

**Purchase Order Number 12185**

This Number Must Appear on all  
Invoices, Packing Lists, and Packages

**ADAMS COUNTY  
PURCHASE ORDER**

Page 1 of 1  
Order Date: 01/29/15  
Requested Date: 01/29/15  
Cost Center: 1061


Vendor Address	Vendor and Shipping Information	Ship To Information
SHI INTERNATIONAL CORP 290 DAVIDSON AVE SOMERSET NJ 08873	Phone: FAX: e-mail: Delivery: FOB DESTINATION	INFORMATION TECHNOLOGY DEPARTMENT 4430 SOUTH ADAMS COUNTY PARKWAY 3RD FLOOR, SUITE C3000 BRIGHTON CO 80601
VENDOR NUMBER: 45988		

LANDesk Maintenance, Subscription and Virtual Cloud Maintenance renewal quote attached. This is under the State of Colorado Contract. The term for this maintenance is 12/30/2014 through 12/29/2015.

Ln	R	Description / Supplier Item	QTY	UOM	Unit Price	Extended Price	Account Number	Req. No.
1	0	LANDesk 2015 Maintenance		EA	0.0000	28,000.00	1056.7825	00005876
2	0	LANDesk Patch Mngr Subscriptio		EA	0.0000	14,000.00	1056.7825	00005876
3	0	LANDesk Vrtl Cld Svcs Appl Mnt		EA	0.0000	465.00	1056.7825	00005876
Original								

<b>Term</b> Net 30 Days	<b>Tax Rate</b> *NA*	<b>Sales Tax</b> 0.00	<b>Total Order</b> 42,465.00
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ACCEPTANCE OF THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS ABOVE AND ON THE REVERSE SIDE OF THIS DOCUMENT  
COLORADO TAX EXEMPT #98-03569

Invoice to: Adams County A/P 4430 S. Adams County Pkwy. Suite C4000A Brighton, CO 80601-8212 720-523-6050	Inquiries to: Adams County Purchasing Department 4430 S. Adams County Parkway, Suite C4000A Brighton, CO 80601-8212 720-523-6050	 293232BONASERA, BETHANY K <b>ADAMS COUNTY AUTHORIZED SIGNATURE</b>
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## ADAMS COUNTY PURCHASE ORDER TERMS AND CONDITIONS

**Quality:** Vendor warrants that the goods delivered hereunder will conform to the description stated in this Order and that the goods will be merchantable, of good workmanship and materials, and free from defects. These warranties shall survive inspection, testing and/or acceptance of the goods. At County's option, and without prejudice to any other rights County may have, Vendor shall remedy any defective goods or reimburse County for its costs for remedying or replacing defective goods.

**Packing Charges:** No charges will be allowed for transportation, boxing, crating or other packaging unless set forth in writing in this Order.

**Terms of Payment:** Payment in full by County shall be made within thirty (30) days after receipt of invoice from Vendor.

**Tax Exempt:** County is a tax-exempt government entity, a body politic and corporate. No sales, use or excise taxes shall be included in or added to the prices of materials or goods on this Order. County's tax exempt number is 98-03569.

**Appropriation Clause:** The payment of County's obligation hereunder in fiscal years subsequent to the current year are contingent upon funds for this Order being appropriated and budgeted. If funds for this Order are not appropriated and budgeted in the year subsequent to the fiscal year of issuance of this Order, the County may terminate this Order. County's fiscal year is the calendar year. Termination under this provision shall not result in any penalty being imposed against County.

**Cancellation for Cause:** This Order is to be acknowledged properly, and the date of shipment shall be stated definitely in the acknowledgment by Vendor. In the event of Vendor's failure to deliver as and when specified, County reserves the right to cancel this Order, or any part thereof, without affect to its other rights, and Vendor agrees that County may return part or all of any shipment so made and may charge Vendor with any loss or expense sustained as a result of such failure to deliver.

**Risk of Loss:** If the risk of loss passes at the shipping point, and if Vendor fails to pack the goods in an appropriate manner or to ship them in the manner or route directed by County, Vendor shall reimburse County for any loss resulting from that failure.

**Compliance:** Vendor represents and warrants that it is in compliance with all applicable laws, rules and regulations that affect this Order.

**Patents and Copyrights:** Vendor shall indemnify, hold harmless, and defend County, its directors, officers, agents and employees for, from and against any suit, claim or demand alleging infringement of any patent or copyright or misappropriation of any confidential information or trade secret in the United States, in the country of source or country of destination, based on the manufacture, assembly, sale, lease or use of goods, machinery, equipment, apparatus, materials or processes supplied hereunder.

**Indemnification:** Vendor shall fully protect, indemnify, hold harmless and defend County, its directors, officers, agents and employees for, from and against any and all loss, cost, damage, injury, liability, claims, liens, demands, taxes, penalties, interest or causes of action of every nature whatsoever, including but not limited to those of Vendor's subcontractors, which in any manner arise out of, are incident to, or are in connection with Vendor's performance under this Order.

**Jurisdiction and Venue:** The laws of the State of Colorado shall govern the interpretation, validity and effect of this Order. Jurisdiction and venue for any disputes arising under this Order shall be with the District Court of Adams County, Colorado.

**Assignment:** This Order shall not be assigned in whole or in part without the prior written approval of County.

**No Waiver of Rights:** No actions or lack of action by County shall be deemed a waiver of any of the provisions, terms or conditions set forth herein. Any waiver by County must be in writing.

**Entire Agreement:** This Order, properly signed, constitutes the entire agreement between County and Vendor. Any alterations, changes, variations, or additional terms by Vendor are rejected unless expressly assented to in writing by County. Acceptance is expressly limited to the terms of this Order; any additional or different terms are of no force and effect and notification of objection to such additional terms is hereby given.



Pricing Proposal  
Quotation #: 9104712  
Created On: 1/22/2015  
Valid Until: 2/20/2015

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## CO ADAMS COUNTY

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### Bethany Bonasera

4430 S Adams County Pkway  
Ste C4000A  
BRIGHTON, CO 80601  
United States  
Phone: (720) 523-6056  
Fax:  
Email: Bonasera@adcogov.org

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## Inside Account Manager

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### Tom Wospil

290 Davidson Ave.  
Somerset, NJ 08873  
Phone: 732-868-8795  
Fax: (732) 868-6421  
Email: Tom\_Wospil@shi.com

All Prices are in US Dollar (USD)

	Product	Qty	Your Price	Total
1	LANDesk Management Suite Maintenance1000-1999 Nodes LANDesk Software - Part#: LDMSPPA-M-03 Coverage Term: 12/30/2014 – 12/29/2015	1750	\$16.00	\$28,000.00
2	LANDesk Patch Manager-Subscription1000-1999 Nodes LANDesk Software - Part#: LDPM-S-03 Coverage Term: 12/30/2014 – 12/29/2015	1750	\$8.00	\$14,000.00
3	LANDesk Virtual Cloud Services ApplianceMaintenance LANDesk Software - Part#: LDVCSA-M Coverage Term: 12/30/2014 – 12/29/2015	1	\$465.00	\$465.00
			Total	\$42,465.00

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### Additional Comments

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WCSA - 20556YYY112PWCSA

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*The Products offered under this proposal are subject to the SHI Return Policy posted at [www.shi.com/returnpolicy](http://www.shi.com/returnpolicy), unless there is an existing agreement between SHI and the Customer.*

## CONTRACT AMENDMENT

Amendment #2	Original Contract CMS # 50848	Amendment CMS # 63097
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WSCA Master Agreement #ADSP011-00000358-2  
Participating Addendum #20556YYY12P/WSCA

### 1) PARTIES

This **Amendment** to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and SHI International Corp.. (hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the **Department of Personnel and Administration, State Purchasing Office** (hereinafter called the "SPO").

