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PARTICIPATING ADDENDUM
to NASPO ValuePoint
Small Package Delivery Services
Master Agreement No. MA454
Between
FedEx Corporate Services, Inc.
And
The State of Colorado
Contract # 174144

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the "Participating Addendum"), is entered into by and between the **FedEx Corporate Services, Inc.**, and the **State of Colorado, acting by and through the State Purchasing & Contracts Office** (the "State"). This Participating Addendum covers usage of the **Small Package Delivery Services** Master Agreement led by the State of **Utah** (the "Master Agreement"), for use by State agencies and other entities located in Colorado which are authorized by law to utilize State contracts with the prior approval of the Chief Procurement Officer. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit C, Services and Price List** of this Participating Addendum.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State's statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. The Participating Entity hereby represents that all such entities authorized to use statewide contracts shall be bound by all of the terms and conditions of this Participating Addendum, as if each such entity were an original signatory hereto. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

A. The Master Agreement and all its terms and conditions shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.

B. The following modifications shall be made to the Master Agreement with respect to Contractor's performance pursuant to this Participating Addendum:

i. **Attachment C, FedEx Rates**, shall be struck in its entirety and all references thereto shall be null and void.

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ii. §9(b) of the Cooperative Contract Cover Page shall be struck in its entirety.

4. RESERVED

5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

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

Primary Contact for the State:
Nikki Pollack
Colorado State Purchasing & Contracts Office
1525 Sherman Street, 5th Floor
Denver, CO 80203
Phone: 303-866-5671
E-mail: nikki.pollack@state.co.us

Primary Contact for the Contractor:
Charles Wagner
FedEx Corporate Services, Inc.
3650 Hacks Cross Road, Bldg. E, 3rd Floor
Memphis, TN 38125
Phone: 503-347-4638
E-mail: Charles. Wagner@FedEx.com

Each individual identified in this **§5** of the Participating Addendum shall be the primary contact of the designated Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's primary contact at the address set forth above or **(C)** as an email with read receipt requested to the primary contact at the email address, if any, set forth above. If a Party delivers a notice to another through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Unless otherwise provided in this Participating Addendum, notices shall be effective upon delivery of the written notice.

6. RESERVED

7. ORDERS

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

8. ORDER OF PRECEDENCE

In the event of a conflict of inconsistency between this Participating Addendum, any Exhibits, and the Master Agreement and any of its Attachments, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

A. Colorado Special Provisions in **§20** of **Exhibit A** to this Participating Addendum, State Specific Terms;

B. The provisions of this Participating Addendum;

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C. All other sections of **Exhibit A**, State Specific Terms;

D. **Exhibit B** of this Participating Addendum, Statement of Work;

E. **Exhibit C** of this Participating Addendum, Services and Price List;

F. Attachment A to the Master Agreement, NASPO ValuePoint Master Agreement Terms and Conditions;

G. A Purchasing Entity's Order;

H. Attachment E to the Master Agreement, NASPO ValuePoint Solicitation Document, RFP #CH21-36;

I. Attachment F to the Master Agreement, Contractor's Proposal; and

J. Attachment D to the Master Agreement, Contractor's Service Guide.

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that **(i)** requires the State to indemnify or hold harmless Contractor or any other party, **(ii)** is in violation of State law as, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State or **(iii)** is contrary to any of the provisions incorporated into **Exhibit A, §19** or the main body of this Participating Addendum.

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

CONTRACTOR **FedEx Corporate Services, Inc.** By: Charles Wagner Title: Worldwide Account Manager DocuSigned by: Charles Wagner EDFD87F0B7E845F... Signature Date: 2/25/2022	**STATE OF COLORADO** **Jared S. Polis, Governor** Department of Personnel and Administration State Purchasing and Contracts Office Tony Gherardini, Executive Director DocuSigned by: John Chapman EF45AFDEB51E414... By: John Chapman, State Purchasing Manager Date: 2/26/2022

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: DocuSigned by: Rachael Kamlet 6D1AC497138C48B...

