

PARTICIPATING ADDENDUM
(hereinafter "Addendum")
NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
Telephone Based Interpreter Services, Inc dba CTS LanguageLink
Administered by the State of New Mexico (hereinafter "Lead State")

MASTER AGREEMENT
Corporate Translation Services, Inc dba CTS Language Link
(hereinafter "Contractor")
Master Agreement No: **50-000-14-00002 AA**
And
State of Colorado
(hereinafter "Participating State/Entity")
Addendum No: 201500000000342

1. Parties:

This Participating Addendum ("Addendum") is entered into by and between the **State of Colorado**, acting by and through the **State Purchasing Office, Colorado Department of Personnel and Administration** (the "Participating State" or "State" as the case may be) and **Corporate Translation Services, Inc. dba CTS LanguageLink** ("Contractor"). This Addendum between Contractor and Participating State (the "Parties") modifies and amends the Contract, NASPO ValuePoint Master Agreement No. **50-000-14-00002AA** ("**Master Agreement**"), between the State of **New Mexico** ("Lead State"), and Contractor for telephone based interpreter services, for use by State Agencies and other entities located in the Participating State and authorized by that state's statutes to utilize NASPO ValuePoint Contracts with the prior approval of the State's Chief Procurement Official.

2. Terms and Conditions:

This Addendum and the Master Agreement, together with their respective exhibits, set forth the entire agreement between the Parties, superseding all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary to, or in addition to, the terms and conditions of this Addendum and the Master Agreement, together with their exhibits, shall not be added to or incorporated into this Addendum and its exhibits by any subsequent Purchase Order or otherwise and any such attempts to add or incorporate such terms and conditions are void. The terms and conditions of this Addendum and the Master Agreement shall prevail and govern in the case of any such inconsistent or additional terms, as applied to the Participating State.

3. Effective Date and Notice of Non-liability:

This Addendum shall not be effective or enforceable until the date on which it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). Neither the State nor any Ordering Entity, as defined herein, shall be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred by Contractor, or be bound by any provision hereof, prior to the Effective Date.

4. Participation:

- i. Use of specific NASPO ValuePoint cooperative Contracts by agencies, Political Subdivisions, registered Non-Profit Organizations, and other entities (including cooperatives) authorized by Participating State's statutes to use State of Colorado Contracts is subject to the prior approval of the applicable State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
- ii. Individual Customer: Each Participating State's agency, Political Subdivision, and registered Non-Profit Organization is an Ordering Entity, as defined in **§2, DEFINITIONS, of Exhibit A** to this Addendum, and will be treated as if it is an individual customer. Except to the extent modified by

this Addendum, each agency, Political Subdivision and registered Non-Profit Organization will be responsible to follow the terms and conditions of the Master Agreement; and each will have the same rights and responsibilities for its purchases as Participating State has under the Contract. Each agency, Political Subdivision and registered Non-Profit Organization will be responsible for its own charges, fees, and liabilities. Each agency, Political Subdivision and registered Non-Profit Organization will have the same rights to any indemnity or to recover any costs allowed in the Contract for its purchases. The Contractor will apply such charges to each Ordering Entity individually and the Participating State shall not be liable for any other Ordering Entity's charges.

5. Subcontractors:

The Contractor may use Subcontractors to perform some of its duties and obligations under this Addendum; however, the Contractor will be responsible for any agreements with such Subcontractors. The State of Colorado is not agreeing to, and is not responsible for, any terms and conditions with Subcontractors. All **Corporate Translation Services, Inc. dba CTS LanguageLink** dealers and resellers authorized in the State of Colorado, as shown on the dedicated **Corporate Translation Services, Inc. dba CTS LanguageLink** website, and are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's duties and obligations will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement regardless of Contractor's use of Subcontractors.

6. Orders:

- i. Any Order placed by a Participating State or Ordering Entity for a Good and/or Service available under the Master Agreement, shall be deemed to be a sale under and governed by the prices and other terms and conditions of the Master Agreement, unless the Parties to the Order agree in writing that another Contract or agreement applies to such Order. Additional requirements for Orders are set forth in **§ 3 and § 4, STATEMENT OF WORK, of Exhibit A** to this Addendum.
- ii. All Orders issued by Ordering Entities as defined in this Addendum shall state the Addendum Number: 20150000000342 and the Master Agreement Number: **50-000-14-00002AA**.
- iii. Contractor's pricing sheets shall be located at the following web address:
<http://www.ctslanguagelink.com/>

7. Participating State Modifications or Additions to Master Agreement:

The following changes shall be made to the Master Agreement with respect to Contractor's performance pursuant to this Addendum:

- i. **§ 8 Confidentiality, Non-Disclosure and Injunctive Relief**, shall be deleted in its entirety and replaced with **§ 8 Confidential Information – Ordering Entity Records, of Exhibit A**.
- ii. **§ 10 Defaults and Remedies**, shall be deleted in its entirety and replaced with **§ 12, Breach and § 13, Remedies, of Exhibit A**.
- iii. **§ 17 Insurance**, shall be deleted in its entirety and replaced with **§ 11 Insurance, of Exhibit A**.
- iv. **§ 21 Ordering**, shall be deleted in its entirety and replaced with **§ 4(E) Statement of Work, Orders, of Exhibit A**.
- v. **§ 22 (a), (b), and (c), Participants**, shall be deleted in their entirety and replaced with **§ 4, Participation, of the Participating Addendum**.
- vi. **§ 23 Payment**, shall be deleted in its entirety and replaced with **§ 5(C)(iv), Taxes and Payments to Contractor, Invoicing/Billing, Payment by State Ordering Entities; Interest, of Exhibit A**.
- vii. **§ 25 Records Administration and Audit**, shall be deleted in its entirety and replaced with **§ 7, Contractor Records, of Exhibit A**.
- viii. **§ 29 Warranty**, shall be deleted in its entirety and replaced with **§ 10, Representations and Warranties, of Exhibit A**.

Provisions set forth in **Exhibit A** to this Addendum are incorporated herein as attached hereto.

8. Primary Contacts:

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative or named successor at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Notices to Ordering Entities shall be as provided for in the Order accepted by the Contractor. Unless otherwise provided herein, all notices shall be effective upon receipt. The primary contact individuals for this Participating Addendum are as follows (unless and until successors are named in writing by the respective Party):

Contractor: Corporate Translation Services, Inc dba CTS Language Link

Name:	Alan Bloch
Address:	911 Main St., #10
Telephone:	360-433-0426
Fax:	360-433-0426
E-mail:	Alan.bloch@ctslanguagelink.com

Participating State: State of Colorado

Name:	Amy Risley
Address:	1525 Sherman Street, 3 rd Floor, Denver, Co 80203
Telephone:	303-866-5663
Fax:	303-894-7445
E-mail:	Amy.Risley@state.co.us

9. Most frequently used languages:

Amharic
Arabic
Burmese
Chinese
French
German
Greek
Hindi
Hmong
Italian
Japanese
Karen
Karenni
Korean
Laotian

Mandarin
Nepali
Persian
Polish
Portuguese
Russian
Somali
Spanish
Swahili
Tagalog
Thai
Tigrinya
Vietnamese

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THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM

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

<p>CONTRACTOR Telephone Based Interpreter Services, Inc dba CTS LanguageLink</p> <p>By: Alan Bloch Title: Controller</p> <p>By: <u>Alan Bloch</u> *Signature</p> <p>Date: <u>5/1/15</u></p>	<p>PARTICIPATING STATE STATE OF COLORADO John W. Hickenlooper, Governor Department of Personnel & Administration State Purchasing Office Kara Veitch, Interim Executive Director</p> <p>By: <u>Molly Randol</u> <input type="checkbox"/> Cindy Lombardi Purchasing and Contracts Director <input checked="" type="checkbox"/> Molly Randol Strategic Sourcing Manager</p> <p>Date: <u>May 6, 2015</u></p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p>PARTICIPATING STATE STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: <u>[Signature]</u> Date: <u>5-13-15</u></p> <p><input type="checkbox"/> Greg Garner, Controller Delegate <input type="checkbox"/> Clark Bolser, Controller Delegate <input type="checkbox"/> Floy Jeffares, Controller Delegate <input checked="" type="checkbox"/> Joe Weber, Controller Delegate</p>

EXHIBIT A
To Participating Addendum
Between
STATE OF COLORADO
and
Corporate Translation Services, Inc. dba CTS LanguageLink

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1. RECITALS

- A. Authority, Appropriation, and Approval.** Authority to enter into this Addendum exists in **CRS §24-102-202**, and Colorado Procurement Code **R-24-102-202-01**. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies of the Participating State.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Addendum.
- C. Purpose**