### 2) EFFECTIVE DATE AND ENFORCEABILITY

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

### 3) FACTUAL RECITALS

The Parties entered into the Contract to provide Licenses for Distributed Software Products, Maintenance and Services Related to the Sale and Management of Distributed Software Licenses.

### 4) 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 **Amendment**.

### 5) LIMITS OF EFFECT

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

### 6) MODIFICATIONS.

The Contract and all prior Amendments thereto, if any, are modified as follows: This Contract Amendment #2 modifies the contract as follows:

The Master Price Agreement shall be modified with respect to this PA only as follows:

A new Section 17 is added to the Participating Addendum, which is incorporated herein and attached hereto. The new Section 17 pertains only to and contains reference and information to the purchase (s) of ORACLE software, maintenance, services and software/hardware bundles as described herein.

### 7) START DATE

This Amendment shall take effect on the later of its Effective Date.

### 8) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this **Amendment** and any of the provisions of the Contract, the provisions of this **Amendment** shall in all respects supersede, govern, and control. The most recent version of

the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

**9) AVAILABLE FUNDS**

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

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**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><b>CONTRACTOR</b> SHI International Corp.</p> <p>By: <u>Natalie Slowik</u></p> <p>Title: <u>Contract Specialist</u></p> <p><u>Natalie Slowik</u> Signature</p> <p>Date: <u>11/25/13</u></p>	<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b></p> <p>Department of Personnel and Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director</p> <p>By: <u>Judson Byrn</u> of Judson Byrn, State Purchasing Director</p> <p>Date: <u>11/27/13</u></p>
	<p><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>


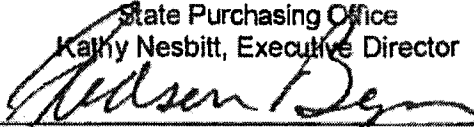
**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This 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><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By: <u>Gregory Garner</u> Date: <u>12/6/13</u></p> <p>Print Name: <u>Gregory Garner, Delegate</u> -or- Delegated Signatory</p>
<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, Governor</b> <b>Governor's Office of Information Technology</b> <b>Kristin Russell, Secretary of Technology and State Chief Information Officer</b></p> <p>By: _____ Date: _____ Brenda Berlin, Chief Financial Officer</p>


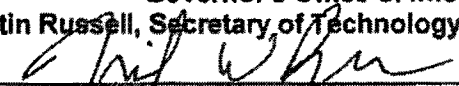
**THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM**

\* 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 align="center"><b>CONTRACTOR</b> SHI International Corp.</p> <p>By: <u>Natalie Slowik</u></p> <p>Title: <u>Contract Specialist</u></p> <p align="center"> Signature</p> <p>Date: <u>11/25/13</u></p>	<p align="center"><b>STATE OF COLORADO</b> John W. Hickenlooper, GOVERNOR</p> <p>Department of Personnel and Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director</p> <p>By:  or Judson Byrn, State Purchasing Director</p> <p>Date: <u>11/27/13</u></p>
	<p align="center"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____</p> <p>Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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<p align="center"><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By:  Date: _____</p> <p>Print Name: _____</p> <p align="center">-or- Delegated Signatory</p>
<p align="center"><b>STATE OF COLORADO</b> John W. Hickenlooper, Governor Governor's Office of Information Technology Kristin Russell, Secretary of Technology and State Chief Information Officer</p> <p>By:  Date: <u>12/6/2013</u></p> <p align="center"><del>Brenda Berlin, Chief Financial Officer</del> Michael W. Brown, Chief Technology Officer (acting)</p>

**Amendments to Exhibit A of the Participating Addendum:**

**"Section 17. ORACLE TERMS AND CONDITIONS**

The Participating State, each Ordering Entity and Contractor agree that notwithstanding anything to the contrary set forth in the Contract, the following provisions, terms and conditions shall apply in each instance that any Ordering Entity (including the Participating State) purchases any Oracle Products or Service Offerings under the Contract:

**Definitions:**

The following terms as used in this §17 shall be construed and interpreted as follows:

**"Addendum"** shall mean this Participating Addendum made between the Participating State, acting by and through the State Purchasing Office, and the Contractor, as amended, supplemented or otherwise modified from time to time in accordance with Section 14.C and Section 17.N of this Exhibit A to the Addendum.

**"Ancillary Programs"** refers to third party materials specified in the Program Documentation which may only be used for the purposes of installing or operating the programs with which the ancillary programs are delivered.

**"Commencement Date"** refers to the date of shipment of tangible media or the effective date of the Order if shipment of tangible media is not required.

**"FUDA"** refers to the Oracle PartnerNetwork Full Use Distribution Agreement, dated June 26, 2013, between Contractor and Oracle (together with all amendments and addenda thereto).

**"Hardware"** refers to the computer equipment, including components, options and spare parts.

**"Integrated Software"** refers to any software or programmable code that is embedded or integrated in the Hardware and enables the functionality of the Hardware and specifically listed (i) in accompanying documentation, (ii) on an Oracle webpage or (iii) via a mechanism that facilitates installation for use with the Participating State's Hardware. Integrated Software does not include and the Participating State does not have rights to (a) code or functionality for diagnostic, maintenance, repair or technical support services; or (b) separately licensed applications, operating systems, development tools, or system management software or other code that is separately licensed by Oracle.

**"Operating System"** refers to the software that manages Hardware for Programs and other software.

**"Oracle"** refers to Oracle America, Inc.



**"Products"** refers to Programs, Hardware, Integrated Software and Operating System.

**"Programs"** refers to (a) the software owned or distributed by Oracle that the Ordering Entity has ordered hereunder, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include Integrated Software or any Operating System.

**"Program Documentation"** refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. The Participating State and Ordering Entity may access the documentation online at <http://oracle.com/contracts>.

**"Separate Terms"** refers to separate license terms that are specified in the Program Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.

**"Separately Licensed Third Party Technology"** refers to third party technology that is licensed under Separate Terms and not under the terms of the Contract.

**"Service Offerings"** refers to technical support, education, hosted/outsourcing services, consulting, advanced customer support services, or other services which the Ordering Entity has ordered. Oracle cloud services are hereby excluded from the Addendum. No Ordering Entity shall purchase any Oracle cloud services under the Contract.

**A. Ownership.** Oracle or its licensors retain all ownership and intellectual property rights to the Programs, Operating System, Integrated Software and anything developed or delivered under the Contract.

**B. Rights Granted.**

1. Upon the Contractor's acceptance of the Ordering Entity's Order, the Ordering Entity has the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the Order), limited right to use the Programs and receive any Program-related Service Offerings the Ordering Entity ordered solely for the Participating State's internal business operations and subject to the terms of the Contract, the definitions and rules set forth in the Order and the Program Documentation.

2. Upon payment for Program-related Service Offerings, the Ordering Entity has the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for the Ordering Entity's internal business operations anything developed by Oracle and delivered to the Participating State hereunder ("deliverables"); however, certain deliverables may be subject to additional license terms provided in the Order.