Name: Rachael Kamlet
Delegate

Effective Date: 2/28/2022

DocuSign Envelope ID: 752A177F-DB4D-4B68-B313-B9F2A94BE767

TABLE OF CONTENTS

PARTICIPATING ADDENDUM:
1. PARTIES AND SCOPE 1
2. PARTICIPATION 1
3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY 1
4. RESERVED 2
5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES 2
6. RESERVED 2
7. ORDERS 2
8. ORDER OF PRECEDENCE 2
EXHIBIT A, STATE SPECIFIC TERMS 2
1. AUTHORITY 6
2. PURPOSE 6
3. TERM 6
4. DEFINITIONS 7
5. ORDERING 9
6. PAYMENTS TO CONTRACTOR 10
7. PAYMENTS TO STATE 11
8. REPORTING – NOTIFICATION 12
9. CONTRACTOR RECORDS 13
10. CONFIDENTIAL INFORMATION-STATE RECORDS 14
11. CONFLICTS OF INTEREST 16
12. INSURANCE 16
13. BREACH OF CONTRACT 18
14. REMEDIES 18
15. DISPUTE RESOLUTION 20
16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION 21
17. OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT 21
18. STATEWIDE CONTRACT MANAGEMENT SYSTEM 21
19. GENERAL PROVISIONS 22
20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3) 25
EXHIBIT B, STATEMENT OF WORK 1
EXHIBIT C, SERVICES AND PRICE LIST 1

DocuSign Envelope ID: 752A177F-DB4D-4B68-B313-B9F2A94BE767

EXHIBIT A, STATE SPECIFIC TERMS

1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01., and its associated rules.

2. PURPOSE

The Parties are entering into this Participating Addendum for the Contractor to provide small package delivery services to Purchasing Entities. The Contractor was selected as a result of the State of Utah's solicitation, **RFP #CH21-26**.

3. TERM

A. Initial Term - Work Commencement

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall be co-terminus with the NASPO ValuePoint Master Agreement **#MA454**. Unless this Participating Addendum is terminated earlier, as described herein, or the Lead State cancels its participation as described in the Master Agreement (the "Term"), the term of the Participating Addendum shall follow the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended, per **§3.B**.

B. Extension of Term

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

C. Order Term

Orders may only be placed prior to the expiration or earlier termination of this Participating Addendum, but may have a delivery date or performance period that extends no longer than 120 calendar days following that expiration or earlier termination date. Regardless of whether this Participating Addendum has expired or has been terminated, the Contractor shall comply with all Orders that extend past the expiration or termination, as described in this section, and all requirements of this Participating Addendum necessary to complete outstanding Orders shall survive the expiration or termination of this Participating Addendum until all Orders are complete.

D. Early Termination in the Public Interest

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Participating Addendum by the State for breach by Contractor, which shall be governed by **§14.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§5** of this Participating Addendum**.** The notice shall specify the effective date of the termination and whether it affects all or a portion of this Participating Addendum, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§14.**

iii. Payments

If the State terminates this Participating Addendum in the public interest, the Purchasing Entities shall pay Contractor according to their orders with the Contractor. The sum of any payment shall not exceed the maximum amount payable to Contractor under each order.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. **"Administration Fee"** means the fee that is due to the State for the administration of this Participating Addendum, as described in **§7.A**. of this **Exhibit A**.

B. "**Breach of Contract"** means the failure of a Party to perform any of its material obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. 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 thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.

C. "**Business Day**" means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.

D. **"Ceiling Price"** means the maximum price a Contractor or a Subcontractor may charge for a Service under this Participating Addendum.

E. **"Chief Procurement Officer"** means the individual to whom the Executive Director of the Department of Personnel & Administration has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.

F. **"CJI"** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302, C.R.S.

G. **"Confidential Information"** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, et seq., C.R.S. ("CORA").

H. **"Contract"** means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

I. **"Contract Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Participating Addendum.

J. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, et. seq., C.R.S.

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K. **"Effective Date"** means the date Contract is signed by the State Controller or their designee.

L. **"Environmentally Preferable Products"** means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.

M. **"Exhibits"** means the following exhibits attached to this Contract:

- **i.** Exhibit A, State Specific Terms;
- **ii.** Exhibit B, Statement of Work; and
- **iii.** Exhibit C, Services and Price List.

