

WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM
FOR WIRELESS VOICE SERVICE, WIRELESS BROADBAND SERVICE,
ACCESSORIES AND EQUIPMENT (WSCA)
Administered by the State of Nevada (hereinafter "Lead State")
MASTER PRICE AGREEMENT
 (Hereinafter "Contractor")
 State of Nevada Contract Number:1907
 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 T-Mobile USA, Inc., ("Contractor"). This Participating Addendum (or "Addendum") adds the **State of Colorado** as a participating state to the Statewide Master Service Agreement for WIRELESS VOICE SERVICE, WIRELESS BROADBAND SERVICE, ACCESSORIES AND EQUIPMENT (WSCA) , Contract Number #1907 (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 entities 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. Participation: Use of specific WSCA cooperative contracts by state agencies, political subdivisions 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.
3. 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.
4. Lease Agreements: **Lease Agreements Are NOT Authorized By this Addendum.**
5. Primary Contacts: The primary contact individuals for this Addendum are as follows (or their named successors):

Lead State Contract Administrator:

Name: Teri Smith
 Title: Purchasing Officer
 Address: 515 E. Musser St., Suite 300
 Carson City, NV 89701
 Telephone: 775-684-0178
 Fax Number: 775-684-0188
 E-Mail: tsmith@admin.nv.gov

Contractor

Name: Ami Hiatt
 T-Mobile USA, Inc.
 7668 Warren Parkway
 Frisco, TX 75037
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 Amy.Hiatt@T-Mobile.com

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ACCESSORIES AND EQUIPMENT (WSCA)
(WSCA)
Administered by the State of Nevada (hereinafter "Lead State")**

CMS # _____

Participating State

Contact:	Cyndie Miller, State Purchasing Agent
State Entity:	State Purchasing Office
Address:	633 17 th Street, Suite 1520
City, State, Zip:	Denver, CO 80202
Phone:	(303) 866-6104
Fax:	(303) 866-7445
Email :	Cyndie.Miller@state.co.us

6. Price Agreement Number: When ordering with purchase orders issued by purchasing entities within the jurisdiction of this Addendum shall include the WSCA Master Price Agreement and/or The State Pricing Agreement Number 72551YYY08M/WSCA.

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.

7. 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.

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PARTICIPATING ADDENDUM
FOR WIRELESS VOICE SERVICE, WIRELESS BROADBAND SERVICE,
ACCESSORIES AND EQUIPMENT (WSCA)
(WSCA)
Administered by the State of Nevada (hereinafter "Lead State")**

CMS # _____

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">CONTRACTOR T-Mobile USA, Inc.</p> <p>By: <u>DAVID LAMPKIN</u></p> <p>Title: <u>VICE PRESIDENT, BUSINESS SALES</u></p> <p><u><i>David Lampkin</i></u> Signature</p> <p>Date: <u>3 OCT. 2012</u></p>	<p align="center">STATE OF COLORADO John W. Hickenlooper. GOVERNOR Department of Personnel and Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director</p> <p><u><i>Kathy Nesbitt</i></u> By: _____ _____, State Purchasing Director</p> <p>Signatory avers to the State Controller or delegate that Contractor has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: <u>10/12/12</u></p>
<p>T-Mobile Legal Approval By: <u><i>[Signature]</i></u></p>	<p align="center">LEGAL REVIEW 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.

STATE CONTROLLER
David J. McDermott, CPA

By: *[Signature]*

Date: 10-24-2012

STATE OF COLORADO
Exhibit A
with
T-Mobile, USA, Inc.

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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 the vendor entity that, along with WSCA, is a party to to the Contract that performs services and/or provides goods for WSCA under the Contract.

iii. **"Equipment"** means wireless voice service, wireless broadband service, accessories and equipment and shall refer to any category of Equipment not specifically excluded under §3 of the IFB.

iv. **"IFB"** means Invitation for Bid, IFB/RFP #1907 of the State of Nevada.

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. **"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 October 31, 2016, or the termination of the Master Price Agreement, unless terminated sooner. The term of the Master Price Agreement terminates on October 31, 2016. 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 two 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 Equipment 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: 1907;
- viii. The Participating State's Statewide Price Agreement Number:
72551YYY08M/WSCA

Unless otherwise agreed in writing, any Equipment 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 Equipment until such Equipment has been inspected in accordance with the specifications and is accepted by the Ordering Entity. Title to Equipment 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.

The Statewide Price Agreement will be "mandatory" and State Agencies subject to the Participating State's Procurement Code shall be required to satisfy requirements through the Statewide Price Agreement. Exceptions may be granted by the Director of the State Purchasing Office on application by the State Agency involved. This "mandatory" Statewide Price Agreement is not an exclusive price agreement to a specific vendor and the State of Colorado reserves the right to create multiple "mandatory" price agreements. While Political Subdivisions and Registered Non-Profit Organizations may order from this Addendum whether the agreement is designated as "mandatory" or "permissive" for such Political Subdivision or Registered Non-Profit Organization shall be at the discretion of each Political Subdivision or Registered Non-Profit Organization.