3. The Ordering Entity may allow the Ordering Entity's agents and contractors (including, without limitation, outsourcers) to use the Programs and deliverables for the Participating State's internal business operations and the Ordering Entity is responsible for their compliance with the Contract, in such use. For Programs that are specifically designed to allow the Ordering Entity's customers and

suppliers to interact with the Ordering Entity in the furtherance of the Ordering Entity's internal business operations, such use is allowed under the Contract.

4. The applicable Ordering Entity has the right to use the Operating System delivered with the Hardware subject to the terms of the license agreement(s) delivered with the Hardware. Current versions of the license agreements are located at <http://oracle.com/contracts>. The applicable Ordering Entity is licensed to use the Operating System and any Operating System updates acquired through technical support only as incorporated in, and as part of, the Hardware.

5. The applicable Ordering Entity has the limited, non-exclusive, royalty free, non-transferable, non-assignable right to use Integrated Software delivered with the Hardware subject to the terms hereof and the applicable documentation. The applicable Ordering Entity is licensed to use that Integrated Software and any Integrated Software updates acquired through technical support only as incorporated in, and as part of, the Hardware.

6. Hardware and Integrated Software are not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or operation of a nuclear facility. No Ordering Entity will use Hardware and/or Integrated Software for the purposes set forth in the immediately preceding sentence.

7. Hardware, if purchased, includes Oracle's Hardware warranty in effect at the time the Hardware is purchased. Such Hardware warranty can be accessed at <http://www.oracle.com/support/policies.html>.

8. The Ordering Entity may make a sufficient number of copies of each Program, Operating System and/or Integrated Software for the Ordering Entity's licensed use and one copy of each Program media.

**C. Restrictions.**

1. The Programs may contain or require the use of third party technology that is provided with the Programs. Oracle may provide certain notices to the Ordering Entity in Program Documentation, readmes or notice files in connection with such third party technology. Third party technology will be licensed to the Ordering Entity under Separate Terms as specified in the Program Documentation, readmes or notice files, and not under the terms of the Contract. However, for clarity, notwithstanding the existence of a notice, third party technology that is not Separately Licensed Third Party Technology shall be deemed part of the Programs and is licensed to the Ordering Entity under the terms of the Contract.

If the Ordering Entity is permitted under an Order to distribute the Programs, the Ordering Entity must include with the distribution all such notices and any associated source code for Separately Licensed Third Party Technology as specified, in the form and to the extent such source code is provided by Oracle, and the Ordering Entity must distribute Separately Licensed Third Party Technology under Separate Terms (in the form and to the extent Separate Terms are provided by Oracle). Notwithstanding

the foregoing, the Ordering Entity's rights to the Programs are solely limited to the rights granted in the Ordering Entity's Order.

2. The Ordering Entity may not:

a. remove or modify any Program markings or any notice of Oracle's or its licensors' proprietary rights;

b. make the Programs, Operating System, Integrated Software and/or materials resulting from the Service Offerings available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Program license or materials from the Service Offerings the Ordering Entity has acquired);

c. cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the Programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by Programs), Operating System and/or Integrated Software;

d. disclose results of any Program benchmark tests without Oracle's prior written consent; provided that Program benchmark tests may be disclosed if required by the Colorado Open Records Act C.R.S. 24-72-201 *et. Seq* (the "Act"), so long as the applicable Ordering Entity provides Oracle with ten (10) days written notice prior to disclosing such Program benchmark test in response to a valid request made pursuant to the Act to allow Oracle to seek injunctive or other such relief as may be appropriate;

e. use the Programs for rental, timesharing, subscription service, hosting or outsourcing; or

f. permit title to the Programs, Operating System and/or Integrated Software to pass to the Ordering Entity or any other third party.

3. The prohibition on the assignment or transfer of the Programs or any interest in them under Section D shall apply to all Programs licensed hereunder, except to the extent that such prohibition is rendered unenforceable under applicable law.

**D. Assignment.** The Participating State or Ordering Entity may not assign or give or transfer the Programs, Operating System, Integrated Software and/or any Service Offerings or an interest in them to another individual or entity. If the Ordering Entity grants a security interest in the Programs, Operating System, Integrated Software and/or any Service Offerings deliverables, the secured party has no right to use or transfer the Programs, Operating System, Integrated Software and/or any Service Offerings deliverables, and if the Ordering Entity decides to finance the Ordering Entity's acquisition of any Products, Operating System, Integrated Software and/or any Service Offerings, the Ordering Entity will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights the Ordering Entity may otherwise have with respect to the Linux operating system, third party technology or Separately Licensed Third Party Technology licensed under open source or similar license terms.

**E. Trial Programs.** The Ordering Entity may order trial Programs, or Oracle may include additional Programs with the Ordering Entity's Order which the Ordering Entity may use for trial, non-production purposes only. The Ordering Entity may not use the trial Programs to provide or attend third party training provided by the Contractor or a third party on the content and/or functionality of the Programs. The Ordering Entity has 30 days from the Commencement Date to evaluate these Programs. To use any of these Programs after the 30 day trial period, the Ordering Entity must obtain a license for such Programs from the Contractor. If the Ordering Entity decides not to obtain a license for any Program after the 30 day trial period, the Ordering Entity will cease using and promptly delete any such Programs from the Ordering Entity's computer systems. Programs licensed for trial purposes are provided "as is" and Oracle does not provide technical support or offer any warranties for these Programs.

**F. Technical Support.**

1. For purposes of an Order, technical support consists of Oracle's annual technical support services the Ordering Entity may have ordered from Oracle or an authorized reseller for the Programs. If ordered, annual technical support (including first year and all subsequent years) is provided under Oracle's technical support policies in effect at the time the technical support services are provided. The Ordering Entity agrees to cooperate with Oracle and provide the access, resources, materials, personnel, information and consents that Oracle may require in order to perform the technical support services. The technical support policies are incorporated herein and are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of technical support services provided for supported Programs during the period for which fees for technical support have been paid. The Ordering Entity should review the policies prior to entering into the Order for the applicable technical support services. Ordering Entity may access the current version of the technical support policies at <http://oracle.com/contracts>.

2. Technical support is effective upon the Commencement Date unless otherwise stated in the Ordering Entity's Order.

3. Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with the Ordering Entity's Order may be renewed annually and, if Ordering Entity renews SULS for the same number of licenses for the same Programs, for the first and second renewal years the fee for SULS will not increase by more than 4% over the prior year's fees.

4. If the Ordering Entity decides to purchase technical support for any Program license within a license set the Ordering Entity is required to purchase technical support at the same level for all licenses within that license set. The Ordering Entity may desupport a subset of licenses in a license set only if the Ordering Entity agrees to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If the Ordering Entity decides not to purchase technical support (a) the Ordering Entity may not update any unsupported Program licenses with new versions of the Program and (b) at the time of the license, the

Ordering Entity will be required to pay reinstatement fees to Oracle in accordance with Oracle's current technical support policies if the Ordering Entity decides to purchase technical support at a later date.