N. **"Extension Term"** means the period defined in **§3.B**.

O. **"Goods"** means any moveable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum, and shall include any moveable material acquired, produced, or delivered by Contractor in connection with the Services.

P. **"Incident"** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any Renter Information (as defined below) and which could reasonably result in substantial harm to the data subject(s).

Q. **"Initial Term"** means the period of time defined in **§3.A** of this **Exhibit A**.

R. **"Lead State"** means the State of Utah, which is centrally administering the Master Agreement.

S. **"Order"** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Services described in this Participating Addendum from the Contractor, and shall include any modification to such a document.

T. **"Party"** means the State or Contractor, and "Parties" means both the State and Contractor.

U. **"Purchasing Entity"** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, government supported institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.

V. **"PCI"** means payment card information including any data related to credit card holders' names, credit card numbers, or the other credit card information as may be protected by state or federal law.

W. **"PII"** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.

X. **"Services"** means the services to be performed by Contractor as set forth in this Participating Addendum.

Y. **"State Confidential Information"** means any State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall

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not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which **(i)** is subject to disclosure pursuant to CORA; **(ii)** is already known to Contractor without restrictions at the time of its disclosure to Contractor; **(iii)** is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; **(iv)** is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; **(v)** was independently developed without reliance on any State Confidential Information; or **(vi)** renter information received by Contractor in connection with truck rentals hereunder or reservations therefor.

Z. **"State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.

AA. **"State Fiscal Year"** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

BB. **"State Records"** means any State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

CC. **"Subcontractor"** means third-parties, if any, engaged by Contractor pursuant to aid in performance of the Work. The term "Subcontractor" includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.

DD. **"Work"** means the Services performed pursuant to this Contract.

EE. **"Work Product"** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Participating Addendum that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

5. ORDERING

A. Order Fulfillment

i. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.

ii. Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.

iii. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity's Orders.

iv. Contractor shall ensure that all Orders it accepts have the proper information contained in

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them for Contractor to be able to comply with all reporting requirements of this Exhibit A.

v. If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.

vi. Contractor's internet-based portal and electronic catalogs shall clearly designate that they are part of this Participating Addendum. Contractor shall ensure that all Environmentally Preferable Products are clearly listed on internet-based portal and electronic catalogs.

vii. If Contractor's catalog will be either hosted on or accessed through the State's eCommerce system, when available, then Contractor shall comply with all policies, procedures and directions from the State in relation to hosting its catalog on or making its catalog accessible through that system. Contractor shall ensure that all information made available through the State's eCommerce system is accurate and complies with this Participating Addendum.

6. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

i. Contractor shall allow Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the Purchasing Entity.

ii. The Purchasing Entity shall not pay any amount to Contractor under this Participating Addendum unless the Purchasing Entity issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by a Purchasing Entity.

B. Payment Procedures

i. Invoices

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity's Order. Contractor shall not invoice the State under any Order. Contractor shall allow 45 days for Purchasing Entities to pay an invoice following the receipt of the invoice, unless the Purchasing Entity specifically agrees to a shorter time in an Order. State law and regulations provide that Purchasing Entity payments made within 45 days are not considered delinquent, and unless otherwise agreed, Purchasing Entities will pay interest on any unpaid balance beginning on the 46th day at the rate of 1% per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Contractor shall invoice the Purchasing Entity separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest rate. (§24-30-202(24), C.R.S., as amended.)

