
Alcatel-Lucent USA, Inc. (part of Nokia
Group)
600-700 Mountain Ave.
Murray Hill, NK 07974
(206) 465-7453
Scott.mehal@nokia.com

6. SUBCONTRACTORS

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

7. ORDERS

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

8. ATTACHED EXHIBITS

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

- A. Colorado Special Provisions in §14 of Participating Addendum Exhibit A, State Specific Terms
- B. The provisions of the main body of this Participating Addendum
- C. All other sections of Participating Addendum Exhibit A, State Specific Terms
- D. Participating Addendum Exhibit B, Products, Services and Price List

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

<p align="center">CONTRACTOR Alcatel-Lucent USA, Inc.</p> <p>By: Eric W. Negley Title: Director, Contract Management</p> <p>_____ Signature</p> <p>Date: <u>7 August 2017</u></p> <p>By: Title:</p> <p>_____ Signature</p> <p>Date: <u>August 8, 2017</u></p>	<p align="center">STATE OF COLORADO John W. Hickenlooper, Governor Department of Personnel and Administration State Purchasing & Contracts Office June Taylor, Executive Director</p> <p>_____ By: John Chapman, State Purchasing Manager</p> <p>Date: <u>Aug 14, 2017</u></p>
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STATE OF COLORADO
Governor's Office of Information Technology
Suma Nallapati, Secretary of Technology and Chief Information Officer

By: Brenda Berlin, Deputy Chief Information Officer and Chief Financial Officer

Date: 8/30/17

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Name: CLARK W. BOLSER

Effective Date: 8/1/17

PARTICIPATING ADDENDUM EXHIBIT A, STATE SPECIFIC TERMS

1. AUTHORITY

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

2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Building Blocks”** means ideas, know-how, concepts, techniques, methodologies, software, templates, routines and tools (i) that existed prior to the performance of Services under this Agreement and are used in connection with creation of the Work Product, (ii) that are created by Contractor in connection with the performance of the Services, and that are of a general nature, not specific to the operations or business of the State and therefore suitable for re-use by Contractor, or (iii) that are documents prepared by Contractor in connection with the performance of the Services, such as work notes, drafts, schedules, analyses, transcriptions, memos and working notes, that serve as the basis for Work Product but which themselves are not actually provided to the State.
- B. **“Contractor Confidential Information”** means any and all information belonging to Contractor that is normally considered confidential in nature.
- C. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302 C.R.S
- D. **“Deliverable”** means the outcome to be achieved or output to be provided, in the form of a tangible or intangible object that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor.
- E. **“FTI Data”** means federal tax information or State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. FTI includes, but is not limited to, all information defined as federal tax information in Internal Revenue Service Publication 1075.
- F. **“Effective Date”** means the date on which this Participating Addendum is approved and signed by the Colorado State Controller or designee.
- G. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement, and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- H. **“Health Insurance Portability and Accountability Act (HIPAA) Data”** means any information, whether oral or recorded in any form or medium, that (i) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of any individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an

individual; and (iii) identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual. HIPAA Data includes, but is not necessarily limited to, protected health information as defined in 45 CFR §160.103 and 45 CFR §164.501.

- I. **“Incident”** means an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources of the State pursuant to C.R.S. §24-37.5-401 et seq. Incidents include, but are not limited to (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- J. **“Non-Embedded Software”** means a software application program (in object-code form and excluding source code) that does not permanently reside on a computing device.
- K. **“Order”** means any purchase order, delivery order, contract, or other authorized commitment voucher used by a Purchasing Entity to order the Goods or Services priced in the Participating Addendum. An Order amended consistent with the requirements of any Purchasing Entity shall also be governed by the same terms and conditions presented in this Participating Addendum. For the avoidance of doubt, the additional meaning of Order in Section 7 of the Participating Addendum applies to Purchasing Entity Orders.
- L. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- M. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- N. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S
- O. **“Purchasing Entity”** means a city, county, district, other political subdivision of the State, and qualifying nonprofit organizations who issue Orders against the Master Agreement and becomes financially committed to the purchase.
- P. **“Purchasing Entity Records”** means any and all Purchasing Entity data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA. For the avoidance of doubt, the State and Purchasing Entity will not intentionally provide Contractor use or access to CJI, FTI, HIPPA, PCI, PII, or any other sensitive information or data, unless mutually agreed upon on a case-by-case basis. If this excluded information is unintentionally provided to Contractor, the State will notify the Contractor of such including a reasonably detailed description of the nature of such information provided.
- Q. **“Services”** means the services to be performed by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement, and shall include any services to be rendered by Contractor in connection with the Goods.