**G. LIMITATION OF LIABILITY.** EXCEPT AS SET FORTH IN THE IMMEDIATELY FOLLOWING SENTENCE, TO THE EXTENT NOT PRECLUDED BY APPLICABLE LAW, ORACLE SHALL NOT BE LIABLE FOR ANY DIRECT OR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE, ARISING FROM THE USE OF THE PROGRAMS OR OUT OF OR RELATED TO THE CONTRACT, THE ADDENDUM, AS AMENDED HEREBY, OR ANY ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE. THE IMMEDIATELY FOREGOING SENTENCE SHALL NOT BE CONSTRUED TO EXCUSE ORACLE FROM LIABILITY TO THE APPLICABLE ORDERING ENTITY TO THE EXTENT OF ANY DIRECT DAMAGES (AS OPPOSED TO INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES) SUFFERED BY THE APPLICABLE ORDERING ENTITY FOR BODILY INJURY (INCLUDING WRONGFUL DEATH) OR DAMAGE TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS (AS DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT) OF ORACLE WHILE PERFORMING SERVICES ON AN ORDERING ENTITY'S PREMISES, IF SUCH ACTIONS OR OMISSIONS WERE NOT CAUSED BY THE ACTION OR OMISSION OF SUCH ORDERING ENTITY OR ANY THIRD PARTY; PROVIDED THAT ORACLE SHALL NOT HAVE ANY LIABILITY FOR ANY CLAIM OF BODILY INJURY AND/OR TANGIBLE PERSONAL PROPERTY DAMAGE ARISING FROM THE USE OF SOFTWARE OR HARDWARE. FOR THE PURPOSE OF THIS PARAGRAPH, "TANGIBLE PERSONAL PROPERTY" SHALL NOT INCLUDE DOCUMENTATION, SOFTWARE, DATA, OR DATA FILES.

**H. Export.** Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. The Ordering Entity agrees that such export laws govern the Ordering Entity's use of the Products (including technical data) and any Service Offerings deliverables provided under the Contract, and the Ordering Entity agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). The Ordering Entity agrees that no data, information, Product and/or materials resulting from Service Offerings (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology. The Ordering Entity shall include the following notice on packing lists, commercial invoices, shipping documents and other documents used in the transfer, export or re-export of the Products and any Service Offerings deliverables: "These commodities, technology, software, or hardware (including any Integrated Software and Operating System(s)) were exported in accordance with U.S. Export Administration Regulations and applicable export laws. Diversion contrary to applicable export laws is prohibited."

**I. Audit.** Upon 45 days written notice, Contractor may, at its own expense, audit any Ordering Entity's use of the Programs. The Ordering Entity shall cooperate with Contractor's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with the Ordering Entity's normal business operations. The Ordering Entity agrees to pay within 45 days of written notification any fees applicable to the Ordering Entity's use of the Programs in excess of the

Ordering Entity's license rights. If The Ordering Entity does not pay Contractor within 45 days, Oracle may end (a) Program-related Service Offerings (including technical support) and/or (b) Program licenses ordered hereunder and related agreements. The Ordering Entity agrees that Contractor may (x) report the audit results to Oracle and/or (y) assign to Oracle Contractor's rights under this clause I, in which case Oracle shall not be responsible for any of the Ordering Entity's costs incurred in cooperating with the audit (which costs will continue to be Contractor's responsibility), and that Oracle may exercise its rights hereunder, including, without limitation, termination of such Ordering Entity's right to order any additional Programs and/or Service Offerings (including technical support).

J. **Third-Party Beneficiary.** The parties hereto agree that Oracle shall be, and is hereby, named as an express third-party beneficiary of the Contract, with full authority to enforce its third party beneficiary rights as described herein.

K. **Other.**

1. The Uniform Computer Information Transactions Act does not apply to Orders for Oracle Products or Service Offerings placed under this Contract. The Ordering Entity understands that Oracle's business partners, including any third party firms retained by the Ordering Entity to provide consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner unless (i) the business partner is providing services as an Oracle subcontractor in furtherance of an Order placed under the Contract and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle Products, Service Offerings or other resources under that Order.

2. In entering into payment obligations under an Order, the Ordering Entity agrees and acknowledges that the Ordering Entity has not relied on the future availability of any Program or updates. However, (a) if the Ordering Entity orders technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support pursuant to -such Order, if and when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to the Ordering Entity under such Order and the Contract.

3. The Ordering Entity shall not limit in any way Oracle's right to develop, use, license, create derivative works of, or otherwise freely exploit the programs, Ancillary Programs, Program Documentation, or any other materials provided by Oracle, or to permit third parties to do so.

4. Some Programs may include source code that Oracle may provide as part of its standard shipment of such Programs, which source code shall be governed by the terms of the Contract.

5. Upon the termination of an Order for breach by the applicable Ordering Entity of its obligations thereunder or under the Contract or of any Program license by Oracle, in each case, the applicable Ordering Entity shall discontinue use and destroy or return to Contractor all copies of the Programs and Program Documentation.

**L. Indemnification.**

1. Subject to sections L.4, L.5 and L.6 below, if a third party makes a claim against an Ordering Entity, that any information, design, specification, instruction, software, data, hardware, or material (collectively, "Material") furnished by Oracle and used by such Ordering Entity infringes the third party's intellectual property rights, Oracle, at Oracle's sole cost and expense, will defend the Ordering Entity against the claim and indemnify the Ordering Entity from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Oracle, if the Ordering Entity does the following:

- a. notifies Oracle promptly in writing, not later than 30 days after the Ordering Entity receives notice of the claim (or sooner if required by applicable law);
- b. gives Oracle sole control of the defense and any settlement negotiations; and
- c. gives Oracle the information, authority and assistance Oracle needs to defend against or settle the claim.

2. If Oracle believes or it is determined that any of the Material may have violated a third party's intellectual property rights, Oracle may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Oracle may end the license for, and require return of, the applicable Material and refund any fees the Ordering Entity may have paid to the other party for it and any unused, prepaid technical support fees the Ordering Entity has paid to Oracle for the license of the infringing Program. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

3. In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, Oracle may end the license for, and require return of, the Program associated with that Separately Licensed Third Party Technology and shall refund any Program license fees an Ordering Entity may have paid to Oracle for the Program license and any unused, prepaid technical support fees an Ordering Entity has paid to Oracle for the Program license.

4. Provided an Ordering Entity is a current subscriber to Oracle technical support services for the Operating System (e.g., Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems or Oracle Linux Premier Support), then for the period of time for which such Ordering Entity was a subscriber to the applicable Oracle technical support services (a) the phrase "Material" above in section L.1 shall include the Operating System and the Integrated Software and any Integrated Software Options that the Ordering Entity has licensed and (b) the phrase "Program(s)" in this section L is replaced by the phrase "Program(s) or the Operating System or Integrated Software or Integrated Software Options (as applicable)" (i.e., Oracle will not indemnify the Ordering Entity for the Ordering

Entity's use of the Operating System and/or Integrated Software and/or Integrated Software Options when the Ordering Entity was not a subscriber to the applicable Oracle technical support services). Notwithstanding the foregoing, with respect solely to the Linux operating system, Oracle will not indemnify the Ordering Entity for Materials that are not part of the Oracle Linux covered files as defined at <http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf>.

5. Oracle will not indemnify an Ordering Entity if such Ordering Entity alters Material or uses it outside the scope of use identified in Oracle's user documentation or if such Ordering Entity uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Ordering Entity, or if the Ordering Entity continues to use the applicable Material after the end of the license to use that Material. Oracle will not indemnify an Ordering Entity to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Oracle. Oracle will not indemnify an Ordering Entity for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by Oracle. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of the Contract, Oracle will indemnify an Ordering Entity for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for the Program under the terms of the Contract. Oracle will not indemnify an Ordering Entity for infringement caused by such Ordering Entity's actions against any third party if the Program(s) as delivered to such Ordering Entity and used in accordance with the terms of the Contract would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify an Ordering Entity for any intellectual property infringement claim(s) known to such Ordering Entity at the time license rights are obtained.