ii. Payment Disputes

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Unless different procedures are specified in an Order, if Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the Purchasing Entity issuing the Order in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by that Purchasing Entity. The Purchasing Entity will review the information presented, including any accounting transpositions, by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the Purchasing Entity's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the Purchasing Entity has concluded its review, and the Purchasing Entity shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iii. Available Funds-Contingency-Termination of Order

a. Purchasing Entities, except for authorized non-profit entities, are prohibited by law from making commitments beyond the term of the current Purchasing Entity's Fiscal Year. Payment to Contractor beyond the current Purchasing Entity's Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (See Colorado Special Provision). If federal funds, non-State funds or funds from any other source constitute all or some of the Contract Funds, the Purchasing Entity's obligation to pay Contractor shall be contingent upon such funding continuing to be made available for payment. Orders under this Participating Addendum shall be made only from Contract Funds, and the Purchasing Entity's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other Purchasing Entity funds are not appropriated, or otherwise become unavailable to fund an Order under this Participating Addendum, the Purchasing Entity may, upon written notice, terminate the Order, in whole or in part, without incurring further liability. The Purchasing Entity shall, however, remain obligated to pay for Services that are delivered and accepted prior to the effective date of notice of termination of Order. A Purchasing Entity Order termination shall otherwise be treated as if the Order was terminated in the public interest as described in **§3.D.** of this **Exhibit A**.

b. The Purchasing Entity may effect such termination by giving Contractor a written notice of termination, to the Contractor's primary contact in accordance with **§5** of the Participating Addendum, and by paying to Contractor any amounts which are due and have not been paid through the last day of the Fiscal Year for which appropriated funds are available. The Purchasing Entity shall endeavor to give notice of such termination not less than 30 days prior to the day of non-availability of funds, and shall notify Contractor of any anticipated termination.

iv. Discount and Delinquency Period

Any applicable cash discount period or delinquency period for the amounts shown on an invoice shall begin on the date the Purchasing Entity's approves of the invoice, or from the date of receipt of acceptable Goods or Services at the specified destination by an authorized Purchasing Entity representative, whichever is later.

7. PAYMENTS TO STATE

A. Administrative Fees

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i. Each State Fiscal Year quarter, Contractor shall, using a form as directed by the State, calculate an Administrative Fee equal to 1% of the Total Sales made under Orders during that State Fiscal Year quarter. Contractor shall pay the State the Administrative Fee for each State Fiscal Year quarter within 30 days following the end of that State Fiscal Year quarter.

ii. Contractor shall remit all Administrative Fees to the State's primary contact identified in **§5** of the Participating Addendum and with the payee as "State of Colorado."

8. REPORTING – NOTIFICATION

A. Volume Reporting

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State's primary contact identified in **§5** of this Participating Addendum within 30 calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form as directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

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

a. The total sales by each type of Purchasing Entity under this Participating Addendum.

b. The total of the list price of all items purchased by each type of Purchasing Entity under this Participating Addendum.

c. The total estimated price savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list price of all items purchased by each type of Purchasing Entity minus the total spent for that type of Purchasing Entity.

d. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Participating Addendum.

e. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.

f. The amount of the total quarterly Administrative Fee due to the State.

g. Any additional summary information as requested by the State if available by Contractor.

ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:

a. The name of the Purchasing Entity to whom the sale was made;

b. The date of the sale.

c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended price for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list price for the item calculated by multiplying the quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list price.

d. Any other detailed information as requested by the State, if available to Contractor.

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B. Additional Operational Reporting

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to any of the Purchasing Entities as reasonably requested by the State. The Contractor shall provide all such additional reports within 30 Business Days following the State's request for that information, unless the State agrees to a longer period in writing.

C. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact identified in **§5** of the Participating Addendum .

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

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact in accordance with **§5** of the Participating Addendum and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds.

By agreement of the parties, it is understood that FedEx will perform necessary and appropriate Services outside both the State of Colorado and the United States and will utilize subcontractors to the extent it deems necessary and appropriate to conduct its business operations. The State consents to such use and shall not require specific information relating to such use nor justification therefor except for the notification requirements under §24-102-206.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the charges for the Work (the "Contractor Records") performed by the Contractor and any Subcontractors, that are required to ensure proper charging for performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 3 years after the date this Participating Addendum expires or is terminated, **(ii)** final payment under this Participating Addendum is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe

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Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 5 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Participating Addendum using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's Records that relates to or affects this Participating Addendum or the Work, whether the audit is conducted by Contractor or a third party.