- R. **"State Confidential Information"** means any and all State Records or Purchasing Entity Records not subject to disclosure under CORA. State Confidential Information shall include but is not limited to; PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State or Purchasing Entity which has been communicated, furnished, or disclosed by the State or Purchasing Entity to Contractor which (i) is subject to disclosure pursuant to CORA (ii) is already known to Contractor without restrictions at the time of its disclosure by Contractor; (iii) is or subsequently becomes public available without breach of an obligation owed by Contractor to the State or Purchasing Entity; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information. The State or Purchasing Entity will provide notice in the event that if State Confidential Information is unintentionally provided to the Contractor.
- S. **"State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- T. **"State Fiscal Year"** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- U. **"Chief Procurement Officer"** means the position described in the Colorado Procurement Code and its implementing regulations.
- V. **"State Records"** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA. For the avoidance of doubt, the State and Purchasing Entity will not intentionally provide Contractor use or access to CJI, FTI, HIPPA, PCI, PII, or any other sensitive information or data, unless mutually agreed upon on a case-by-case basis. If this excluded information is unintentionally provided to Contractor, the State will notify the Contractor of such including a reasonably detailed description of the nature of such information provided.
- W. **"Subcontractor"** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- X. **"Work"** means the delivery of the Goods and performance of the Services described in this Participating Addendum.
- Y. **"Work Product"** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, information, and any other results of the Work. "Work Product" does not include (i) any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work, or (ii) any Building Blocks.

Any term used in this Participating Addendum that is defined in another Exhibit or in the main body of this Participating Addendum shall be construed and interpreted as defined in that portion of this Participating Addendum.

3. TERM

- A. Initial Term - Work Commencement

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

B. Extension of Term

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

4. PAYMENTS/ACCEPTANCE

A. Purchasing Entity Payments

Each Purchasing Entity will make its own payments under any Order that it enters into with Contractor. The State shall not be liable to the Contractor for any payments due under any Order unless the State is a party to that Order. Contractor will issue invoices as follows: (i) for Products, upon delivery; (ii) for non-recurring Services, including engineering and installation Services, as such Services are completed; and (c) for recurring Services, including maintenance, technical support, and network management Services, upon commencement of such Services and thereafter on a quarterly basis at the beginning of each quarter.

B. Administrative Fee Payments

For each Fiscal Year quarter, the Contractor shall remit to the State an administrative fee equal to 1% of the total spent by all Purchasing Entities under this Participating Addendum during that quarter. The Contractor shall remit all administrative fees to the State's Primary Contact identified in this Participating Addendum, and with the payee as "State of Colorado", within 60 days following the State Fiscal Year quarter to which the administrative fee applies.

C. Acceptance of Products and Services.

- i. Acceptance will be deemed to occur on the day that the State or the Purchasing Entity places the Product into production use (other than for testing purposed during the Acceptance Testing period).
- ii. Acceptance of Services will be deemed to occur as Services are performed.

5. REPORTING - NOTIFICATION

A. Volume Reporting

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

- i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:

- a. The total spent by each type of Purchasing Entity under this Participating Addendum.
 - b. The total of the list price of all items purchased by each type of Purchasing Entity under this Participating Addendum.
 - c. The total estimated cost savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list cost minus the total spent for that Purchasing Entity.
 - d. The amount of the total administrative fee due to the State.
 - e. Any additional summary information as requested by the State and agreed to by Contractor.
- ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
- a. The name of the Purchasing Entity who the sale was made to.
 - b. The date of the sale.
 - c. The model number or description of the item sold.
 - d. The price of the item.
 - e. Any other detail information as requested by the State and agreed to by Contractor.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact described in this Participating Addendum.

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

- i. To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact described in this Participating Addendum, within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum.
- ii. The State acknowledges that Contractor and its affiliates are a well-established, multi-national group of companies with locations outside the State of Colorado and outside the United States of America. Accordingly, the Contractor and its affiliates will perform Services outside the State of Colorado and outside the United States of America. More particularly, Contractor and its affiliates expect to perform remote technical support Services from locations in Canada and the United Kingdom where their technical support centers are located.