- i. Contractor is authorized to provide telephone based interpreter services under this Addendum. This Addendum authorizes the purchase of such Goods and/or Services, in accordance with the terms of Orders issued pursuant to this Agreement by eligible Ordering Entities within the State of Colorado. The State Purchasing Office has entered into this Addendum pursuant to the award issued to Contractor as a result of Solicitation # 50-000-14-00002 to establish the price and terms for purchase of Goods and/or Services within the State of Colorado by State Agencies and Other State Departments (SA), Institutions of Higher Education (IHE), Political Subdivisions (PS), eligible Non-Profit Organizations (NPO), and other eligible entities (including cooperatives, collectively referred to as the "Ordering Entities," defined in **§2, Definitions**, below).
 - ii. Except with respect to any Orders placed by it under this Addendum, the State Department of Personnel & Administration shall not be liable to the Contractor as a signatory to this Addendum for any breach by an Ordering Entity of any payment or other obligation herein or under any Order or Contract for Goods and/or Services under this Addendum, and the State shall not be liable to Contractor for any payment or other obligation owed by any Political Subdivision or Non-Profit Organization or other non-State Ordering Entity.
- D. Participation.** Use of this Addendum by Ordering Entities that are authorized by Colorado statutes to use this Addendum, are subject to the prior approval of the State Purchasing Office. Determination of eligibility for participation in this Addendum is solely within the discretion of the State Purchasing Office.
- E. References.** All references in this Addendum to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are contained herein or incorporated as a part hereof, unless otherwise noted.

2. DEFINITIONS

Capitalized terms used herein shall be construed and interpreted as follows:

- A. Chief Procurement Official.** "Chief Procurement Official" shall mean the Director of the State Purchasing Office, Colorado Department of Personnel & Administration.
- B. Confidential Information.** "Confidential Information" means information, data, records, and documentary materials belonging to the State or an Ordering Entity regardless of physical form or characteristics, including but not limited to any non-public State or Ordering Entity Records, sensitive State or Ordering Entity data, protected State or Ordering Entity data, State or Ordering Entity personnel records, personally identifiable information ("PII"), and other information or data concerning individuals, which has been communicated, furnished or disclosed by the State or Ordering Entity to Contractor. Notwithstanding the foregoing, Confidential Information shall not include State Data and Records or Ordering Entity Records.
- C. Contract.** "Contract" is synonymous with "Addendum" and means this Addendum, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future amendments, modifying agreements, exhibits, attachments or references incorporated herein pursuant to State law, Fiscal Rules, and State Controller Policies.
- D. Contract Funds.** "Contract Funds" means funds available for payment by the State to Contractor pursuant to this Addendum for Orders placed by Ordering Entities.
- E. Contractor.** "Contractor" means any organization or individual that seeks to provide, or is already providing, Goods and/or Services.
- F. Deliverable.** "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 Ordering Entity by Contractor. Examples of Deliverables include, but are not limited to, report(s), document(s), server upgrade(s), software license(s), and may be composed of multiple smaller Deliverables.

- G. Environmentally Preferable.** "Environmentally Preferable" shall mean products or Services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or Services that serve the same purpose (**CRS §24-103-207.5, May 21, 2007**).
- H. Evaluation.** "Evaluation" means the process of examining Contractor's Work and rating it based on criteria established in **§4 (Statement of Work)** and **§15 (Statewide Contract Management System)**.
- I. Executive Director.** "Executive Director" shall mean the Executive Director of the Colorado Department of Personnel & Administration.
- J. Exhibits and other Attachments.** The following documents are attached hereto and incorporated by reference herein: **Exhibit 1 (Sample Option Letter)**, **Exhibit 2 (Sample Summary Contractor Volume Report)**, **Exhibit 3 (Sample Contractor Performance Evaluation)**, **Exhibit 4 (IRS Requirement)** and **Exhibit 5 (Detail Volume Report)**.
- K. Fiscal Year.** "Fiscal Year" means the State's Fiscal Year, which begins on July 1 of each calendar year and ends on June 30 of the following calendar year.
- L. Goods.** "Goods" means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with Services the Contractor renders.
- M. Institution of Higher Education (IHE).** "Institution of Higher Education" means a university or college located in the State of Colorado, which is supported by the State. Only those IHE's subject to the State Procurement Code are State Agencies for the purposes of this Addendum.
- N. MBE/WBE/SBE/DBE/VBE.** "MBE/WBE/SBE/DBE/VBE" means minority-owned, woman-owned, small, disadvantaged, and veteran-owned business enterprises certified as such by the State of Colorado.
- O. Non-Profit Organization (NPO).** "Non-Profit Organization" means entities that have 501(c)(3) status under the US Internal Revenue Code, are recognized as "in good standing" by the Colorado Secretary of State office, and receive funding from federal, state, or local governmental sources with which to make purchases. A NPO must submit an annual application and be approved by the State Purchasing Office to make purchases from Master Agreement Contractors (as defined in the NASPO ValuePoint Master Agreement).
- P. Order.** "Order" means any Purchase Order, Delivery Order, Contract, or other authorized commitment voucher used by an Ordering Entity to Order the Goods or Services priced in the Addendum. An Order amended consistent with the requirements of any Ordering Entity shall, also be governed by the same terms and conditions presented in this Addendum.
- Q. Ordering Entity.** "Ordering Entity" means a Colorado State Agency in the Executive Branch of Colorado State government; an Other State Department; an Institution of Higher Education, a Political Subdivision, an eligible Non-Profit Organization, and any other entity (including a cooperative) authorized by Colorado statutes and the SPO to place Orders with Contractor.
- R. Ordering Entity Records.** "Ordering Entity Records" means information, data, records, and documentary materials belonging to an Ordering Entity regardless of physical form or characteristics, including but not limited to any public Ordering Entity Records, non-sensitive Ordering Entity data, and other information or data concerning individuals that is not deemed confidential but nevertheless belongs to an Ordering Entity, which has been communicated, furnished or disclosed by an Ordering Entity to Contractor which (i) is subject to disclosure pursuant to the Colorado Open Records Act, **CRS §24-72-200.1, et seq.**; (ii) is already known to Contractor without restrictions at the time of its disclosure by Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to an Ordering Entity; (iv) is disclosed to Contractor, without confidentiality obligations, by a third Party who has the right to disclose such information; or (v) was independently developed without reliance on any Confidential Information.

- S. Other State Departments.** "Other State Departments" means the Department of Law, the State Treasurer, the Judicial Department, the Secretary of State, the State Legislature and any other State Ordering Entities that are not governed by the State Procurement Code.
- T. Party or Parties.** "Party" means the State or Contractor, and "Parties" means both the State and Contractor.
- U. Political Subdivision (PS).** "Political Subdivision" means any non-State governmental entity such as cities, towns, counties, and special districts, such as school, fire, water, transportation, governmental entities, operating within the State of Colorado.
- V. Review.** "Review" means examining Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§4 (Statement of Work)**, **§15 (Statewide Contract Management System)**, and in any Order.
- W. Services.** "Services" means the labor required to be performed by Contractor pursuant to this Addendum and an Order.
- X. State Agencies.** "State Agencies" means the departments, divisions, commissions, boards, and institutions in the executive branch of Colorado State government (which do not include the Judicial Department, Department of Law, the Secretary of State, the State Treasurer, the State Legislature, State-supported Institutions of Higher Education which are not governed by the State Procurement Code; Colorado Political Subdivisions or Non-Profit Organizations, or other non-State Ordering Entities).
- Y. State Data and Records.** "State Data and Records" means information, data, records, and documentary materials belonging to the State regardless of physical form or characteristics, including but not limited to any public State records, non-sensitive State data, and other information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to the Colorado Open Records Act, **CRS §24-72-200.1, et seq.**; (ii) is already known to Contractor without restrictions at the time of its disclosure by Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third Party who has the right to disclose such information; or (v) was independently developed without reliance on any Confidential Information.
- Z. State Ordering Entities.** "State Ordering Entities" means State Agencies, Institutions of Higher Education and Other State Departments.
- AA. State Ordering Entities Subject to the Procurement Code.** "State Ordering Entities Subject to the Procurement Code" means State Agencies, Other State Departments and those Institutions of Higher Education that are not exempt from the jurisdiction of the Colorado Procurement Code (**CRS §24-102-202 et seq.**) and that are required to purchase Goods and Services from State Price Agreements designated by the SPO.
- BB. State Purchasing Office or SPO.** "State Purchasing Office" or "SPO" means the Colorado State Purchasing Office, a unit of the Colorado Department of Personnel & Administration.
- CC. Subcontractor.** "Subcontractor" means, in the event subcontracting by the Contractor is authorized, a third-Party, if any, engaged by Contractor to aid in performance of its obligations under this Addendum.
- DD. Work.** "Work" means the Goods and associated Services Contractor is required to provide to fulfill its obligations under this Addendum and each Order.
- EE. Work Product.** "Work Product" means the tangible or intangible results of Contractor's Work, including but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or Work Product of any type, including drafts, prepared, developed, originated or reduced to practice by Contractor under this Addendum.