E. Periodic Business Reviews

i. The State may schedule periodic business reviews to review Contractor's performance under this Participating Addendum.

ii. Contractor shall use commercially reasonable efforts to ensure personnel assigned to the Participating Addendum are available for these meetings with the State as scheduled by the State.

iii. Contractor's primary contact designated in **§5** of this the Participating Addendum shall be reasonably available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall k**e**ep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with this Participating Addendum and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, if applicable, **(ii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, and Criminal Justice Information Services Security Policy for all CJI, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's primary contact as identified in **§5** of the Participating Addendum.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to

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those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Participating Addendum. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements or are subject to confidentiality obligations by policy or otherwise containing nondisclosure provisions at least as protective as those in this Participating Addendum, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Participating Addendum, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party

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Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor has reason to believe a conflict may exist but is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction concerning the actual or apparent conflict constitutes a breach of this Participating Addendum.

12. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for Services or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. Insurance companies as approved by the State shall issue all insurance policies required by this Participating Addendum.

A. Workers' Compensation

Workers' Compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment. Insurance must stay in place and in effect even if the contract terms expires, until all product or terms of the contract are completed and satisfied up to 120 days after contract term expires.

B. General Liability

Commercial general liability insurance for the acts and omissions of Contractor's employees covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

i. $1,000,000 each occurrence;

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ii. $2,000,000 general aggregate;

iii. $1,000,000 products and completed operations aggregate; and

iv. $50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance, which may be self-insured, covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

D. Cyber Liability

Liability insurance covering all loss of State Confidential Information, such as PII, PCI, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $2,000,000 general aggregate.

E. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

F. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

G. Primacy of Coverage

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

H. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§5** of the Participating Addendum within 7 days of Contractor's receipt of such notice.

I. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Participating Addendum shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

J. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability

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insurance requirements stated above, at all times during the term of this Participating Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Participating Addendum, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

K. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Participating Addendum within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§12**.

13. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§14** for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion in order to protect the public interest of the State, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in this Participating Addendum; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

14. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum and fails to cure such breach, the State, following the notice and cure period set forth in **§13,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

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

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b. If after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest under **§3.D.**

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Purchasing Entity shall be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

Request immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest or the State's best interest. In the event of such request, the parties will immediately meet in order to accommodate or resolve such a request.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in **§13** and the dispute resolution process in **§15** shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

C. Purchasing Entity's Remedies

i. If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that Order, all remedies listed in **§14.A.ii** above, all remedies listed here in **§14.C** and all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

ii. Payments and Damages

a. Notwithstanding anything to the contrary, Purchasing Entities shall only pay Contractor for accepted Work received as of the date of termination. Upon prior notice to Contractor, a Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary until Contractor corrects its Work or to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the Purchasing Entity in procuring from third parties replacement Work as cover.

b. Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the

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State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages.

c. Upon prior notice to Contractor, a Purchasing Entity may deny payment to Contractor for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

15. DISPUTE RESOLUTION

A. Order Disputes, Termination and Resolution

i. If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with **§5** of the Participating Addendum. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contract of any Order.

ii. A Purchasing Entity may terminate an Order if it determines that Contractor was in breach of that Order. Termination of an Order shall not terminate any other Order or this Participating Addendum.

iii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

B. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum which cannot be resolved by the designated Participating Addendum primary contacts, as identified in **§5** of the Participating Addendum**,** or through a dispute on an Order shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

C. Resolution of Controversies arising under this Participating Addendum

If the initial resolution described in **§15.B**. fails to resolve the dispute within ten (10) Business Days, Contractor shall, without waiving any other rights or remedies it may have, submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office as described in in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), and if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

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16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

It is understood and agreed upon by the parties that Contractor will not be providing any non-Contractor-owned or licensed intellectual property related to the Work Product in its performance of the Services.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Participating Addendum, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Participating Addendum without the prior written consent of the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT

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

18. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is $100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply to the extent applicable to Contractor or the services provided by Contractor hereunder. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's

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performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

19. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Participating Addendum are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Participating Addendum. In addition, the State may not transfer or assign this Participating Addendum or any rights or obligations hereunder without prior notification to the Contractor.