6. CONFIDENTIAL INFORMATION

A. Confidentiality

Contractor shall hold and maintain any and all State Confidential Information provided to Contractor or made available to Contractor by the State or its Purchasing Entities in confidence for the sole and exclusive benefit of the State or Purchasing Entity that provided such Confidential Information. The State and its Purchasing Entities shall hold and maintain all Contractor Confidential Information provided to State or its Purchasing Entities in confidence for the sole and exclusive benefit of Contractor or the affiliated company of Contractor who provided such Confidential Information. Each party who receives or obtains State Confidential Information or Contractor Confidential Information ("Receiving Party") from or belonging to the other party, ("Disclosing Party") shall use the information solely for the purposes of exercising its rights and performing the Participating Addendum. The Receiving Party shall not, without prior written approval of the Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the Disclosing Party, Confidential Information, including, with respect to Contractor, any State Confidential Information, except as otherwise stated in this Participating Addendum. Any request or demand to Contractor by any third party for the State's Confidential Information shall be forwarded as soon as practicable to the State's primary contact described in the Participating Addendum. The State and its Purchasing Entities acknowledge and agree that Contractor may disclose to, and permit the use by, Contractor's affiliated companies and Subcontractors for the purpose of performing this Participating Addendum.

B. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §6.A of this Exhibit A may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §6.A of this Exhibit A.

C. Notification

Contractor shall notify its affiliated companies, agents, employees, Subcontractors and assigns that may come into contact with State Confidential Information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such State Confidential Information.

D. Use, Security, and Retention

State Confidential Information shall be stored, processed, or transferred only in, or to, facilities located within the United States, and shall not be distributed or sold to any third party, retained in any files or otherwise, or used by Contractor or its agents in any way, except as authorized by this Participating Addendum or approved in writing by the State or the Purchasing Entity, as applicable. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located.

E. Protection

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

- i. Provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Participating Addendum or an Order;
- ii. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), and annual security testing conducted solely by Contractor, or an authorized third-party.
- iii. Comply with State and federal regulations and mutually agreed upon guidelines related to security, confidentiality, integrity, availability, and auditing;
- iv. Ensure that security is not compromised by unauthorized access to computers, programs, software, databases, or other electronic environments; and
- v. Shall report all breaches involving State Confidential Information to a representative of the Office of Information Security (OIS) or the applicable Purchasing Entity within 24 hours of a confirmed breach.

Upon a 30 day written notice, Contractor shall provide the State or Purchasing Entity with access, subject to Contractor's reasonable access security requirements, to inspect and monitor use of State Confidential Information, for the purpose of maintaining State or Purchasing Entity systems, and evaluating physical and logical security control effectiveness. Neither Contractor nor its Subcontractors shall have any rights to use or access any Office of Information Technology (OIT) or other Purchasing Entity data or information, except with the prior written approval of OIT or the Purchasing Entity or the State.

F. Audit Overview

Audits will be confined to the designated and agreed-upon areas, systems and infrastructure which are likely and materially to impact the security of the Purchaser, Purchaser's information, or the Supplier's ability to fulfill its security obligations under this Agreement. Prior to Contractor permitting such audit, the parties shall agree on the purpose, scope and methodology of the Audit.

General auditing guidelines:

- i. the State shall provide 30-day advance written notice with intended areas of audit scope which will be clearly defined;
- ii. the State shall limit the number of audits per calendar year to one (1). The scope of the audit will be limited to the verification of Contractors compliance with the agreed upon contractual security obligations;
- iii. the State will bear expense/cost of the audit unless the sponsoring Contractor organization accepts responsibility for funding the cost or if the Contractor is found to be in breach of this Agreement;
- iv. the audit will be conducted under the supervision of Contractor and only during normal business hours. The audit will start/end within a commercially reasonable timeframe;

- v. Contractor may approve/deny the customer's use of third parties who may be competitors, that work on contingency fees, or service providers of Contractor to conduct the audit
- vi. Contractor may deny access to records that potentially violates other customers' or Nokia employees' right of privacy; or considered strategic in nature
- vii. if the State exercises its right to conduct an Audit the State will enter into a commercially reasonable Non-Disclosure Agreement to safeguard Contractor information and the audit results;
- viii. the State shall provide the results of the audit to Contractor;
- ix. Contractor shall to use commercially reasonable efforts to resolve non-compliance, in a time period agreed on by the State and the Contractor;
- x. vulnerability and penetration testing are not permitted without prior written approval of Contractor;
- xi. the State will not be granted physical access to Data Centers, SOC's, corporate NOCs

G. Compliance

Contractor shall review, on a semi-annual basis, all OIS policies and procedures which OIS has promulgated pursuant to C.R.S. §§24-37.5-401 through 406 and 8 CCR §1501-5 and posted at <http://oit.state.co.us/ois>, to ensure compliance with the standards and guidelines published therein. Upon written request by the State, Contractor may provide reasonable evidence of compliance with OIT policies and procedures.