6. This section provides the parties' exclusive remedy for any infringement claims or damages.

**M. Warranties, Disclaimers and Exclusive Remedies.**

1. Oracle warrants that a Program licensed to an Ordering Entity will operate in all material respects as described in the applicable Program Documentation for a period of one year after delivery (i.e., via physical shipment or electronic download). An Ordering Entity must notify Oracle of any Program warranty deficiency within one year after delivery. Oracle also warrants that technical support services and Program-related Service Offerings ordered and provided hereunder will be provided in a professional manner consistent with industry standards. An Ordering Entity must notify Oracle of any technical support service or Program-related Service Offerings warranty deficiencies within 90 days from performance of the deficient technical support service or Program-related Service Offerings.

**2. ORACLE DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS.**



3. FOR ANY BREACH OF THE ABOVE WARRANTIES, AN ORDERING ENTITY'S EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE ERRORS OF THE APPLICABLE PROGRAM LICENSE IN A COMMERCIALY REASONABLE MANNER, SUCH ORDERING ENTITY MAY END SUCH ORDERING ENTITY'S PROGRAM LICENSE AND RECOVER THE FEES SUCH ORDERING ENTITY PAID TO CONTRACTOR FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES SUCH ORDERING ENTITY HAS PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, SUCH ORDERING ENTITY MAY END THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS AND RECOVER THE FEES SUCH ORDERING ENTITY PAID TO CONTRACTOR FOR THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS.

4. TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS THE EXCLUSIVE WARRANTY PROVIDED BY ORACLE AND THERE ARE, FROM ORACLE, NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

N. Amendments to Section 17. The parties hereto shall not amend or otherwise modify §17 of this Exhibit A to the Addendum without the prior written consent of Oracle.

O Appropriations. An Ordering Entity's issuance of a purchase order shall be the Ordering Entity's representation to Contractor that all funds for the Order have been fully appropriated and are available for Orders to be delivered before the end of that fiscal year of the Participating State."

**WESTERN STATES CONTRACTING ALLIANCE**  
**PARTICIPATING ADDENDUM**  
**FOR SOFTWARE VALUE-ADDED RESELLER CONTRACT (SVAR)**  
**Administered by the State of Arizona (hereinafter "Lead State")**  
**MASTER PRICE AGREEMENT**  
 SHI International Corp.  
 (Hereinafter "Contractor")  
 State of Arizona Contract Number: ADSP011 00000358-2  
 and  
**State of Colorado**  
 (Hereinafter "Participating State")

This Participating Addendum ("Addendum") is made between the **State of Colorado**, acting by and through the State Purchasing Office, Colorado Department of Personnel and Administration (the "Participating State") and SHI International Corp. ("SHI" OR "Contractor"). This Participating Addendum (or "Addendum") adds the **State of Colorado** as a participating state to the Statewide Master Service Agreement for Licenses for Distributed Software Products, Maintenance and Services Related to the Sale and Mangement of Distributed Software Licenses, Contract Number ADSP011 00000358-2 (the "Master Price Agreement").

1. Scope: This Addendum covers the use of the Master Price Agreement by State Agencies, as defined in Exhibit A attached hereto, and other entitites located in the Participating State authorized by that State's statutes to utilize the Participating State's contracts. The award to Contractor in the Master Price Agreement, is for **all categories and for all states** (entities) authorized to use the Master Price Agreement.
2. Services: The purchase of services is permitted under this Addendum. Services will be permitted on a case-by-case instance, with all Statement of Works to be negotiated by each individual entity and/or by the Colorado State Office Of Information Technology or the State Purchasing Office. Any Professional Services requiring additional sub- Contractors, must have all sub-Contractors pre-approved in writing prior to any commencement of work. Any Professional Services will require the the Contractor and the Sub-Contractor to agree to adhere to rules and regulations as defined by each enitt; including, but not limited to, the terms and conditions as in this Addendum. Additionally, at the discretion of the Participating State, Contractor may be asked to sign a seperate Services Agreement . Pricing for services are included under § Offeror - Pricing of the IFB Solicitation No: ADSP011-00000358-2 ; additional quotes may be obtained for supplemantaryl pricing.
3. Participation: Use of specific WSCA cooperative contracts by state agencies, political subdivisions, registered non-profits and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participating are solely within the authority of the State Chief Procurement Official.
4. Participating State Modifications or Additions to Master Price Agreement: These modifications or additions apply only to actions and relationships within the executing Participating State and are addressed in **Exhibit A** incorporated herein and attached hereto.
5. Lease Agreements: **Lease Agreements Are NOT Authorized By this Addendum.**
6. Primary Contacts: The primary contact individuals for this Addendum are as follows (or their named successors):

**Lead State**

Name	Terri Johnson
Address	State of Arizona – Department of Administration State Procurement Office 100 N 15 <sup>th</sup> Ave, Phoenix, AZ 85007
Telephone	602-542-9125
Fax	602-542-5508
E-mail	<a href="mailto:terri.johnson@azdoa.gov">terri.johnson@azdoa.gov</a>

**Contractor**

Name	Katie Grennan
Address	SHI International Corp 290 Davidson Avenue Somerset, NJ 08873
Telephone	800-477-6479 X 5904
Fax	732-868-5905
E-mail	<a href="mailto:katie_grennan@shi.com">katie_grennan@shi.com</a>

**Participating Entity**

Name	Cyndie Miller
Address	State Of Colorado – Department of Administration State Purchasing Office 633 17 <sup>th</sup> Street, Suite 1520, Denver, CO 80202
Telephone	303-866-6104
Fax	303-866-7445
E-mail	<a href="mailto:Cyndie.Miller@state.co.us">Cyndie.Miller@state.co.us</a>

7. **Subcontractors:** Servicing subcontractors are authorized under this Addendum prior written approval by the Participating State.
8. **Price Agreement Number:** All purchase orders issued by purchasing entities within the jurisdiction of this Addendum shall include the Participating State Contract Number: 20556YYY112P/WSCA and the Master Price Agreement Number: ADSP011 00000358-2 .