B. Subcontracts

Contractor is hereby providing notice to the State of its use of subcontractors and the State consents to such use as Contractor deems necessary and appropriate in order to provide Services. All subcontracts entered into by Contractor in connection with this Participating Addendum shall comply with all applicable federal and state laws and regulations, and shall be subject to all provisions of this Participating Addendum.

C. Binding Effect

Except as otherwise provided in **§A.**, all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Participating Addendum and the performance of such Party's obligations have been duly authorized.

E. Captions and References

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

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

G. Entire Understanding

This Participating Addendum represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Participating Addendum. Prior or contemporaneous additions, deletions, or other changes to this Participating Addendum shall not have any force or effect whatsoever, unless embodied herein.

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H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

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

J. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Participating Addendum to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Participating Addendum.

K. Severability

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

L. Survival of Certain Contract Terms

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

M. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Contractor shall honor any tax exemption that any Purchasing Entity has, and shall not charge any Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

N. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in **§19.A,** this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Participating

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Addendum 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 Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Participating Addendum, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Participating Addendum and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

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

R. Licenses, Permits, and Other Authorizations

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Participating Addendum, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Participating Addendum, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Participating Addendum.

S. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Participating Addendum.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of **§10** may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including reasonable attorneys' fees and costs) incurred by the State in relation to any negligent act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **§10**.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that

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any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE

Contractor agrees that 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

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

G. PROHIBITED TERMS

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION

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.

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this 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.

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

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

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

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

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

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

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

DocuSign Envelope ID: 752A177F-DB4D-4B68-B313-B9F2A94BE767

EXHIBIT B, STATEMENT OF WORK

1. CONTRACTOR REQUIREMENTS

A. Fuel Surcharge. If Contractor assesses a fuel surcharge, then the following shall apply:

i. An express (air) and group cap shall not exceed 7% throughout the term of the Participating Addendum.

ii. All fuel surcharges shall be published on Contractor's website.

B. Exclusion of Listed Charges

i. Contractor shall not charge Purchasing Entity any fees for pick-ups, whether they are one-time or regularly scheduled.

ii. Contractor shall not require a minimum number of packages to be picked up, either per trip, per day, per week, or per month.

C. Carrier Pick-Up. Contractor shall pick-up packages upon request from Purchasing Entity.

D. Deliver as Addressed

i. Contractor shall return undeliverable packages to Purchasing Entity, rather than performing an address correction.

ii. Contractor shall not charge an additional fee to the Purchasing Entity for returned items, providing the Purchasing Entity has identified the package as "Deliver as Addressed."

E. Invoicing

i. Contractor shall invoice Purchasing Entity at time of delivery, when all chargeable costs (zone, weight, address etc.) are known.

ii. Contractor shall invoice Purchasing Entity on a weekly basis.

iii. Contractor shall send invoices electronically or via mail.

F. Money Back Guarantee

i. Contractor shall provide a 100% money back guarantee on the following Services:

a) First Overnight;

b) Priority Overnight; and

c) Standard Overnight.

ii. Contractor's money back guarantee shall only be in effect for as long as the State is utilizing the Single-Carrier Pricing Model.

iii. Contractor shall fully refund or credit the Purchasing Entity for the packages that are not delivered in accordance with the guaranteed Service.

iv. Deliveries that are more than 60 seconds late shall be eligible for a full refund.

v. The Purchasing Entity must request a refund or credit within 30 days of the scheduled delivery time.

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vi. If the late delivery adheres to one or more of Contractor's exception criteria, as stated in Attachment D to the Master Agreement, Contractor's Service Guide, then Contractor shall not be obligated to issue a refund to the Purchasing Entity.

G. Shipping Supplies

i. Contractor shall provide the following no cost express packaging options:

a) Pre-printed Shipping Forms

b) Standard and Legal Size Envelopes

c) Tear and Water Resistant Paks

d) Small Boxes

e) Medium Boxes

f) Large Boxes

g) Extra Large Boxes

h) Tubes

i) Safe Insert Boxes

j) Security Box Kit – available for approved shippers

k) Cold Shipping

l) Clinical Pak

m) Large Clinical Box

ii. Contractor shall provide supplies within 48 hours of request, with the exception of Pre-printed Shipping Forms.

iii. Upon request from Purchasing Entity, Contractor shall provide label printers and scales at no additional cost.