H. Background Checks

Contractor shall perform, and shall cause its Subcontractors to perform, in a form reasonably acceptable to the State or Purchasing Entity, current background checks on all of its respective employees and agents performing Services or having access to State Confidential Information provided under the Participating Addendum. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access shall be deemed to be current. For the avoidance of doubt, Contractor employees and other resources have certain credentials, criminal and other background information verified as a condition of employment and continued employment. Accordingly, Contractor will conduct pre-employment screening, including background checks, on all U.S. employees to the extent allowable by law.

I. Security Breach Remediation

- i. If Contractor becomes aware of an Incident involving any State Confidential Information that relate to an Order placed by Contractor, it shall notify OIS, the State, and the Purchasing Entity within 24 hours of a confirmed security breach and cooperate with the State, OIS, and the Purchasing Entity regarding recovery, remediation, and the necessity to involve law enforcement, if any. If Contractor or any of its Subcontractors are determined to be the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised by the Incident. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State and OIS.

- ii. Contractor shall be responsible for performing an analysis to determine the cause of the Incident, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future.
- iii. Contractor shall present such analysis and remediation plan to the State and OIS as soon as practicable after notifying the State, OIS, and the Purchasing Entity of the Incident. If Contractor cannot produce the required analysis and plan within a reasonable period of time, the State and/or OIS, and Contractor shall mutually agree upon the next course of action.

J. Rights in Data, Documents, and Computer Software

- i. Except to the extent specifically provided elsewhere in this Participating Addendum, any State Records or Purchasing Entity Records, pre-existing State software, research, reports, studies, data, photographs, negatives or other pre-existing documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Participating Addendum or any Order, shall be the exclusive property of the State or Purchasing Entity (collectively, "State Materials" or "Purchasing Entity Materials"). All State Materials or Purchasing Entity Materials shall be delivered to the State or Purchasing Entity by Contractor upon completion of an Order or termination thereof. The State's or Purchasing Entity's exclusive rights in such State Materials or Purchasing Entity Materials shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, or willingly allow, cause or permit such State Materials or Purchasing Entity Materials to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State or Purchasing Entity.
- ii. Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Participating Addendum, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State or Purchasing Entity as set forth in this Section 6.J. or in a State or Purchasing Entity approved license agreement: (a) entered into as exhibits to this Participating Addendum, (b) obtained by the State or Purchasing Entity from the applicable third-party vendor, or (c) in the case of open source software, the license terms set forth in the applicable open source license agreement.
- iii. Upon delivery of any Non-Embedded Software and subject to the State's payment of the applicable fees for such Non-Embedded Software, Contractor hereby grants the State a limited, nonexclusive, nontransferable license (a) to use those portions and features of the Non-Embedded Software for which Contractor has authorized the activation solely on or with the single unit or arrangement of equipment for the State's internal use in the United States; and (b) to copy the Non-Embedded Software as reasonably necessary for backup and archival purposes provided the copies contain all of Contractor's proprietary notices contained in the original Non-Embedded Software. The State acknowledges and agrees that (c) Contractor may have encoded within the software optional functionality, features and/or capacity, which may be accessed only through the purchase of the applicable license extension from Contractor at an

additional price (no licenses are granted to such functionality, features and/or capacity unless the State purchases the applicable license extension); and (d) the State may need to obtain a new or additional application key from Contractor to use such software. This Section applies to all updates, upgrades, maintenance releases, revisions, and enhancements for the Non-Embedded Software.