C. State Employee Benefit Program

Ordering Entity(ies) will be eligible to participate with Contractor to obtain eligible employees' participation in the State's Employee Benefit Program

4. MODIFICATIONS TO MASTER PRICE AGREEMENT

The Master Price Agreement shall be modified as follows:

A. Public Records

Section 33 of the Master Price Agreement is deleted in its entirety and the following is inserted in lieu thereof:

"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.

B. Payment

The section entitled "12 Payment" in the Master Price Agreement is deleted in its entirety and the following is inserted in lieu thereof: "Payments shall be submitted to Contractor at the address shown on the invoice, as long as Contractor has exercised due diligence in notifying the State of Nevada and the Ordering Entity of any changes to that address. Each Ordering Entity shall use commercially reasonable efforts to fully pay each invoice within 30 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by Ordering Entity. Uncontested amounts not paid by the Ordering Entity within 45 days shall 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."

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.

C. 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.

D. 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.

5. 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 and Registered Non-Profit Organizations 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 45 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.

6. Remedies

In addition to other remedies provided for in the WSCA Master Contract, this Addendum or any Order, and without limiting its remedies otherwise available at law, the Ordering Entity may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in the Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by contractor. These remedial actions are as follows:

- A. Suspend Performance.** Suspend Contractor's performance pending necessary corrective action as specified in writing by the Ordering Entity without Contractor's entitlement to adjustment in price/cost or schedule; and/or
- B. Withhold Payment.** Withhold payment to Contractor until the necessary Services or corrections in performance are satisfactorily completed or the Order has been terminated; and/or

C.. Termination. Terminate the Order for default.

The above remedies are cumulative and the Ordering Entity, in its sole discretion, may exercise any or all of them individually or simultaneously.

Except as otherwise provided for by law or this Addendum, the rights and remedies of the Ordering Entities shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages.

7. TERMINATION

A. Termination for the Public Interest.

- i. Participating Addendum. This Participating Addendum may be terminated by either the Participating State or Contractor upon sixty (60) days prior written notice. Such notice shall be effective upon receipt of written notice. Upon notice of termination, no Orders may be accepted by Contractor with performance periods extending beyond the effective date of termination. However, subject to the right of the Ordering Entity to terminate, or as otherwise agreed between the Purchasing Entity and Contractor, Contractor will perform obligations consistent with the Contract for Orders in effect on the effective date of the termination.
- ii. Orders. Unless otherwise agreed, the Procurement Officer, when the interests of the Ordering Entity so require, may terminate any Order, in whole or in part, for the public interest of the Ordering Entity, provided only that such termination will not relieve such Ordering Entity from its obligations with respect to any User Equipment or Services already delivered to or used by such Purchasing thirty (30) days of issuance of such notice, such officer may terminate Contractor's right to proceed with the Order or such part of the Order as to which there has been such delay or a failure to properly perform. Contractor shall continue performance of the Order to the extent it is not terminated.
- ii. Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the purchasing agency has an interest (if any).
- iii. Compensation. Payment for completed User Equipment delivered and accepted by the Purchasing Entity and for acceptable Services performed and accepted by the Ordering Entity shall be at the Contract price. The Ordering Entity may withhold amounts due to Contractor as the procurement officer deems to be necessary to protect the Purchasing Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Purchasing Entity for the excess costs incurred in procuring similar goods and services.
- iv. Erroneous Termination for Default. If after notice of termination of Contractor's right to proceed under the provisions of this paragraph, it is determined for any reason that Contractor was not in default under the provisions of this paragraph, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for the public interest section.

8. 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.

9. 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

i. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the Participating State, if requested by the Participating State. Contractor shall require each contract with a subcontractor that is a public entity, to include the insurance requirements necessary to meet such subcontractor's liabilities under the GIA.

ii. Non-Public Entities

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Addendum insurance coverage and policies meeting the same requirements set forth in §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.

iii. Automobile Liability

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

iv. Additional Insured

The State 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.

v. Primacy of Coverage

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

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the Participating State in accordance with §12(B) (Notices) within seven days of Contractor's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Addendum and secured and maintained by Contractor or its subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the 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.

10. 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 products and services; (b) replace any Equipment or other product 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 Equipment or products and refund the price paid therefore to the Participating State, such price to be based upon a five year straight amortization schedule.

11. 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.

12. 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.

13. 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 delivered in accordance with §____ of the Master Price Agreement. 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 14** 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.

14. 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; provided however the Service aggregate volume discount provided by T-Mobile shall not exceed 15% which is the 16% WSCA negotiated aggregate volume discount less the 1.00% administration fee required by the Participating State of Colorado. If the WSCA discount changes, the Ordering Entities of the Participating State will receive the WSCA contract discount less the 1.00% administration fee which will be paid to the Participating State of Colorado. 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 §4 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 45th 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.

15. 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

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
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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.

STATE OF COLORADO John W. Hickenlooper GOVERNOR Name of Agency or IHE
_____ By: Insert Name & Title of Person Signing for Agency or IHE
Date: _____

<u>ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER</u>
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: _____