3. TERM

- A. Initial Term-Work Commencement.** The Parties' respective performances under this Addendum shall commence on the later of either the Effective Date or April 15, 2015. This Addendum shall terminate on March 4, 2017, unless terminated sooner, as specified in **§13 (Remedies)**, or extended further as specified in **§3.C** below.
- B. Order Terms.** Orders shall be placed consistent with the terms of this Addendum during the term specified above. Orders must be placed pursuant to this 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 Addendum. Notwithstanding the expiration or termination of this Addendum, the Contractor agrees to perform in accordance with the terms of any Order outstanding at the time of such expiration or termination. Addendum provisions required to implement and govern Order performance shall survive Addendum termination until all outstanding Orders have been completed or terminated in accordance with this Addendum.
- C. State's Option to Extend**
- i. The State shall have the option to unilaterally require continued performance of the Contractor for a period of 5 years from the effective date at the same rates and same terms specified in the Addendum. If the State exercises its option(s), it shall provide written notice to Contractor at least 30 days prior to the end of the current Contract term in a form substantially equivalent to **Exhibit 1 (Sample Option Letter)**. If exercised, the provisions of the Option Letter shall become part of, and be incorporated into, this Addendum. The total duration of this Addendum, including the exercise of any options under this clause, shall not exceed 5 years, unless authorized in writing by the State Purchasing Director.
 - ii. Continuation of this Addendum beyond the initial term is a State option and not a right of the Contractor. The State shall exercise this option only when such continuation is clearly in the best interest of the State.
 - iii. If the NASPO ValuePoint Master Agreement is extended beyond the original five (5) year term, the State, upon authorization from the State Purchasing Director, may choose to extend co-terminously in a form substantially equivalent to **Exhibit 1 (Sample Option Letter)**.

4. STATEMENT OF WORK

- A. Completion.** Contractor shall complete the Work and its other obligations as described herein and in accordance with any Order issued by an Ordering Entity. The State shall not be liable to compensate Contractor for any Work performed on an Order placed prior to the Effective Date or after the termination of this Addendum. Further, the State shall not be held liable to compensate Contractor for any Work performed on an Order placed by a non-State Ordering Entity.
- B. Employees.** All persons employed by Contractor or Subcontractor's to perform Work under this Addendum shall be Contractor's or Subcontractor's employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Addendum.
- C. Pricing and Price Changes.** The SPO reserves the right to publish any pricing on the State Price Agreements web location, for use by Ordering Entities.
- D. Performance.** Contractor shall become familiar with individual Ordering Entity rules and regulations, as identified by Ordering Entities, regarding procurement and fiscal rules, delivery requirements, and other relevant procedures, and shall comply with any Executive Orders of the Governor of the State, and any other judicial or administrative decisions regarding the State of Colorado.
- i. **Customer Service Representatives.** Contractor shall provide each Ordering Entity utilizing the Addendum with contact information for customer service representatives assigned to handle questions and resolve all problems that arise with any Orders.

Service representatives shall be available, at a minimum, from 8:00 a.m. to 5:00 p.m., Mountain Time, Monday through Friday (State holidays excepted). Contractor shall also provide a list of customer service contacts to the State's principal representative identified in **§8 of the Addendum** or successor, and shall provide notice when any updates are made to this list. Customer service representatives shall be available by phone (via local or toll free number), fax, or email during the required times. Contractor shall also provide an emergency number and contact for after hours use. All customer service representatives shall have online access to account information and be able to provide a timely response to inquiries concerning the status of Orders (shipped or pending), delivery, back-Orders, Addendum pricing, category discounts, product availability, product information, account and billing questions, and Addendum compliance requirements.

- ii. **PERA.** State Ordering Entities are Colorado PERA affiliated employers. In the event billable personal Services are performed for State Ordering Entities by the Contractor, and pursuant to **CRS §24-51-1101(2)**, the Contractor must notify in writing (email is acceptable) the State Ordering Entity's representative listed on the Order within fifteen (15) calendar days from the date of receipt of any Order if the Services to be provided are being or will be performed by a PERA retiree (as defined at **CRS §24-51-101**).
- iii. **Resolution of Performance Issues.** Ordering Entities have the authority and discretion to resolve performance issues with Contractor. Contractor is required to first meet with the Ordering Entity and its purchasing office to resolve issues once an Ordering Entity has given notice of a performance issue. If resolution cannot be reached, then Contractor and the Ordering Entity should contact the SPO in writing to request assistance in reaching resolution to the satisfaction of all Party involved. Contractor's failure to provide satisfactory performance after receiving notice of a performance issue may be sufficient cause for Ordering Entities to give notice of breach to Contractor and to terminate Orders they have placed. Contractor shall convey any notice of breach it receives to the SPO via email within five (5) business days of receipt thereof.
- iv. **Marketing Notices.** Prior to any distribution, Contractor must submit to SPO for advance written approval all Contractor marketing notices and literature intended for distribution to Ordering Entities utilizing the Addendum. Maintenance of mailing lists and the production and distribution of pre-approved marketing notices and literature is the Contractor's responsibility and shall be at Contractor's expense.
- v. **HIPAA**
 - a) The Health Insurance Portability and Accountability Act of 1996 (HIPAA) **Public Law 104-191** governs the exchange of certain health data and the privacy and security of certain health information. All Work performed by Contractor and any Subcontractors must be in compliance with the Health Insurance Portability and Accountability Act of 1996.
 - b) The Ordering Entity is responsible for notifying the Contractor in writing when placing a HIPAA-related Order. HIPAA Standards/Final Rules are posted on the Department of Health and Human Services (DHHS) website.
- vi. **Training.** Contractor shall provide to Ordering Entities at no additional cost, all necessary training on aspects of ordering, online ordering, product delivery, product returns, and customer service processes. Further, Contractor shall provide Ordering Entities, as applicable, training and information on the use of products, including their energy efficiency; new features; opportunities for manufacturer/certified set up and training; green "EPP"; and other Services that are offered or available.
- vii. **Procurement Card.** Contractor shall have the capability to accept procurement "credit" cards. Contractor shall have industry standard security protocol including storage of data, ordering security, and data file security.

- viii. **Contract Management.** Contractor shall provide Contract management and sales support to the State and to each Ordering Entity. Contractor shall designate a representative(s) who shall have primary responsibility for management of this Addendum. Contractor shall notify the State's principal representative identified in **§8 of the Addendum** or successor of any change in designated representative(s).
- E. **Orders.** Ordering Entities shall place Orders with Contractor for Goods and/or Services on an "as-needed" basis. Orders shall be placed consistent with the terms of this Addendum during the term specified in **§3 (Term)**. Each Ordering Entity shall identify and utilize its own appropriate purchasing procedure and documentation. Contractor shall not begin Work without a valid Order number. State Agencies, State-funded Institutions of Higher Education and Other State Departments shall ensure that no Orders are placed before a valid purchase Order or Contract is in place and shall comply with the purchasing requirements described in **State Fiscal Rule 2-2-4** (Orders in excess of \$100,000 shall utilize a State Contract and encumbrance of Contract Funds). The State of Colorado shall not be liable for payment of Orders placed by non-State Ordering Entities and Contractor shall not seek compensation from the State of Colorado for such Orders. Contractor shall furnish all communications concerning administration of Orders solely to the purchasing officer within the relevant Ordering Entity's purchasing office, or to such other individual identified in writing in the Order. All Orders for Goods and/or Services issued pursuant to this Addendum, at a minimum, shall include:
- i. Order date, when the Order is being placed by the Ordering Entity,
 - ii. A brief description of the Goods and/or Services being purchased, including line item descriptions, item numbers, quantity ordered; quantity to be included in shipments, unit costs, rates (when applicable), and totals,
 - iii. The location (delivery address) and requested time of delivery or performance,
 - iv. The billing address,
 - v. The complete name of the Ordering Entity, including the name, phone number, and address of the Ordering Entity's purchasing officer or representative, and
 - vi. The State of Colorado Addendum Number: 201500000000342.
- F. **Delivery.** Unless otherwise agreed in writing, any Goods and/or Services ordered pursuant to this Addendum shall be delivered in a good, working, undamaged condition, freight on board (F.O.B.) destination to the location specified in the Order. The Ordering Entity shall not be deemed to have accepted any Goods and/or Services until such have been inspected in accordance with Order specifications and are accepted by the Ordering Entity. Title to Goods shall pass to the Ordering Entity or the leasing company in the case of a lease, upon acceptance of delivered items.
- G. **Termination of an Order by Ordering Entities.** An Ordering Entity through its designated procurement officer or other authorized representative, may terminate an Order for default, which shall not terminate this Addendum, without additional notice of termination from the State. Such termination shall be governed by this **§4.H**.
- i. **Default**
 - a) If Contractor refuses or fails to perform any of its obligations under the provisions of an Order, with such diligence as will ensure its completion within the time specified in the Order, the Ordering Entity's procurement officer may notify Contractor in writing of the non-performance.
 - b) If such breach is not corrected within thirty (30) days of issuance of notice, or if, due to Contractor's actions or inaction's, performance would be of no value to the Ordering Entity, the procurement officer may terminate Contractor's right to proceed with the Order or such part of the Order as to which there has been such delay or a failure to properly perform. Contractor shall continue performance of the Order to the extent it is not terminated.