- iv. The State shall not directly or indirectly: (a) modify, copy (other than as permitted above), transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any Embedded Software or Non-Embedded Software or related documentation (collectively, "Licensed Material") or portion thereof; (b) encumber, time-share, rent or lease the rights granted herein; (c) manufacture, adapt, create derivative works of, localize, port or otherwise modify any Licensed Material or portion thereof; (d) disclose or otherwise make available any Licensed Material or portion thereof to any third party; (e) enable any software functionality, feature or capacity which Contractor licenses as a separate product, without Contractor's prior written consent; (f) take any action that may result in the software becoming subjected to the terms of a license that requires it to be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge; or (g) use any Licensed Material or portion thereof except in accordance with this Section. All rights, title and interest in and to the Licensed Material, including all intellectual property rights, remain vested in Contractor, its suppliers and licensors, and the State is granted only a limited license to use the Licensed Material in conjunction with the equipment, as provided in this Section and in Section 31 of the Master Agreement (with respect to Embedded Software).
- v. If the Embedded Software or Non-Embedded Software contains free or open source software ("FOSS") that is packaged separately or integrated with the Software, and to which third party license obligations apply, information will be available in the FOSS itself, on the website from which the download is available, or from Contractor upon the State's request, indicating the license under which such FOSS was released, and containing required acknowledgements, legends and/or notices. Unless otherwise dictated by a FOSS license (such as GPL, LGPL, and Affero GPL) that requires Contractor to grant the same rights to the parties to whom we distribute the FOSS, the State's rights to use, copy, and further distribute (if applicable) the FOSS are governed by this license, and not by the FOSS license originally applicable to the FOSS. If the State modifies any FOSS then notwithstanding any other provisions to the contrary, Contractor will have no further liability or obligation to provide support, maintenance, warranty or indemnity with respect to the modified FOSS or any Contractor products with which the modified version of the FOSS interacts.
- vi. Certain Software may be delivered with its own specific license ("Additional License"). In such a case, the terms of the Additional License will be delivered to the State for review, and will govern use of the Software by the State to the extent Contractor does not have a right to supersede them. Contractor's licensors are third party beneficiaries of these license provisions (and those in the Master Agreement) with respect to their software and documentation.

K. Delivery and Support

The State or a Purchasing Entity, in its sole discretion, may securely deliver State Records or Purchasing Entity Records directly to the facility where such data is used to perform the

Work.

L. End of Agreement Data Handling

Upon written request by the State or Purchasing Entity made before or within sixty (60) days after the effective date of termination of this Participating Addendum, Contractor will make available to the State or Purchasing Entity download file of State Records, Purchasing Entity Records and any documentation prepared specifically for the State. If legislation applicable to the Contractor prevents it from returning or destroying all or part of the State Records or Purchasing Entity Records provided by the State or Purchasing Entity to Contractor, Contractor warrants that it will guarantee thereafter the confidentiality of the State Confidential Information provided by the State or Purchasing Entity to Contractor and will not actively process such data anymore.

M. Intellectual Property Indemnification

Contractor shall indemnify, hold harmless, and defend, at Contractor's sole expense, the State and Purchasing Entities and their respective employees and agents against any and all loss, cost, expenses or liability, including but not limited to attorneys fees, court costs, and other legal expenses and damages awarded to a third party in a final judgment against the State or a Purchasing Entity, arising out of a claim by such third-party against the State or a Purchasing Entity, that any Goods or Services, software, or Work Product provided by Contractor under this Participating Addendum or any Order, or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right of such third-party. Contractor's obligation hereunder shall not extend to (w) the combination of the Goods, software or Work Product with any other product, system, or method, unless the other product, system, or method is (i) provided by Contractor or Contractor's subsidiaries or affiliates, or (ii) specified by Contractor to work with the Goods, software or Work Product, or (iii) reasonably required in order to use the Goods in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function, or (iv) is reasonably expected to be used in combination with the Goods, (x) modification of the Goods, software or Work Product by the State, a Purchasing Entity, or any third-party not authorized by Supplier, (y) compliance by Supplier with specifications, design modifications or instructions furnished by the State or a Purchasing Entity, or (z) a claim that relates to the use of any Goods, software or Work Product in a manner not contemplated by this Agreement.

Contractor's indemnity obligations are conditioned upon (1) the State or a Purchasing Entity promptly notifying Contractor of the making of a claim, (2) Contractor having control over the defense thereof and State or a Purchasing Entity cooperating in the defense at Contractor's expense, and (3) State or a Purchasing Entity not agreeing to the settlement of any such claim, demand, action or suit prior to a final judgment thereon without the prior written consent of the Contractor, which consent may not be unreasonably withheld.

Notwithstanding the Supplier's primary right to have control over defense, Buyer may take all necessary steps, at the expense of the Supplier, to defend itself until the Supplier, to the reasonable satisfaction of Buyer, assigns a counsel and initiates defense in a professional manner.

