

CONTRACT AMENDMENT

Amendment # 1	Original Contract CMS (CLIN) # 97061	Amendment CMS # 161967
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1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the “Contract”) is entered into by and between Nokia of America Corporation, (hereinafter called “Contractor”), and the STATE OF COLORADO (hereinafter called the “State”) acting by and through the Department of Personnel and Administration, State Purchasing and Contracts office, (hereinafter called the “State ” or “SPCO”).

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment 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 Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3) FACTUAL RECITALS

- a) NASPO ValuePoint via lead state Washington through public solicitation (Request for Proposal) entered into Master Agreement 05715 with Alcatel-Lucent USA, Inc. effective July 13, 2016 to provide Public Safety Communication Equipment.
- b) The State of Colorado entered into price agreement # 2017-133 with Alcatel-Lucent USA, Inc. through a Participating Addendum to NASPO ValuePoint Master Agreement 06913 effective September 1st, 2017, which authorizes the purchase of Public Safety Communication Equipment.
- c) Alcatel-Lucent USA, Inc. reorganized and changed its name to Nokia of America Corporation.

4) CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment. If applicable, such Colorado Special Provisions are attached hereto and incorporated by reference herein as **Exhibit A**.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6) MODIFICATIONS

- a) The Participating Addendum is hereby modified to replace all references to Alcatel-Lucent USA with vendor current legal name of Nokia of America Corporation.

b) Exhibit A, Section 3 “Term” is deleted in its entirety and replaced by the following;

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”).

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.

B. Order Terms.

Orders shall be placed consistent with the terms of this Participating Addendum during the term specified above. Orders must be placed pursuant to this Participating Addendum prior to the termination date hereof, but may have a delivery date or performance period up to one-hundred and twenty (120) days past the then-current termination date of this Participating Addendum. Notwithstanding the expiration or termination of this Participating Addendum, the Contractor

expiration or termination. Participating Addendum provisions required to implement and govern Order performance shall survive Participating Addendum termination until all outstanding Orders have been completed or terminated in accordance with this Participating Addendum.”

- C. Exhibit A, Section 14 “Colorado Special Provisions” is deleted in its entirety and replaced by the following;

COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Participating Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Participating Addendum. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Participating Addendum. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor’s liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-

109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

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. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this 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 AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. . The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting

State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

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

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

7) START DATE

This Amendment shall take effect on the later of its Effective Date or 6/20/2020.

8) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, except where otherwise provided for within Exhibit A of the Participating Addendum or to the extent permitted by law, the provisions of this Amendment shall control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9) AVAILABLE FUNDS

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

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

CONTRACTOR
Nokia of America Corporation

By: Eric W. Negley

Title: Commercial Contract Manager

Eric W. Negley

*Signature

Date: 26 June 2020

CONTRACTOR
Nokia of America Corporation

By: Lynda Smith

Title: Commercial Contract Manager June 29, 2020

*Signature

Date: _____

STATE OF COLORADO
Jared S. Polis, Governor

Department of Personnel & Administration
State Purchasing and Contracts Office
Kara Veitch, Executive Director

John Chapman

By: Sherri Maxwell, Director State Purchasing and Contracts
John Chapman, State Purchasing Manager

6/30/2020

Date: _____

STATE OF COLORADO
Governor's Office of Information Technology
Theresa M. Szczurek PhD., Information Officer and Executive
Director

Laura Calder

By: Laura Calder, Chief Financial Officer

6/30/2020

Date: _____

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: Clark Bolser

Clark Bolser

Name: _____

6/30/2020

Date: _____