- ii. **Contractor's Duties.** Notwithstanding termination of the Order, and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the Ordering Entity has an interest (if any).
 - iii. **Compensation.** The Ordering Entity may withhold amounts due to Contractor as the procurement officer deems necessary to protect the Ordering Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Ordering Entity for the extra costs incurred in procuring substitute Goods and/or Services.
 - iv. **Erroneous Termination for Default of the State Ordering Entity.** If after notice of termination of Contractor's right to proceed under the provisions of this **§4.H**, it is determined for any reason that Contractor was not in breach under the provisions of this section, or that the delay was excusable, the rights and obligations of the State Ordering Entity and the Contractor shall be the same as if the notice of termination had been issued pursuant to termination for the public interest **§4.H.v**.
 - v. **Termination of an Order for the Public Interest.** Unless otherwise agreed, a State Ordering Entity procurement officer, when the interests of the State, so require, may terminate any Order, in whole or in part, for the public interest of the State, provided only that such termination will not relieve the Ordering Entity from its obligations with respect to any Goods and/or Services already delivered to or used by such Ordering Entity. The procurement officer shall give at least thirty (30) days prior written notice of the termination to Contractor specifying the part of the Order terminated and when termination becomes effective. Termination for the public interest of all or any portion of an Order shall not constitute a breach of this Addendum by an Ordering Entity or the State.
 - a) **Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated Order on the date set in the notice of termination. Contractor will stop Work to the extent specified. Contractor must still complete and deliver to the State Ordering Entity the portion of the Order not terminated (if any) by the notice of termination.
 - b) **Compensation.** Upon termination of an Order by a State Ordering Entity, Contractor shall be entitled to compensation as follows:
 - 1. Contractor shall submit a termination claim specifying the amounts due because of the termination for the public interest together with cost or pricing data bearing on such claim.
 - 2. The Ordering Entity shall pay Contractor an amount which bears the same ratio to the total reimbursement under the Order as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in the Order, less payments previously made. Additionally, if a terminated Order is less than sixty (60) percent completed, the State Ordering Entity may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under such Order) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor under such Order.
- H. **Internet Ordering, E-Commerce and Web Catalog, Electronic Data Storage, and Catalogs** The Contract shall be responsible for the maintenance of its internet, e-commerce and web catalog, electronic data storage, and catalogs and the associated expense.
- i. **Internet Ordering.** As applicable, Contractor shall provide internet catalogs accessible to all Ordering Entities, provide a URL link and Colorado "splash" page or landing page with link to the SPO State Addendum web location, designate market

basket items in its on-line catalogs for ease of ordering, identify a symbol or marking used to identify market basket items, and designate all Environmental Preferable Products (EPP) in their on-line catalogs and identify the symbol used to mark these EPP Goods.

- ii. **Electronic Data Storage.** Contractor must have the capability of electronic data storage and a back-up system in the unlikely event that the main information storehouse becomes unusable. Contractor shall have industry standard security protocol including storage of data, ordering security, and data file security.
- iii. **Catalogs.** Contractor must provide paper and/or computer media catalogs to any Ordering Entity, upon request for the duration of this Contract.

5. TAXES and PAYMENTS TO CONTRACTOR

A. Taxes and Tax Exemption Status

- i. The Participating State and State Agencies are exempt from all federal excise taxes under the US Internal Revenue Code (**IRC**) **Chapter 32 (Certificate of Registry No. 84-730123K)** and from all Colorado State and local government sales and use taxes under **CRS §39-26-101 and 201 et seq.** Such exemptions apply when Goods are purchased or Services are rendered to benefit the State. Contractor is hereby notified that when products or Services are purchased for the benefit of State Ordering Entities, some Political Subdivisions (e.g., City and County of Denver) may require payment of sales or use taxes even though the product or service is provided to the State or a State Ordering Entity. These sales or use taxes will not be reimbursed by the State Ordering Entity, nor will any prices or rates in this Contract be adjusted on account of such taxes.
- ii. For the purpose of establishing this Addendum, the SPO's FEIN is 84-0644739, however different Ordering Entities may have their own Federal Employer Identification Numbers. The State's tax exemption number is 98-02565-0000; however, different Ordering Entities may have their own tax exemption numbers as well. The Contractor shall be responsible for requesting and obtaining each Ordering Entity's FEIN and tax exemption number, and documentation at the time an Order is placed or upon Contractor's request. The State is not liable for any taxes assessed against Contractor for franchise or licensing, or related to the income of the Contractor. No taxes of any kind shall be charged to the State.

B. Payments to Contractor

- i. The Ordering Entity issuing a valid Order shall be bound by the terms and conditions of this Addendum, including, without limitation, the obligation to pay Contractor for Goods and/or Services in accordance with the provisions of this **§5**, using the methods set forth below.
- ii. The State of Colorado shall not be liable for payment of Orders placed by a non-State Ordering Entity, nor shall the Contractor seek compensation from the State of Colorado for such Orders.

C. Invoicing/Billing

- i. **Invoices**
 - a) Contractor shall have an accounting and billing system and provide Ordering Entities with an invoice when purchases are made. Contractor shall invoice Ordering Entities for Goods and/or Services provided to and accepted by the Ordering Entity, at the prices listed in this Addendum, as amended. A statement showing transactions for a period is not an invoice, though the Contractor may provide such documents as information to the Ordering Entity on a regular basis or upon the request of an Ordering Entity. Unless otherwise specified in the Order, Ordering Entities will pay Contractor based on submission of invoices to the Ordering Entity that detail the dates, quantity, and description of Goods delivered and/or Services performed, the billing rate and the Order number.

Incorrect payments to Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments due under Orders or other Contracts between the Ordering Entity and the Contractor.

- b) The terms and conditions on any invoice, statement, Contractor time sheet, or other form, including, but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the State or any Ordering Entity. The Contractor's and Ordering Entities' rights and obligations shall be governed solely by the terms and conditions of this Addendum. Any Ordering Entity employee's signature on Contractor's forms shall be effective only to establish receipt of Goods or Services. The Contractor shall provide a toll free number for Ordering Entity inquiries on billing problems.
- ii. **Renewal of Agreement.** In the event of renewal of this Addendum, or any amendment of its terms (including prices), unless otherwise specified in an Order, the Contractor shall provide Goods and/or Services in accordance with the terms of the Addendum current at the time of an Order, and invoice the Ordering Entity at the pricing in effect at the time the Order was placed.
- iii. **Remittance.** Ordering Entities will remit payments by mail or via State procurement credit cards or as otherwise agreed by Contractor and such Ordering Entities. The Ordering Entities shall send payments to Contractor at the address shown on the invoice if it is the same address recorded in this Addendum or subsequently provided to SPO in writing. Contractor must provide written notice (email is acceptable) of a remittance change to the SPO within five (5) business days of a change.
- iv. **Payment by State Ordering Entities; Interest.** Contractor shall allow State Ordering Entities a minimum of thirty (30) days after receipt of an invoice to pay for products or Services provided by Contractor. State law and regulations provide that State payments made within forty-five (45) days are not considered delinquent, and unless otherwise agreed, State Ordering Entities will pay interest on any unpaid balance beginning on the 46th day at the rate of one (1) percent per month on any unpaid balance until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Contractor shall invoice State Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest date. (**§24-30-202(24), CRS, as amended.**)
- v. **Payment by Colorado Political Subdivisions, Non-Profit Organizations, or Other Non-State Eligible Entities.** For Orders placed by non-State Ordering Entities (Political Subdivisions, Non-Profit Organizations, or other non-State eligible entities), terms for payment shall be specified in the written Orders. Contractor shall invoice non-State Ordering Entities directly. Ordering Entities generally remit payment in a timely manner within forty-five (45) days of invoice; however, it is the Contractor's responsibility to confirm all payment terms with each non-State Ordering Entity at the time an Order is placed.
- vi. **Maximum Amount.** State Ordering Entities shall place Orders with the Contractor using a purchase or delivery Order, or State Contract as required by State law, regulations, and the State Fiscal Rules. All non-State Ordering Entities shall place Orders with a purchase Order or other contracting document acceptable to the Contractor. The maximum amount payable under this Addendum shall be determined by the amount of Orders placed and other contracting documents. No Contract Funds will be encumbered by the State Department of Personnel & Administration against this Addendum unless an Order is placed by that agency. Ordering Entities shall state the maximum amount available for the purchase of Goods and/or Services under each Order.