This section states the sole and exclusive remedy of the State or a Purchasing Entity for claims of intellectual property rights infringement under this Agreement.

N. License or Use Audit Rights

Contractor shall have the right, at any time during and throughout the term of the Participating Addendum, but not more than once (1) per Fiscal Year to request via written notice (“Audit Request”) that the State or Purchasing Entity certify its compliance with any applicable license or use restrictions and limitations (“Audit”) contained in this Participating Addendum or any Order. The State or Purchasing Entity shall complete the Audit and provide certification of its compliance to Contractor (“Audit Certification”) within one hundred twenty (120) days following the State or Purchasing Entity’s receipt of the Audit Request. If upon receipt of the State’s or Purchasing Entity’s Audit certification, the Parties reasonably determine: (i) the State’s or Purchasing Entity’s use of licenses, use of software, use of programs, or any other use during the Audit period exceeded the use restrictions and limitations contained in this Participating Addendum or any Order (“Overuse”) and (ii) that the State or Purchasing Entity would have been or is then required to purchase additional maintenance and/or Services (“Maintenance”), Contractor shall provide written notice to the State or Purchasing Entity identifying any Overuse or required Maintenance and request that the State or Purchasing Entity brings its use into compliance with such use restrictions and limitations. Notwithstanding anything to the contrary in this Participating Addendum or any Order, or incorporated as a part of Contractor’s or any Subcontractor’s website, click-through or online agreements, third-party agreements, or any other documents or agreements between the Parties, the State or Purchasing Entity shall be liable for the costs associated with any Overuse or Maintenance, regardless of whether the State or Purchasing Entity may have been notified in advance of such costs, as determined by the pricing set forth in Exhibit B, Products, Services, and Price List

7. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

8. BREACH

A. Defined

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

B. Notice and Cure Period

In the event of a breach, the aggrieved party shall give written notice of breach to the other Party's primary contact described in this Participating Addendum. If the notified Party does not cure the breach within 30 days after receipt of written notice, or, if a cure cannot be completed within 30 days but cure of the breach has not begun within 30 days and has not been pursued with due diligence, the State may exercise any of the remedies set forth in §9 of this Exhibit A. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in the Participating Addendum in order to protect the public interest of the State. In the event State provides Contractor with no notice or a cure period to protect the interest of the State, the State shall reimburse Contractor for Goods delivered, and Services performed up to, including the date of such termination.

9. REMEDIES

A. State's Remedies

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

i. Termination for Breach

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

a. Obligations and Rights

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

the State's request, Contractor shall return materials owned by the State that Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the State at the State's request.

b. **Payments**

The State shall reimburse Contractor only for accepted Goods and Services received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest. See Section 8.B. for reimbursement to Contractor in the event of termination in the public interest.

c. **Damages and Withholding**

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages. The State may withhold any amount that may be due Contractor as the State deems necessary to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the State in procuring from third parties replacement Work as cover.

ii. **Remedies Not Involving Termination**

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

a. **Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State, without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. **Removal**

Demand immediate removal from Work under this Participating Addendum of any of Contractor's employees, agents, or Subcontractors whom the State deems unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest. For the avoidance of doubt, if State's removal of Contractor's key personnel cannot be replaced in a timely manner and Contractor cannot perform then both Parties mutually agree that such inability to perform shall not constitute a termination for breach but, rather, would constitute a termination for convenience, and the State shall reimburse Contractor for goods delivered and services performed up to and including the date of such termination.

c. **Intellectual Property**

In the event that any Work infringes a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, at its option (i) secure that

right for the State; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the value of such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum, Contractor, following the notice and cure period set forth in §8.B of this Exhibit A and the dispute resolution process in §10 of this Exhibit A shall have all remedies available to it at law and equity. For the avoidance of doubt, in the event State is in breach as set forth in Section 8.B., the State shall, at a minimum, reimburse Contractor for goods delivered, services performed up to, and including the date of such termination.

10. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §10.A of this Exhibit A fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Participating Addendum or any Order to which the State is a party, to the Chief Procurement Official of the State Purchasing and Contracts Office as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Chief Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

11. RIGHTS IN WORK PRODUCT

Unless otherwise modified by another Exhibit to this Participating Addendum, the Purchasing Entity shall own the Work Product.