This Addendum and the Master Price Agreement, together with their respective exhibits and attachments, set forth the entire agreement between the parties with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with their respective exhibits and attachments, shall not be added to or incorporated into this Addendum or the Master Price Agreement or their respective exhibits and attachments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and their respective exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

9. **Compliance With Reporting Requirements of the "American Recovery and Reinvestment Act of 2009 ("ARRA"):** If or when Contractor is notified by an Ordering Entity that a specific purchase or purchases are being made with ARRA funds, Contractor shall comply with the data element and reporting requirements as currently defined in Federal Register Vol. 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). An Ordering Entity is responsible for informing Contractor as soon as the Ordering Entity is aware that ARRA funds are being used for a purchase or purchases. Contractor shall provide the required report to the Ordering Entity with the invoice presented to the Ordering Entity for payment. Contractor, as it relates to purchases under this Addendum, is not a subcontractor, but simply a provider of goods and related services.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**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><b>CONTRACTOR</b> <b>SHI International Corp</b></p> <p>By: _____</p> <p>Title: Contract Specialist</p> <p>_____</p> <p><i>Natalie Monik</i> Signature</p> <p>Date: 3/7/13</p>	<p><b>STATE OF COLORADO</b> <b>A. John W. Hickenlooper, GOVERNOR</b> Department of Personnel and Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director</p> <p>By: _____ or Judson Byrn, State Purchasing Director</p> <p>Date: 3/13/13</p>
	<p><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____</p> <p>Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This 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><b>STATE CONTROLLER</b> <b>David J. McDermott, CPA</b></p> <p>By: _____ Date: 3-21-2013</p> <p>Print Name: <i>PALEX SLUGA</i></p> <p>-or- Delegated Signatory</p>
<p><b>OFFICE OF INFORMATION TECHNOLOGY</b></p> <p>By: _____</p> <p>Signature - Authorized OIT Representative</p> <p>Date: _____</p>

**STATE OF COLORADO**  
**Exhibit A**  
**with**  
**SHI International, Corp.**

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**1.EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

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

**2. DEFINITIONS**

**A. Defined Terms**

The following terms as used herein shall be construed and interpreted as follows:

i. **"Contract"** shall mean the integrated agreement consisting of this Addendum, the Master Price Agreement, their respective attachments, and any Orders issued in connection therewith.

ii. **"Contractor"** means Vendor.

iii. **"Product"** means any equipment, software (including embedded software), documentation, or deliverable supplied or created by the Contractor pursuant to the Master Agreement not specifically excluded under §4 of the IFB.

iv. **"IFB"** means Invitation for Bid, IFB #ADSP011-00000358 of the State of Arizona.

v. **"Order"** means any purchase order, contract, or other authorized agreement used to order the Equipment priced in the Master Price Agreement. An Order amended consistent with the requirements of any Ordering Entity and accepted by Contractor shall be governed by the terms and conditions of the original Order, except as amended.

vi. **"Ordering Entity"** means a State Agency, a Political Subdivision, or a Registered Non-Profit Organization within the Participating State that places an Order.

vii. **"Participating State"** means the State of Colorado.

viii. **"Parties"** means the Participating State and Contractor.

ix. **"Political Subdivision"** means any Colorado governmental entity such as cities, towns, counties, libraries, etc. Political Subdivisions of the State of Colorado may

either (i) execute a separate addendum with Contractor, but to the extent any terms of such addendum incorporate additional terms, Contractor shall not be obligated to execute or accept such addendum or (ii) issue an Order in accordance with the terms of this Addendum.

x. **"Registered Non-Profit Organization"** means a non-profit organization that has contacted the State Purchasing Office, met the non-profit organization eligibility of section 501(c)(3) under the Internal Revenue Code of 1986, as amended, and obtained a Colorado registered assigned number.

xi. **"State Agency"** means any department, agency, or institution of higher education of the State of Colorado, not including Political Subdivisions.

xii. **"State Purchasing Agent"** means the Participating State's purchasing agent identified in Section 5 of this Addendum, or such other purchasing agent as the Participating State's Chief Procurement Office may designate, from time to time, by written notice to Contractor and the Lead State.

xiii. **"State Purchasing Office"** means the State Purchasing Office, Colorado Department of Personnel and Administration.

xiv. **Subcontractor** means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

xv. **"Uniform Commercial Code"** means the Uniform Commercial Code as enacted in the State of Colorado, CRS §4-1-101 et seq.

#### **B. Other Definitions**

Capitalized terms used and not otherwise defined in this **Exhibit A** shall have the meanings ascribed to them in the Addendum or the Master Price Agreement.

### **3. TERM AND ORDERS**

#### **A. Term**

The Parties' respective performances under this Addendum shall commence on the Effective Date and shall terminate on June 3, 2013, or the termination of the Master Price Agreement, unless terminated sooner. The term of the Master Price Agreement terminates on June 3, 2013. The Master Price Agreement may be extended at the sole option of the Lead State. The Participating State may unilaterally require continued performance for a period of three (3) additional 12 month periods concurrently with the extension of the term of the Master Price Agreement at the same rates and same terms specified in the Contract, as amended. If the Participating State exercises this option, it shall provide written notice to Contractor prior to the end of the current Addendum term in form substantially equivalent to **Exhibit B** (Sample Option Letter)(each an **"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 five (5) years.

The Participating State's decision to renew the term of the Addendum is contingent upon renewal of the Master Price Agreement, and is a Participating State prerogative and not a right of the Contractor. This prerogative will be exercised only when such continuation is clearly in the best interest of the Participating State.

#### **B. Orders**

Orders may be placed consistent with the terms of this Addendum during the term specified in **§3(A)**. All Orders for Product issued pursuant to this Addendum, at a minimum, shall include (collectively, the **"Minimum Required Information"**):

- i. Order date, when the Order was placed by the Ordering Entity;
- ii. A brief description of the Equipment being purchased, including item number

and quantity;

iii. The place and time of delivery;

iv. The billing address;

v. The complete name of the Ordering Entity, the name, phone number, and address of the Ordering Entity's representative (example for Agency designation: "Colo. Dept. of Transportation," "CDOT" is not acceptable);

vi. The price by item and the total amount of the Order for Equipment being purchased;

vii. The WSCA Master Price Agreement Number: ADSPO11-00000358-2;

viii. The Participating State's Statewide Price Agreement Number:  
20556YYY112P/WSCA

All State Agencies, except for those institutions of higher education which have opted out of the Participating State's Procurement Code, must comply with the Participating State's Fiscal Rule requirements for purchase documentation.

Unless otherwise agreed in writing, any "**Product**" ordered pursuant to this Addendum shall be delivered F.O.B. destination to the location specified in the Order. The Ordering Entity shall not be deemed to have accepted any "**Product**" until such "**Product**" has been inspected in accordance with the specifications and is accepted by the Ordering Entity. Title to **Product** shall pass to the Ordering Entity upon acceptance of delivered items.

Orders under this Addendum may be placed at any time prior to the termination hereof. All Orders must be placed prior to the expiration date of the Master Price Agreement, but may have a delivery date or performance period up to 120 days past the then-current expiration date of this Addendum. Financial obligations of State Agencies and Political Subdivisions payable after the current applicable fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Notwithstanding the expiration or termination of this Addendum or the Master Price Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Addendum, or otherwise inconsistent with its terms. Orders for any indefinite quantity, task order, or other form of indefinite delivery order arrangement priced under the Master Price Agreement shall not be placed after the expiration or termination of this Addendum, notwithstanding the term of any such indefinite delivery order agreement.

Use of the Master Price Agreement under this Addendum is "permissive", whereby State Agencies and delegated institutions of higher education subject to the State's Procurement Code shall be expected to satisfy requirements through the Master Price Agreement. Exceptions may be granted by the Director of the State Purchasing Office on application by the State Agency involved. This Addendum does not provide an exclusive price agreement for a single specific vendor. The State of Colorado reserves the right to create multiple statewide price agreements. Political Subdivisions and other non-delegated institutions of higher education may order from this Addendum at their discretion.

#### **4. MISCELLANEOUS**

##### **A. Authority, Appropriation, and Approval**

Authority to enter into this State Price Agreement exists in R-24-102-202-01.  
Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

##### **B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Price Agreement.

##### **C. Purpose and Scope**

Contractor is authorized to sell Licenses for Distributed Software Products, Maintenance and Services Related to the Sale and Mangement of Distributed Software Licenses

Except with respect to orders placed by it under this agreement, the Department of Personnel & Administration shall not be liable to Contractor as a signatory to this Addendum for any breach by an Ordering Entity of any payment or other obligation herein or under a purchase order or contract that orders from this Price Agreement.