- vii. **Advance, Interim and Final Payments.** Any advance payment allowed under any Order issued by a State Agency against this Addendum shall comply with State Fiscal Rules and be made in accordance with the provisions of this Addendum and such Order. Non-State Ordering Entities may have their own fiscal procedures regarding advance payments, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.
- viii. **Available Funds-Contingency-Termination**
 - a) State Ordering Entities are prohibited by law from making commitments beyond the term of the State's current Fiscal Year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the **Colorado Special Provisions, §18** hereof. If federal funds are used to pay for Work ordered by State Ordering Entities under this Addendum, in whole or in part, the State's performance hereunder is contingent upon the continued availability of such Contract Funds. State Ordering Entities shall only make payments for Work ordered by a State Ordering Entity under this Addendum from available State Ordering Entity Contract Funds that have been encumbered for that Work, and the State Ordering Entity's liability for such payments shall be limited to the amount remaining of such encumbered Contract Funds. If State or federal funds are not appropriated, or otherwise become unavailable to pay for any Order placed by a State Ordering Entity under this Addendum, the State Ordering Entity may terminate the Order immediately, in whole or in part, without further liability in accordance with the provisions hereof.
 - b) A Political Subdivision Ordering Entity may have its own fiscal requirements regarding available funds for payment of Orders, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.
- ix. **Erroneous Payments**
 - a) At the State's sole discretion, State Ordering Entity payments made to the Contractor in error for any reason, including, but not limited to, omission, error, fraud, or defalcation, over-payments or improper payments, and un-expended or excess funds received by Contractor, may be recovered from Contractor by deduction (set-off) from subsequent payments for purchases under this Addendum or other Contracts, grants or agreements between the State and Contractor or by other appropriate methods, or collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.
 - b) Non-State Ordering Entities may have their own fiscal requirements regarding erroneous payments, which may be agreed upon in writing between the non-State Ordering Entity and the Contractor.
- x. **Discount/Delinquency Period.** Any applicable cash discount period or delinquency period shall start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable Goods or Services at the specified destination by an authorized Ordering Entity representative; whichever is later.

6. REPORTING – NOTIFICATION

Reports required under this **§6** shall be in accordance with the procedures of, and in such form as, prescribed by the State, as applicable. Contractor's failure to provide these reports shall constitute cause for cancellation of this Addendum and may disqualify Contractor from future awards by the State.

- A. **Performance, Progress, Personnel, and Funds.** If and as required under **§15 (Statewide Contract Management System)**, State Ordering Entities shall submit a report to the Contractor upon expiration or termination of their Order(s), which shall contain an Evaluation and Review of Contractor's performance and the final status of Contractor's

obligation hereunder, in a form substantially equivalent to **Exhibit 3 (Sample Contractor Performance Evaluation)**.

- B. Volume Reports.** The State intends to use the centralized method of tracking volume. Contractor shall furnish the SPO sales/volume reports within thirty (30) calendar days after the end of each calendar quarter. The quarter periods are: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31, of any given year.
- i. Contractor must provide SPO a report detailing its total sales to each Ordering Entity within the State, each reporting period. The Volume detail report, for the quarter being reported, shall contain the following: the Ordering Entity name, the date of each sale, the items purchased, quantity, unit price, extended cost (quantity x unit price), list price per unit, extended list cost (quantity x list price /unit), and savings (extended list cost minus extended cost). Additionally, Contractor must provide a summarized report in a form substantially equivalent to **Exhibit 2 (Sample Summary Contractor Volume Report)** and **Exhibit 5 (Detail Volume Report)** attached hereto and incorporated herein, and in a format requested by the SPO such as an Excel spreadsheet. Reports shall be sent via email to the Primary Contact identified in **§8 of the Addendum** or assigned successor. Specifically, the reports must include:
 - a) **Exhibit 2 Sample Summary Contractor Volume Report.** Total spent by each Ordering Entity every quarter.
 - b) **Total Regular (List) Cost of Total Sales.** Total of the extended list cost by each Ordering Entity.
 - c) **Total Estimated Cost Savings.** Total estimated cost savings (extended list cost minus total sales = savings) by each Ordering Entity.
 - d) **Total Paid by Procurement Card.** Total payments made by a procurement "credit" card by each Ordering Entity.
 - e) **Total Green Sales.** Total Green sales, meaning sale of Environmentally Preferable Products, by each Ordering Entity. (Environmentally Preferable Products, including applicable discount savings, are defined in the State's Environmentally Preferable Purchasing Policy. In most cases, "Green" products have been third Party registered or certified as such by EPA, NFP, Energy Star, LEED, etc.)
 - f) **Amount of NASPO ValuePoint Administration Fee.** The amount of the NASPO ValuePoint Administration Fee due to the State.
 - g) **Exhibit 5 Detail Volume Report.** The State Agency, Political Subdivision, or Non-Profit.
 - h) **Bill To and Service Location.** The location the order and service occurred.
 - i) **Purchase Order.** The order number of the job.
 - j) **Order Date and Service Date.** The date of order and of service of the job.
 - k) **Languages.** The language used in the service.
 - ii. In the event a quarterly report submitted by the Contractor contains discrepancies, the Contractor, upon notification from the State, shall make necessary modifications, which may include adjustments to the Ordering Entity's account profile, and resubmit reports in a timely manner.
- C. Additional Reports**
- i. Contractor shall provide a detailed volume report in a form substantially equivalent to **Exhibit 5 (Detail Volume Report)** attached hereto
 - ii. Contractor also shall provide a comprehensive sales history at the end of each anniversary year of this Addendum, or within thirty (30) calendar days of request from the SPO. The comprehensive sales reports shall set forth, at a minimum, the name of each Ordering Entity, the Orders placed, the quantity of Goods and/or Services purchased, a description of the Goods and/or Services, the unit price or hourly rate

charged, the extended dollar amount spent, and the overall total amount spent for the period.

- iii. If requested, Contractor shall also provide detailed reports of the type described above relating to that Ordering Entity.

D. Performance Outside the State of Colorado and/or the United States

[In the event of a State Ordering Entity Subject to the Procurement Code include any federal Contract Funds, the State Ordering Entity shall notify the Contractor thereof and this clause will not be applicable]. Following the Effective Date, Contractor shall provide written notice to the State, in accordance with **§8 of the Addendum**, within twenty (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 for State Ordering Entities Subject to the Procurement Code outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this **§6.D** shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this **§6.D** shall constitute a material breach of this Contract.

- E. Litigation Reporting.** Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Addendum or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the SPO in writing (email is preferable) of such action and deliver copies of such pleadings to the State's principal representative as identified in **§8 of the Addendum**. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the State Department of Personnel & Administration.

- F. Noncompliance.** Contractor's failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of State funds and/or termination as provided under this Addendum.

G. Administration Fees

- i. The Colorado General Assembly has authorized the State Purchasing Office to collect a fee for the administration of statewide Contracts. On a quarterly basis, Contractor shall return to the State, a fee of one (1) percent of the total sales within the State by all Ordering Entities during that quarter, in Order to assist with the cost of Contract administration by the State. The Contractor shall remit the administration fee to the State within thirty (30) days of the end of each quarter.
- ii. Fees shall be made payable to the Colorado State Treasurer via a check submitted to the State's Primary Contact identified in **§8 of the Addendum** or successor. The quarter periods and report/payment submission dates of any given year are as follows:
 - a) Quarter End Dates: **(1)** January 1 to March 31, **(2)** April 1 to June 30, **(3)** July 1 to September 30, and **(4)** October 1 to December 31.
 - b) Payment and Report Due Dates: **(1)** April 30, **(2)** July 30, **(3)** October 30, and **(4)** January 30.