12. GOVERNMENTAL IMMUNITY

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

13. GENERAL PROVISIONS

A. Binding Effect

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

B. Counterparts

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

C. Venue

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

D. Modification

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

E. Severability

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of the Participating Addendum.

F. Survival of Certain Participating Addendum Terms

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

G. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under C.R.S. §§39-26-701, et seq. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Some Purchasing Entities may be subject to taxes for Orders, but in no event shall the State have liability to the Contractor for any such taxes.

H. Third Party Beneficiaries

Except for the Parties' respective successors and assigns permitted under this Participating Addendum, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties, except for rights explicitly provided for Purchasing Entities or rights contained in an Order. Enforcement of this

Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties, except for rights explicitly provided for Purchasing Entities or rights contained in an Order. Any Services or benefits which third parties receive as a result of this Participating Addendum are incidental to the Participating Addendum, and do not create any rights for such third parties, except for rights explicitly provided for Purchasing Entities or rights contained in an Order.

I. Standard and Manner of Performance

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

J. Additional Insured

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

14. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY

No term or condition of this Participating Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes, income taxes, and local head taxes incurred pursuant to this Participating Addendum. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts

required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW

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

F. CHOICE OF LAW

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

G. BINDING ARBITRATION PROHIBITED

The State does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Participating Addendum or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00

State or other public funds payable under this Participating Addendum shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Participating Addendum and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Participating Addendum, including, without limitation, immediate termination of this Participating Addendum and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Participating Addendum. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's Services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET. C.R.S. §§24-30-202(1) and 24-30-202.4

Subject to C.R.S. §24-30-202.4(3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in C.R.S. §39-21-101, et seq.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to

the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.

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

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Participating Addendum and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Participating Addendum, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to C.R.S. §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Participating Addendum or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Participating Addendum. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Participating Addendum is being performed, (ii) shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Participating Addendum, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, institution of higher education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Participating Addendum for breach and, if so terminated, Contractor shall be liable for damages.

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

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

PARTICIPATING ADDENDUM EXHIBIT B, PRODUCTS, SERVICES AND PRICE LIST

A. Contractor has been awarded the following categories:

- 1) Microwave Radios, Carrier Grade, Packet Data
- 2) Microwave Radios, Network Grade

B. The Price List is located on the dedicated State website, and is incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the Lead State and shall be effective when published on the dedicated State website.

C. Warranty Information. Contractor's warranties for the Products listed on the Price List and for Services are as follows (the "Warranty Provisions"):

1) Warranty for Equipment.

- i. Contractor warrants that during the warranty period defined in this paragraph, the equipment on the Price List ("Equipment") will, under normal use and service, be free from defects in materials and workmanship and function substantially in accordance with Contractor's technical specifications in effect on the date of shipment.
- ii. The warranty period for Equipment is 12 months from the date of shipment. If Contractor installs the Equipment, such 12-month warranty period will commence on the date of installation completion. Under no circumstances, however, will the warranty period commence later than 4 months after the shipment date of the Equipment in question. Repaired or replaced units and subassemblies will have a new warranty period of 3 months from shipment date or the end of the original warranty period, whichever is longer.
- iii. Purchasing Entity must obtain from Contractor a return authorization number and pack and ship, at its own cost, the defective part, subassembly or unit (if applicable) to the facility designated by Contractor, together with a detailed description of the problem and the appropriate documentation required for such shipment and return shipment thereof. Purchasing Entity will perform the re-installation of the repaired or replacement part, subassembly or unit at its own cost. When repairing or replacing any Product or part thereof, Contractor may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Products or parts.

2) Warranty for Software.

- i. Contractor warrants that during the warranty period, Embedded Software and Non-Embedded Software (collectively, "Software") will, under normal use and service, function substantially in accordance with Contractor's technical specifications in effect on the date of shipment or on the date that the Software is first loaded on Purchasing Entity's Equipment or other products (as applicable).
- ii. Contractor makes no warranty that any Software will operate uninterrupted or error free.
- iii. The warranty period for Software is 90 days from the date of shipment or from the

date that the Software is first loaded onto Purchasing Entity's Equipment or other products in accordance with the provisions below (depending upon which is applicable). If Contractor installs the Software, such 90-day warranty period will commence on the date of installation completion. Software will be deemed to have been loaded on the shipment date. The warranty period for corrected Software is the remainder of the original warranty period.