2. ADDITIONAL TERMS

A. Contractor shall complete the Work as described in this Participating Addendum and in accordance with any Purchasing Entity's Order. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.

B. Any additional terms and conditions on any invoice, statement, Contractor time-sheet, website, electronic license or use agreement or any other form, including, without limitation, terms regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Participating Addendum or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish completion of Services and shall not make any term of that form enforceable.

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EXHIBIT C, SERVICES AND PRICE LIST

1. DELIVERY SERVICES

A. Ground for business delivery

i) Delivery commitment within 1-5 business days, but typically within one business day for intrastate shipments.

ii) Delivery by end of day.

B. Ground for home delivery

i) Delivery commitment within 1-5 business days but typically within one business day for intrastate shipments.

ii) Delivery within 3-7 business days to Alaska and Hawaii.

iii) Delivery between 9am and 8pm, Tuesday through Saturday.

iv) Weight limitation on packages is 70 lbs.

C. Ground Economy for residential delivery

i) Shipments to P.O. boxes and military APO, FPO, and DPO destinations.

ii) Packages are routed to a U.S. Post Office facility for final delivery.

iii) Delivery is typically 2-7 business days within the contiguous 48 states.

D. First Overnight

i) Next business day delivery.

ii) Delivery by 8am, 8:30am, 9am, or 9:30am to most areas and by 10am, 11am, or 12pm to extended areas.

E. Priority Overnight

i) Next business day delivery.

ii) Delivery in two business days for certain shipments to Alaska and Hawaii.

iii) Delivery by 10:30am to most areas and by 12pm, 4:30pm, or 5pm to some rural areas.

iv) Saturday pickup available for additional charge.

F. Standard Overnight

i) Next business day delivery.

ii) Delivery by 4:30pm to most areas, and by 8pm to residences.

iii) Saturday pickup available for additional charge.

G. Express Multi-weight and Ground Multi-weight

i) Multiple-piece shipments that are traveling from one origin to one destination.

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ii) Combined weight is 100 lbs. or more.

iii) Charge is based on the lower of the price-per-package or the price-per-total-weight for intrastate and interstate shipments.

iv) Charge is based on price-per-total-weight for international shipment. Per-pound rates apply if the total shipment is more than 100 lbs.

v) Average minimum package weight must be 15 lbs.

H. 2 Day A.M. Delivery in two business days by 10:30am to most areas and by 12pm to rural areas.

I. 2 Day

i) Second business day delivery by 4:30pm to most areas and by 8pm to residences within the contiguous 48 states.

ii) Delivery in three business days for certain shipments to Alaska and Hawaii.

J. Express Saver. Delivery in three business days by 4:30pm to most areas and by 8pm to residences.

K. International Priority

i) Delivery typically within 1–3 business days to more than 220 countries and territories.

ii) Delivery to Canada and Mexico typically in one business day.

iii) Delivery to major cities in Europe, Asia, and Brazil typically in two business days by 12pm.

L. International Economy

i) Delivery typically within 2–5 business days to more than 215 countries and territories.

ii) Delivery to key markets such as Canada, Mexico, and Puerto Rico is typically within 2-3 business days.

M. International Ground to Canada

i) Delivery typically within 2-7 business days based on distance to destination.

ii) Delivery by end of business day.

N. International Mail Service

i) For catalogs, brochures and other mail.

ii) Shipment is sorted and stamp, then tendered to postal service in the destination country for final delivery.

iii) Delivery in 4-7 business days for premium service or 7-11 business days for standard service, from pickup to handoff to the destination country postal service.

2. PRICING

A. The State shall utilize Contractor's Single-Carrier Pricing Model.

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B. The pricing is located on the State's dedicated website, and is incorporated into this Participating Addendum by reference.

C. Changes in product and pricing must be approved by the lead state and shall be effective when published on the dedicated State website.

D. The price list contains Ceiling Prices. Contractor may offer lower prices to Purchasing Entities, and Purchasing Entities may request lower prices with Contractor, without the review or approval of the State.