7. CONTRACTOR RECORDS

- A. Maintenance and Record Retention Period.** Contractor shall make, keep, maintain, and allow inspection and monitoring by the State and its Office of Information Security (OIS) of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Order or the delivery of Goods and/or Services hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three (3) years after the date this Addendum expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(iii)** the resolution of any pending Addendum matters, or **(iv)** if an audit is occurring, or Contractor has received

notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

- B. Inspection.** Contractor shall permit the State, OIS, the federal government, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Addendum during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. The State and OIS reserve the right to inspect the Work at all reasonable times and places during the term of this Addendum, including any extensions or renewals. If an Order fails to conform to the requirements of this Addendum, the State, OIS, and the relevant Ordering Entity may require Contractor to promptly bring such Order into conformity with Addendum requirements, at Contractor's sole expense. If the Order cannot be brought into conformance by re-performance or other corrective measures, the State, OIS, or the relevant Ordering Entity may require Contractor to take action necessary to ensure that future performance conforms to Addendum requirements, and may exercise the remedies available under this Addendum, at law or in equity, in lieu of or in conjunction with such corrective measures.
- C. Monitoring.** Contractor shall permit the State, OIS, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Addendum using any reasonable procedure, including, but not limited to: internal Evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.
- D. Final Audit Report.** If an audit is performed on Contractor's records for any Fiscal Year covering a portion of the term of this Addendum, Contractor shall submit a copy of the final audit report to the State's principal representative at the address specified herein. Contractor shall ensure the provisions of this paragraph apply to any subcontract related to performance under this Addendum. Contractor shall, at Contractor's sole expense, reconstruct any records not preserved or retained as required by this paragraph.

8. CONFIDENTIAL INFORMATION-ORDERING ENTITY RECORDS

Contractor shall comply with, and shall cause each of its Subcontractors, and any other Party performing Work under this Addendum, to comply with the provisions of this §8 if it becomes privy to Confidential Information in connection with its performance hereunder.

- A. Confidentiality.** Contractor shall keep all State and Ordering Entity Records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third Party for a State or Ordering Entity Records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.
- B. Notification.** Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with State and Ordering Entity Records and Confidential Information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.
- C. Use, Security, and Retention.** Confidential Information, State Data and Records, and/or Ordering Entity Records of any kind shall not be distributed or sold to any third Party or used by Contractor or its agents in any way, except as authorized by this Addendum or approved in writing by the State or the Ordering Entity, as applicable. Contractor shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information wherever located. Confidential Information, State Data and Records, and/or Ordering Entity Records shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Addendum or approved in writing by the Ordering Entity or the State. All Confidential Information, State Data and Records, and/or Ordering Entity

Records of any kind, shall be stored, processed, or transferred only in, or to, facilities located within the United States.

D. Rights in Data, Documents, and Computer Software

- i. Except to the extent specifically provided elsewhere in this Addendum, any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Addendum, shall be the exclusive property of the State or Ordering Entity and all Work Product shall be delivered to the State or Ordering Entity by Contractor upon completion of an Order or termination thereof. The State's or Ordering Entity's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative Works, and to amend, update or alter such Work Product as the State or Ordering Entity deems appropriate. Contractor shall not use, or willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State or Ordering Entity. The State or Ordering Entity shall have the right to exercise all incidents of ownership of the Work Product without any further obligation to Contractor, other than compensation for Services rendered as set forth herein.
- ii. Contractor retains all right and title to any licensed software, pre-existing Contractor materials, third-Party materials, open source software, and derivatives thereof, delivered by Contractor under the Addendum, whether incorporated in a Deliverable or necessary to use a Deliverable ("Contractor Property"). Contractor Property will be licensed to the State or Ordering Entity as set forth in a license agreement that is: **(a)** acceptable to the State or Ordering Entity, or **(b)** obtained by the State or Ordering Entity from an applicable third Party Contractor, or **(c)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

E. Disclosure-Liability

- i. Disclosure of State or Ordering Entity Records or other Confidential Information by Contractor for any reason may be cause for legal action by third Party against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, the Ordering Entity, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this §8.
- ii. Notwithstanding any other provision of this Addendum or any Order, Contractor shall be liable to the State and Ordering Entities for all consequential and incidental damages arising from a Security Breach. The State or an Ordering Entity, in its sole discretion, may securely deliver Confidential Information, State Data and Records, and/or Ordering Entity Records directly to the facility where the data is used to perform the Work. Confidential Information, State Data and Records, and/or Ordering Entity Records are not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes. The Contractor shall ensure that Confidential Information, State Data and Records, and/or Ordering Entity Records are not retained beyond time-frames established by the State and Ordering Entity.

9. CONFLICTS OF INTEREST

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

- B.** Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance thereof exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, 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 Addendum.

10. REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties for the benefit of the State and Ordering Entities on the date hereof and as of each Order's effective date, each of which was relied on by the State in entering into this Addendum, and will be relied upon by the State in entering into this Addendum and by each Ordering Entity in placing Orders with Contractors.

- A. Standard and Manner of Performance.** Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Addendum and in any Order.
- B. Legal Authority – Contractor Signatory.** Contractor warrants that it possesses the legal authority to enter into this Addendum and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Addendum, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Addendum within fifteen (15) days of receiving such request.
- C. Licenses, Permits, Etc.**
- i.** Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Addendum, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees and agents of Contractor delivering Orders under this Addendum shall hold all required licenses or certifications, if any, to perform their responsibilities.
 - ii.** Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of such licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Addendum is a material breach by Contractor and may constitute grounds for termination of this Addendum.
- A. Doing Business in Colorado.** Contractor and its Subcontractors and authorized dealer/distributors, if applicable, shall register to do business within the State of Colorado with the Colorado Secretary of State, in accordance with **CRS §7-90-801**, and must maintain such registration in "good standing" throughout the term of this Addendum. Contractor shall provide the State upon the State's request a copy of Contractor's Articles of Incorporation and/or Bylaws.
- B. Federal Employer Identification Number (FEIN).** Contractor shall submit to the State its FEIN and a completed W-9, Taxpayer Identification form before any Ordering Entity may issue an Order to Contractor under this Addendum.

11. INSURANCE

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this §11 at all times during the term of this Addendum. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

A. Contractor

i. Public Entities

a) If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, **CRS §24-10-101, et seq.**, as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

b) Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each Contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

ii. **Non-Public Entities.** If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Addendum, insurance coverage and policies meeting the same requirements set forth in §11(B), and shall obtain and maintain during the terms of this Addendum insurance coverage and policies meeting the same requirements with respect to Subcontractors that are not "public entities."

B. **Contractors – Subcontractors.** Contractor shall require each contract with Subcontractors providing Goods or Services in connection with this Addendum, other than those that are public entities, to include insurance requirements substantially similar to the following:

i. **Worker's Compensation.** Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor or Subcontractor employees acting within the course and scope of their employment.

ii. **Commercial General Liability.** Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent Contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Contractor and/or Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

iii. **Automobile Liability.** Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. **Additional Insured.** The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction Contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any Subcontractors hereunder.

v. **Primacy of Coverage.** Coverage required of Contractor and Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

vi. **Cancellation.** The above insurance policies shall include provisions preventing cancellation or non-renewal without at least thirty (30) days prior notice to Contractor

and Contractor shall forward such notice to the State in accordance with **§8 of the Addendum** within seven (7) days of Contractor's receipt of such notice.

- vii. **Subrogation Waiver.** All insurance policies in any way related to this Addendum and secured and maintained by Contractor or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- C. **Certificates.** Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within (7) seven business days of the Effective Date of this Addendum. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the State, certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Addendum, Contractor and each Subcontractor shall supply the State with evidence, satisfactory to the compliance with the provisions of this **§11**.

12. BREACH

- A. **Defined.** In addition to any breaches specified in other sections of this Addendum, the failure of the Contractor, the State or an Ordering Entity to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against 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 twenty (20) days after the institution or occurrence thereof, shall also constitute a breach.
- B. **Notice and Cure Period.** In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party and to the State in the manner provided in **§8 of the Addendum**. If such breach is not cured within thirty (30) days of receipt of written notice, or if a cure cannot be completed within thirty (30) days, or if cure of the breach has not begun within thirty (30) days and pursued with due diligence, the State or an Ordering Entity may exercise any of the remedies set forth in **§13 (Remedies)**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Addendum in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

13. REMEDIES

If Contractor is in breach under any provision of this Addendum, the State and an Ordering Entity shall have all of the applicable remedies listed in this **§13**, except for those remedies specifically limited to the State, in addition to all other remedies set forth in other sections of this Addendum and under applicable law, following the notice and cure period set forth in **§12 (Breach)**. The State and any Ordering Entity may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

- A. **Contract Termination for Cause and/or Breach.** The State may terminate this entire Addendum or any part thereof, or any Order, in response to Contractor's uncured breach. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall remain responsible for performance of this Addendum and any Orders to the extent not terminated, if any.
 - i. **Obligations and Rights**
 - a) To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding Orders and subcontracts with third Party pertaining to such performance. However, Contractor shall complete and deliver to individual Ordering Entities all Orders not cancelled by the termination notice and may incur obligations as are necessary to do so within this Addendum's terms.