- iv. This subsection C.2 does not apply to Software supplied under license from third parties, for which the rights and guarantees given are those which Contractor is authorized to provide to its customers.
- v. Upon notice from Purchasing Entity, Contractor undertakes to remedy defects discovered in Software during the warranty period as follows:
 - a) As the first remedial measure in the case of a problem affecting the Software subsequent to the installation of an updated or new version of such Software, Purchasing Entity shall reload the most recent Software update or version to restore performance.
 - b) If the foregoing is not applicable or does not correct the problem, Contractor shall remedy the defect in the Software by delivering a correction to Purchasing Entity by electronic means or by delivery to Purchasing Entity of suitable media chosen solely by Contractor.
 - c) Notwithstanding the aforesaid, defects in a part of Embedded Software that is embedded on devices which are not readily reprogrammable or correctable as set out above may, in Contractor's discretion, be rectified through the repair or replacement of the applicable Equipment module under the warranty terms and conditions applicable to Equipment.

3) Warranty for Services.

- i. Contractor warrants that during the warranty period defined in this subsection C.3, Services purchased under the Participating Addendum will be performed in accordance with Contractor's written standards, or in the absence of such standards, in a professional and workmanlike manner.
- ii. The warranty period for Services is 30 days, beginning on the date of completion.
- iii. Upon notice from Purchasing Entity that any Service is not as warranted, Contractor shall correct the Service. The warranty period for the corrected Service is the remainder of the original warranty period.

4) General Exclusions.

- i. The warranties of Contractor under these Warranty Provisions are valid only on condition that:
 - a) Purchasing Entity has acted in conformity with the provisions of these Warranty Provisions;
 - b) The Products have been transported, stored, installed and operated fully in accordance with the instructions and specifications of Contractor;
 - c) The Products have not been modified or repaired or reworked by anyone other than Contractor or its designee or using any unauthorized parts,

subassemblies or software without the prior written consent of Contractor;

- d) Purchasing Entity has notified Contractor in writing during the warranty period of each defect discovered in the Products promptly upon its occurrence but in any event not later than 10 calendar days after it has been discovered, and;
- e) Purchasing Entity has promptly provided any additional information concerning the defect and its occurrence, upon Contractor's reasonable request.

ii. The Warranty Provisions do not cover:

- a) Consumable, perishable or wearing parts or Products that have had their serial numbers or month and year of manufacture removed, altered, defaced or deleted;
- b) Any defects arising out of or in connection with (1) any improper handling or use, (2) external reasons such as (but not limited to) excessive physical force, water, humidity or dust and other detrimental environmental or operating conditions beyond the limits specified for each Product, (3) power failures, fires, explosions or any acts of God or other cause beyond Contractor's control, (4) operator error, (5) use not in accordance with the Documentation, (6) failure to implement any new releases or updates to Software, or (7) use of the Product in conjunction with a non-Contractor product (except to the extent provided in the Documentation);
- c) Electromagnetic interference or malfunctions of interconnected equipment;
- d) Damage to property or equipment other than the Product itself.

iii. Warranty does not include:

- a) Contractor assisting in diagnostic efforts;
- b) Access to Contractor's technical support web sites, databases, or tools;
- c) Product integration;
- d) On-site assistance, or;
- e) Documentation updates.

- 5) The Warranty Provisions are non-transferable.
- 6) Liability. Contractor's liability for any breach of warranty or otherwise under the Participating Addendum is strictly limited, at Contractor's sole discretion, to repair, correction or replacement of the defective Products or parts thereof or Services or the repayment of amounts paid with respect thereto (which repayment will take the form of a credit that can only be applied against Purchasing Entity's future purchases and licenses under the Participating Addendum).
- 7) The fulfillment of the obligations set out in this Warranty Provision will be in full satisfaction of Contractor's liability for defects with regard to the Products and Services, and Purchasing Entity or the State shall hold harmless and/or indemnify Contractor from any claim of third parties in this respect.
- 8) The above warranties are exclusive warranties. Contractor disclaims all other warranties,

representations and conditions, express, implied and/or statutory, including all warranties, representations and conditions of merchantability, fitness for a particular purpose, and non-infringement. The remedies provided are Purchasing Entity's exclusive remedies for failure of the Products and Services to conform to the warranties.

- D. **Maintenance.** If Purchasing Entity wishes Contractor to provide maintenance and support services in addition to these warranty services, the parties will enter into a separate written annual maintenance and support agreement on terms, conditions and prices to be agreed.