##### **D. Participation**

Use of this Price Agreement by State Agencies, institutions of higher education, political subdivisions, and non-profits and other entities (including cooperatives) authorized by Colorado statutes to use state contracts are subject to the approval of the State Purchasing Office. Issues of interpretation and eligibility for participation are solely within the authority of the State Purchasing Office.

##### **E. References**

All references in this Price Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

##### **F. Public Records**

The disclosure of Contractor information by the Participating State, a State Agency or a Political Subdivision shall be governed by the Colorado Open Records Act, CRS §24-72-200.1, et seq.

##### **G. Venue**

All suits or actions related to this Addendum or any Order placed hereunder shall be filed and proceedings held in the State of Colorado and exclusive venue shall be proper in the City and County of Denver.

##### **H. Contract Termination**

- i. For a termination of this Addendum, all references to "Contract Termination" in the Master Price Agreement shall mean the "Participating State," "Contract" shall mean this "Addendum," "Contract Administrator" shall mean the Participating State's State Purchasing Agent and "Purchaser" shall mean "Ordering Entity."
- ii. The Termination for Convenience clause may be invoked by the Participating State when it is in the best interest of the State of Colorado.

##### **I. Changes to Master Price Agreement**

- (a) Section 6.2.2, Indemnification of the Master Price Agreement is deleted in its entirety.
- (b) Section 11, Arbitration of the Master Price Agreement is deleted in its entirety.
- (c) Section: Offer Exceptions, all references to the State of Arizona, shall be modified to reference the State of Colorado.
- (d) Section: Offer Exceptions, all references to A.R.S. § 35-154 shall be deleted and replaced with CRS § 24-30-202 and the clause "If the



Contractor is insured pursuant to A.R.S. § 41-621" shall be deleted and replaced with, "If the Contractor is insured in accordance with the Participating State's requirements."

- (e) Section: Offer Exceptions, Section 9.5, Termination for Default, ADD, section is deleted in its entirety.

## **5. PAYMENT**

All Ordering Entities issuing valid Orders will be bound by the terms and conditions of the Contract, including, without limitation, the obligation to pay Contractor for Equipment.

### **A. Discounts.**

Any applicable cash discount period or delinquency period will start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable Services at the specified destination by an authorized representative of the Ordering Entity, whichever is later.

### **B. Payments.**

Payments shall be submitted to Contractor at the address shown on the invoice, as long as Contractor has exercised due diligence in notifying the Participating State and the Ordering Entity of any changes to that address. The Ordering Entity shall fully pay each invoice within 30 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the Ordering Entity. Uncontested amounts not paid by the Ordering Entity within 45 days may bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the Ordering Entity separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

Cash discount terms is replaced by **\$12**, Purchase Order in this Addendum.

### **C. Remittance.**

Payments from State Agencies will be remitted by mail or via the Participating State's "Purchasing Card." Payments from other Ordering Entities will be remitted by mail or as otherwise agreed by Contractor and such Ordering Entity.

## **6. REPORTING**

### **A. Volume Reports**

The Participating State intends to use the new centralized method of volume reporting directly to the Lead State and Western States Contracting Alliance ("WSCA") as noted in the Master Price Agreement. Contractor shall furnish sales reports each calendar quarter. The reports must include:

- i. The total dollars spent by State of Colorado Agencies in conjunction with the Statewide Price Agreement,
- ii. The total estimated dollars saved by State Agencies on the Master Price Agreement for that period,
- iii. The total dollars spent by State Agencies in conjunction with the Master Price Agreement,
- iv. The total estimated dollars saved by State institutions of higher education (State universities and State colleges) on the Master Price Agreement for

that period,

- v. The total dollars spent by Political Subdivisions in conjunction with the Master Price Agreement,
- vi. The total estimated dollars saved by Political Subdivisions on the Master Price Agreement.
- vii. The total dollars spent by Registered Non-Profit Organizations in conjunction with the Master Price Agreement;
- viii. The total estimated dollars saved by Registered Non-Profit Organizations on the Master Price Agreement;
- ix. The total dollars paid for with procurement card as opposed to traditional methods of payment for each category;
- x. The total dollars spent by each of these aforementioned entities on **Environmentally Preferable** products, including applicable discount savings, as such item is defined in Participating State's Environmentally Preferable Purchasing Policy.

The foregoing requirements shall be in addition to using the required WSCA reporting template. Contractor shall be required to provide Colorado specific reporting in the form set forth on the website of the Participating State Purchasing Office: <https://www.gssa.state.co.us/PriceAwd.nsf/Forms+Info+Pages?OpenView> .

Contractor also shall be required to provide a comprehensive sales history on July 15 of each year during the term of this Addendum or within 15 days of request from the State Purchasing Office. The comprehensive sales reports shall set forth the date of sale, the name of the customer, the invoice number, quantity of Equipment sold, description, unit price and extended dollar amount. Failure to provide these reports shall constitute cause for cancellation of this Addendum and may disqualify Contractor from the award of future price agreements by the Participating State.

## **7. CONFLICTS OF INTEREST**

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 Participating State's interests. Absent the Participating 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 Participating State hereunder.

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

## **8. INSURANCE**

Contractor and its subcontractors, if any, shall obtain and maintain insurance as specified in this section 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 Participating State.

### **A. Contractor**

Contractor shall obtain and maintain during the term of this Addendum insurance coverage and policies meeting the same requirements set forth in §8(B) with respect to subcontractors that are not "public entities".

**B. Contractors - Subcontractors**

Contractor shall require each contract with subcontractors other than those that are public entities, providing Equipment or services in connection with this Addendum, to include insurance requirements substantially similar to the following:

**i. Worker's Compensation**

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

**ii. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent 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.

**i. 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.

**ii. Additional Insured**

The State of Colorado and all of its agencies and institutions of higher education shall be named as additional insured on all Commercial General Liability 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.

**iii. Primacy of Coverage**

Coverage required of Contractor and subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the Participating State.

**iv. Cancellation**

Should any of the above insurance policies be cancelled before the expiration date thereof, notice will be delivered in accordance with policy provisions. Contractor shall forward such notice to the Participating State Agency in accordance with §12(B) (Notices) within seven days of Contractor's receipt of such notice.

**v. 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 Participating 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 Participating State within seven business days of the Effective Date of this Addendum. No later than 15 days prior to the expiration date of any such coverage, Contractor and each subcontractors shall deliver to the Participating State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the Participating State at any other time during the term of this Addendum or any subcontract, Contractor and each subcontractor shall, within 10 days of such request, supply to the Participating State evidence

satisfactory to the Participating State of compliance with the provisions of this Section.

## **9. 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 Contractor's option (a) obtain for the Participating State or Contractor the right to use such infringing material; (b) replace any infringing material or other material involved with non-infringing products of substantially similar functionality or modify them so that they retain substantially similar functionality but become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing materials and refund the price paid therefore to the Participating State, such price to be based upon a five year straight amortization schedule.

## **10. LICENSES, PERMITS, ETC.**

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 Participating State. Additionally, all employees, agents, and subcontractors of Contractor performing services under this Addendum shall hold all required licenses or certifications, if any, to perform their responsibilities. 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 licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of the Addendum is a material breach by Contractor and constitutes grounds for termination of this Addendum.

## **11. CONFIDENTIAL INFORMATION**

Contractor shall comply with the provisions of this Section if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and other records or information concerning individuals. To facilitate Contractor's efforts to protect confidential information, it shall be marked as "confidential" by the State or designated as "confidential" by the State at the time of disclosure. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

### **A. Confidentiality.**

Contractor shall keep all State confidential 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 State confidential information in the possession of Contractor shall be immediately forwarded to the State Purchasing Agent.

### **B. Notification.**

Contractor shall notify its agent, employees, subcontractors and assigns who may come into contact with State confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

### **C. Use, Security, and Retention.**

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Addendum or approved in writing by the Participating State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Confidential information 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 Participating State.

**D. Disclosure-Liability.**

Disclosure of state confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the Participating State, a Ordering Entity or their respective agents. Contractor shall indemnify, save, and hold harmless the Participating State, the Ordering Entities and their respective 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 Section.

**12. BREACH**

**A. Defined**

In addition to any breaches specified in other sections of this Contract, the failure of either Party 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 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 in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §13.

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 Contract 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 Contract, the State shall have all of the remedies listed in this §13 in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. Termination for Cause and/or Breach**

The State may terminate this entire Contract or any part of this Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

**i. Obligations and Rights**

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 parties. However, Contractor shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or

subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State's property.

**ii. Payments**

The State shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the State, 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 Contract had been terminated in the public interest, as described herein.

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination in the Public Interest**

The State is entering into this Contract 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 Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by §12(A) or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

**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**

If this Contract is terminated by the State pursuant to this §13(B), Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the State 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 hereunder.

**C. Remedies Not Involving Termination**

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**iv. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of this Contract 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.

**v. Withhold Payment**

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

**vi. Deny Payment**

Deny payment for those obligations not performed, that due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

**vii. 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 relation to this Contract is deemed to be contrary to the public interest or the State's best interest.

**viii. Remedy for Infringement**

Remedy provided under Article 9.

**14. GENERAL PROVISIONS**

**A. Jurisdiction and Venue**

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

**B. Notices**

All notices required to be given hereunder shall be given in writing to the Parties at their addresses identified §6 of the Addendum. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**C. Modification**

**i. By the Parties**

Except as specifically provided in this Addendum, modifications of this Addendum shall not be effective unless agreed to in writing by both parties in an amendment to this Addendum, properly executed and approved in accordance with applicable Colorado State law and Fiscal Rules. Modifications permitted under this Addendum, other than contract 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 shall be 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.

**D. Order of Precedence**

The provisions of this Addendum shall govern the relationship of the Participating State and Contractor. In the event of conflicts or inconsistencies between this Addendum and its exhibits and attachments, including, but not limited to, those

provided by Contractor, or this Addendum and the Master Price Agreement, or any Order, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. **Section 16** of this Addendum (Colorado Special Provisions);
- ii. The remaining portions of this **Exhibit A**;
- iii. This remaining portions of this Addendum;
- iv. The Master Price Agreement; and
- iv. An Order.

**E. Taxes.**

It is hereby recognized and acknowledged by Contractor that the Participating State and each State Agency is tax-exempt and is not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The Participating State's tax exemption number is 98-02565. The Participating State is also not liable for any taxes of Contractor for franchise or related to the income of the Contractor. No taxes of any kind shall be charged to the Participating State.

Contractor is hereby notified that when materials are purchased for the benefit of the Participating State or a State Agency, some Political Subdivisions require Contractor to pay sales or use taxes even though the ultimate product or service is provided to the Participating State or a State Agency. These sales or use taxes will not be reimbursed by the Participating State or State Agency, nor will any prices or rates in the Master Price Agreement or this Addendum be adjusted on account of such taxes. Contractor will accord the same tax free treatment to Political Subdivisions to the extent that they establish like exemption from taxes.

**F. Litigation Reporting.**

Within 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 State Purchasing Agent of such action and deliver copies of such pleadings to the State Purchasing Agent. If a State Purchasing Agent is not then serving, such notice and copies shall be delivered to the Chief State Procurement Official.

**G. 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 Participating State. Any attempt at assignment, transfer, or 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.

**H. Severability.**

Provided this Addendum can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Addendum in accordance with its intent.

**I. Survival of Certain Contract 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 Participating State if Contractor fails to perform or comply as required.



**J. 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.

**K. 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.

**L. Binding Effect**

Except as otherwise provided in §14(G), 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.

**M. Captions**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

**N. Counterparts**

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**O. Entire Understanding**

This Contract 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.

**P. Indemnification**

The Participating State and some Ordering Entities are prohibited from indemnifying another party.

Contractor shall indemnify, save, and hold harmless the Participating State, its employees, and agents, State Agencies, Political Subdivisions and Registered Non-Profit Organizations 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; or if the Participating State or such Ordering Entity is required to indemnify the manufacturer or any Product pursuant to any Order. 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.

**Q. Third Party Beneficiaries**

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

**15. PARTICIPATING STATE ADMINISTRATIVE FEE**

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 Participating State a fee of 1.00 % (.0100 multiplication factor) of the total sales within the Participating State by all Ordering Entities during that quarter, to assist with the cost of contract administration by the Participating State. The administration fee shall be remitted to the Participating State

within **forty-five (45)** days of the end of each quarter. Fees shall be made payable to the Colorado State Treasurer by a check submitted to the Participating State's Primary Contact identified in §6 of this Addendum, or to the Participating State's assigned replacement Contact. 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. Contractor shall provide a report setting forth the total sales to State Agencies and other Ordering Entities within the Participating State. The report and a check in the amount of the administration fee due and owing shall be submitted to the Participating State on or before the 45<sup>th</sup> day after the end of the quarter.

Contractor shall be permitted to adjust the pricing under the Master Price Agreement pricing to include the Participating State's administration fee by adding the fee to the Master Price Agreement price of each Equipment product on the invoice.

## **16. COLORADO SPECIAL PROVISIONS**

For the purposes of this Section, references to "State" shall be deemed to be references to the Participating State and references to "contract" shall be deemed to be references to this Addendum.

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

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

**2. 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.

**3. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, 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.

**4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. 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 (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

**5. 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.

**6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. 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 contract, to the extent capable of execution.

**7. 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 contract or incorporated herein by reference shall be null and void.

**8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**9. 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 contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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

**11. 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 contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department 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 contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and

Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**12. 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 **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

**EXHIBIT B**

**SAMPLE OPTION LETTER**

<b>Date:</b>	<b>Original Contract CMS #:</b>	<b>Option Letter #</b>	<b>CMS Routing #</b>
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- 1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.  
a. Option to renew only (*for an additional term*)
- 2) **REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:  
a. **For use with Option 1(a):** In accordance with Section 3.A of the Original Contract between the State of Colorado, Insert Name of Department or Higher Ed Institution , 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 the same rates and same terms specified in the Original Contract, as amended. Unless specified in this Option Letter, there shall be no change to the current contract value as a result of this extension to the term.
- 3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or ,  
whichever is later.

<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper GOVERNOR</b> Name of Agency or IHE</p> <hr/> <p>By: Insert Name &amp; Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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.

**STATE CONTROLLER**  
**David J. McDermott, CPA**

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

Date: \_\_\_\_\_