- b) At the request of any Ordering Entity, Contractor shall assign to the requesting Ordering Entity all of Contractor's right, title, and interest in Work Product created pursuant to any terminated Orders as of the effective date of their termination.
 - c) Upon termination, Contractor and any Subcontractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which any individual Ordering Entities have an interest. Contractor and or any Subcontractors shall immediately return to the Ordering Entity all materials owned by the Ordering Entity that are in their possession. All Work Product, at the option of the Ordering Entity, shall be delivered by Contractor to the Ordering Entity and shall become the property of the Ordering Entity.
- ii. **Payments.** Ordering Entities shall reimburse Contractor only for accepted performance up to the date of termination of an Order. If, after termination of an Order by State Ordering Entities, it is determined 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 the same as if this Addendum had been terminated in the public interest, as described below in **§13.B**.
 - iii. **Damages and Withholding.** Notwithstanding any other remedial action by the State or an Ordering Entity, Contractor shall remain liable to the State or the Ordering Entity as may be appropriate for any damages sustained by the State or the Ordering Entity by virtue of any breach under this Addendum by Contractor. An Ordering Entity may withhold any payment to Contractor for the purpose of mitigating the Ordering Entity's damages, until such time as the exact amount of damages due to the Ordering Entity from Contractor is determined. An Ordering Entity may withhold any amount that may be due Contractor as the Ordering Entity deems necessary to protect it against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring substitute Goods or Services. Contractor shall be liable for excess costs incurred by the Ordering Entity in procuring from third Party replacement Work or substitute Goods and/or Services.
- B. Contract Early Termination in the Public Interest.** The State is entering into this Addendum for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Addendum ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Addendum, and any Order, in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's or any Ordering Entity's obligations hereunder. This subsection shall not apply to a termination of this Addendum by the State for cause or breach by Contractor, which shall be governed by **§13.A** or as otherwise specifically provided herein.
- i. **Method and Content.** The State shall notify Contractor of such termination in accordance with **§8 of the Addendum**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Addendum and any Orders.
 - ii. **Obligations and Rights.** Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in **§13(A)(i)**.
 - iii. **Payments**
 - a) If this Addendum is terminated by the State pursuant to this **§13(B)**, Contractor shall be paid by respective Ordering Entities for all outstanding Orders an amount which bears the same ratio to the total reimbursement under those Orders as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in each Order, less payments previously made.
 - b) Additionally, if an Order is less than sixty (60) percent completed, an Ordering Entity may reimburse Contractor for a portion of actual out-of-pocket expenses

(not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor by an Ordering Entity under such Order.

- C. State's Option to Terminate.** The State may, at any time, terminate this Addendum by sending written notice to the Contractor. Such notice shall state the effective date of termination, which shall be no less than thirty (30) calendar days after the date of the notice.
- D. Remedies Not Involving Contract Termination.** The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:
- i. Suspend Performance.** Suspend Contractor's performance with respect to all or any portion of this Addendum pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.
 - ii. Withhold Payment.** Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.
 - iii. Deny Payment.** Deny payment for those obligations not performed that, due to Contractor's actions or inaction's, cannot be performed or, if performed, would be of no value to the State, provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.
 - iv. Removal.** Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued participation under this Addendum is deemed to be contrary to the public interest or the State's best interest.
- E. Intellectual Property.** If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Addendum, Contractor shall, at the State's or an Ordering Entity's option **(i)** obtain for the State, Ordering Entity or Contractor the right to use such Goods and Services; **(ii)** replace any Goods involved in the performance of the Services with non-infringing Goods, or modify them so that they become non-infringing; or, **(iii)** if neither of the foregoing alternatives are reasonably available, remove or discontinue any infringing Services or Goods and refund the price paid therefore to the State.
- F. Non-State Ordering Entity Remedies.** Non-State Ordering Entities may include other remedies in the terms of the Orders they place.
- G. Delay or Nonperformance – Liquidated Damages.** If an Ordering Entity provides Contractor with written notice of delay or nonperformance under an Order in accordance with **§8 of the Addendum**, and Contractor fails to cure such delay or nonperformance within the time specified in such notice, then to the extent such Order contains a liquidated damages provision, Contractor shall be liable for the liquidated damages in addition to any other applicable damages as provided therein.

14. GOVERNMENTAL IMMUNITY

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

15. STATEWIDE CONTRACT MANAGEMENT SYSTEM

- A. If the maximum amount payable to Contractor by any one State Ordering Entity under this Addendum is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§15** applies to that State Ordering Entity's Orders.
- i. Contractor agrees to be governed, and to abide, by the provisions of **CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102** concerning the monitoring of Contractor performance on state Contracts and inclusion of Contract performance information in a Statewide Contract management system.
 - ii. Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Addendum, State law, including **CRS §24-103.5-101**, and State Fiscal Rules, Policies and Guidance.
 - iii. Evaluation and Review of Contractor's performance shall be part of the normal Contract administration process and Contractor's performance will be systematically recorded in the Statewide Contract Management System.
 - iv. At the end of the current Contract term, the State Ordering Entity shall complete and submit a performance Evaluation in a form substantially equivalent to **Exhibit 3 (Sample Contractor Performance Evaluation)**.
- B. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Addendum shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the Statewide Contract Management System at intervals established by State Ordering Entities and a final Evaluation, Review and Rating shall be rendered within thirty (30) days of the end of the Addendum term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain Work progress.
- C. Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel & Administration (Executive Director), upon request by the State Purchasing Office, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future Contracts.
- D. Contractor may contest the final Evaluation, Review and Rating by: (i) filing rebuttal statements, which may result in either removal or correction of the Evaluation (**CRS §24-105-102(6)**), or (ii) under **CRS §24-105-102(6)**, exercising the debarment protest and appeal rights provided in **CRS §24-109-106, 107, 201 or 202**, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

16. GENERAL PROVISIONS

- A. **Assignment and Subcontracts.** Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.
- B. **Binding Effect.** Except as otherwise provided in **§16(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
- C. **Captions.** The captions and headings in this Addendum are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.
- D. **Counterparts.** This Addendum may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

- E. Entire Understanding.** This Addendum represents the complete integration of all understandings between the Parties, and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.
- F. Indemnification.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, **CRS §24-10-101 et seq.**, or the Federal Tort Claims Act, **28 U.S.C. 2671 et seq.**, as applicable, as now or hereafter amended.
- G. Jurisdiction and Venue.** All suits or actions related to this Addendum shall be filed and proceedings held in the State of Colorado and venue shall be in the City and County of Denver, except venue may be the Colorado court district where the Ordering Entity's primary place of business is located.
- H. Modification**
- i. By the Parties**
 - a)** Except as specifically provided in this Addendum, modifications of this Addendum shall not be effective unless agreed to in writing by the Parties in an amendment to this Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.
 - b)** Modifications permitted under this Addendum, other than amendments, shall conform to the policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.
 - ii. By Operation of Law.** This Addendum is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Addendum on the effective date of such change, as if fully set forth herein.
- I. Order of Precedence**
- i.** The provisions of this Addendum shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Addendum and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
 - a)** §17 of this Addendum, FAFTA Provisions
 - b)** §18 of this Addendum, Colorado Special Provisions,
 - c)** The remaining provisions of the main body of this Addendum and this Exhibit A,
 - d)** The provisions of the Master Agreement, and
 - e)** The provisions of each Order.
 - ii.** Notwithstanding anything to the contrary herein, the State and Ordering Entities shall not be subject to any provision incorporated in any exhibit attached hereto, any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click through or online agreements, or any provision incorporated into any other document or agreement between the Parties that **(a)** requires the State or Ordering Entity to indemnify Contractor or any other Party, **(b)** is in violation of State laws, regulations, rules, fiscal rules, policies, or other State or Ordering Entity requirements as deemed solely by the

State or Ordering Entity, or (c) is contrary to any of the provisions incorporated into §16 or the main body of this Addendum.

- J. Severability.** Provided this Addendum can be executed and performance of the obligations of the Parties accomplished as intended, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Addendum in accordance with its intent.
- K. Survival of Certain Addendum Terms.** Notwithstanding anything herein to the contrary, provisions of this Addendum requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State or an Ordering Entity if Contractor fails to perform or comply as required.
- L. Third Party Beneficiaries.** Enforcement of this Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any Services or benefits which third Party receive as a result of this Addendum are incidental to the Addendum, and do not create any rights for such third Party.
- M. Waiver.** Waiver of any breach under a term, provision, or requirement of this Addendum, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- N. CORA Disclosure.** To the extent not prohibited by federal law, this Addendum and the performance measures and standards under **CRS §24-103.5-101**, if any, are subject to public release through the Colorado Open Records Act, **CRS §24-72-101, et seq.**
- O. Sex Offender Registry Check.** If in the course of doing business, an employee of a Contractor, its Subcontractors, and/or authorized dealers/distributors, visits a State facility that has as clients children under the age of 21 on the premises, Contractor shall complete a sex offender registry check on each such employee prior to such employee going to any such State facility. In the event a designated employee is on the registry, such employee shall not be sent to a State facility and will not be admitted to such facility. Link to access the Colorado Department of Public Safety's website: <http://cdpsweb.state.co.us/> (Reference **CRS §16-22-110**, Sex Offender Registry).

17. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2004 ("FFATA")

If or when an Ordering Entity places an Order using FFATA funds, the Ordering Entity shall immediately notify the State and the Contractor of payment with FFATA funds and the Order shall include the "State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to the Federal Funding Accountability and Transparency Act of 2006, as amended," as such provisions may be modified from time to time. The FFATA provisions are available on the website of the Colorado State Controller at: <https://www.colorado.gov/pacific/osc/ffata>. The State and the Ordering Entity agree to comply with all federal and state reporting requirements for the use of FFATA funds. Contractor shall provide the required report to the Ordering Entity with the invoice presented to the Ordering Entity for payment. The Parties acknowledge that Contractor, for purchases under this Addendum, is not a Subcontractor or sub-grantee, but a provider of Goods and related Services.

18. COLORADO SPECIAL PROVISIONS

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

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

- B. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- C. GOVERNMENTAL IMMUNITY.** No term or condition of this 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, **CRS §24-10-101 et seq.**, or the Federal Tort Claims Act, **28 U.S.C. §1346(b)** and **2671 et seq.**, as applicable now or hereafter amended.
- D. INDEPENDENT CONTRACTOR.** 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.
- E. UNEMPLOYMENT INSURANCE.** Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third Party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this 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.
- F. 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.
- G. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this 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 Addendum, to the extent capable of execution.
- H. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Addendum or Order or incorporated herein by reference shall be null and void.
- I. SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. State or other public funds payable under this 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 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 Addendum, including, without limitation, immediate termination of this Addendum and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- J. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this 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.

- K. VENDOR OFFSET. CRS §24-30-202 (1) and 24-30-202.4.** *[Not applicable to intergovernmental agreements].* Subject to **CRS §24-30-202.4 (3.5)**, the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State Agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in **CRS §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.
- L. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.** *[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services].* Contractor certifies, warrants, and agrees that it does not knowingly employ or Contract with an illegal alien who will perform Work under this 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 Addendum, through participation in the E-Verify Program or the State program established pursuant to **CRS §8-17.5-102(5)(c)**, Contractor shall not knowingly employ or Contract with an illegal alien to perform Work under this 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 Addendum. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Addendum is being performed, (ii) shall notify the Subcontractor and the contracting State agency within three (3) days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for Work under this Addendum, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to **CRS §8-17.5-102(5)**, by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or Party, 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 **CRS §8-17.5-101 et seq.**, the contracting State agency, Institution of Higher Education or Party may terminate this Addendum for breach and, if so terminated, Contractor shall be liable for damages.
- M. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** 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 **CRS §24-76.5-101 et seq.**, and (iii) has produced one form of identification required by **CRS §24-76.5-103** prior to the effective date of this Addendum.

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EXHIBIT 1 - SAMPLE OPTION LETTER

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
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1) **OPTIONS.** Option to renew only *(for an additional term)*

2) **REQUIRED PROVISIONS.**

In accordance with Section(s) _____ of the Original Contract between the State of Colorado, Department of Personnel & Administration, State Purchasing Office, and [Contractor's Name], the State hereby exercises its option for an additional term beginning [Insert start date] and ending on [Insert ending date] at a cost/price specified in Section[_____]Exhibit [____].

3) **EFFECTIVE DATE.** The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, Governor Department of Personnel & Administration</p> <hr/> <p>By: Insert Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

<p>CRS §24-30-202 requires the State Controller to approve all State Contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.</p>
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STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Insert Name of Agency or IHE Delegate-Please delete if Contract will be routed to OSC for approval

Date: _____

EXHIBIT 2 – SAMPLE SUMMARY CONTRACTOR VOLUME REPORT

STATE OF COLORADO VENDOR QUARTERLY SUMMARY VOLUME REPORT						<i>Send completed form to:</i> State Purchasing Office 1525 Sherman Street, Third Floor Denver, CO 80203 <i>or email to Sourcing Specialist</i>			
Vendor Name:						x		Revised - 4/24/14	
Contact Person:						x			
E-Mail Address:						x		← Fill in Highlighted Areas	
Phone:						x			
Date:						xx/xx/20xx			
Colorado Price Agreement #:						x			
Commodity or Service Name:						x			
Reporting Period - Please select the appropriate period:						July - September		← Select one from each Drop Down Menu	
Reporting Year - Please select the appropriate year:						2013			
SPO Sourcing Specialist Contact - Please select the Specialist and e-mail this form to:						Molly Randol		(303) 866-6191 Molly.Randol@state.co.us	
Sales Data Reported									
Type of Entity	Total Sales Dollars This Quarter ¹	Regular (List) Pricing of Total Sales ²	Estimated Cost Savings ³		Total Paid By Commercial Credit Card ⁴		Total Green Sales ⁵		
State Agencies and other State Departments	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Higher Education	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Political Subdivisions ⁶	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Non-Profit ⁷	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Totals	\$ -	\$ -	\$ -	0%	\$ -	0%	\$ -	0%	
Colo. Admin. Fee ⁸	\$ -	Note: Make check payable to "State of Colorado". Send to: Colorado State Purchasing Office, 1525 Sherman Street, Third Floor, Denver, CO 80203							
Vendor Comments:									
(enter here---->)									
Legend									
1	Total Sales Dollars this Quarter - Attach detailed reports/data to support these amounts.								
2	Regular (List) Pricing of Total Sales - The List / Catalog / MSRP Pricing and %, prior to any discounts.								
3	Estimated Cost Savings - Savings to the State and % as a direct result of this price agreement.								
4	Total Paid by Commercial Card - Reflects the portion of total sales and % paid by the State Procurement Card or credit cards.								
5	Total Green Sales - Reflects the portion of total sales and % that has Environmentally Preferable attributes.								
6	Political Subdivisions - Examples include City/County/Local Governments, Special Districts (School, Fire, Water, Transportation etc.)								
7	Non-Profits - Organizations qualified by the State Purchasing Office based on C.R.S. 24-110-207.5.								
8	Colorado Administration Fee - Only applicable to price agreements where the State is collecting a fee. Vendor manually enters								
----- SPO Use Only ----- Date Entered to QVR Log: -----									
Notes/Comments: (enter here---->)									



EXHIBIT 3 – SAMPLE CONTRACTOR PERFORMANCE EVALUATION

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

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

Completing this Form

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

CMS Identification Number:
Name of State Agency/IHE:
Name of Project/Program:

Contract Completion Date:
Name of Contractor/Grantee:

Contractor Performance – Evaluation conducted after completion of Services

Contractor met requirements related to Quality: Yes ☐ No ☐

Contractor met requirement related to Cost: Yes ☐ No ☐

Contractor met requirements related to Timeliness: Yes ☐ No ☐

Briefly indicate area(s) of non-compliance and steps taken to remedy:

Indicate number and dates of interim performance Evaluation worksheets completed for this Contract:

Overall Rating of Contractor Performance: Below Standard ☐ Standard ☐ Above Standard ☐

The following to be completed by the State following submittal to Contractor for Review

Provided with opportunity to Review Evaluation? (Date sent:) Yes ☐ No ☐

Contractor submitted response to Evaluation? (Date rebuttal received:) Yes ☐ No ☐

Contractor disputed Evaluation? (Date Dispute received:) Yes ☐ No ☐

If No, explain:

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

Signature: _____

Title: _____

Print Name: _____

Date: _____

Phone: _____

EXHIBIT 4 – IRS REQUIREMENT

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- 1) All Work will be done under the supervision of the Contractor or the Contractor's employees.
- 2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- 3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- 4) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the Work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- 6) All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in **IRS Publication 1075**. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- 7) No Work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- 8) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- 9) The agency will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

- 1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by **IRC sections 7213 and 7431** and set forth at **26 CFR 301.6103(n)-1**.
- 2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection

by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by **IRC section 7213A and 7431**.

- 3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, **5 U.S.C. 552a**. Specifically, **5 U.S.C. 552a(i)(1)**, which is made applicable to Contractors by **5 U.S.C. 552a(m)(1)**, provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established there under, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

III. INSPECTION

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any Work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

EXHIBIT 5 – Detail Volume Report

Vendor Name:
Contact Person:
E-mail Address:
Date:
Colorado Price Agreement Number/ WSCA

Reporting Period - Please select the appropriate period:
Reporting Year - Please select the appropriate year:

January - March

2015

Entity/Customer Type (e.g. State Agencies, Higher Ed, Political Subdivisions, Non-Profit)	Bill To Location	Service Location	Purchase Order Identifier/Number	Order Date	Se D: