

**PARTICIPATING ADDENDUM**



**COPIERS AND MANAGED PRINT SERVICES**

Led by the State of Colorado

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Master Agreement #: **140604**

Contractor: **TOSHIBA AMERICA BUSINESS SOLUTIONS, INC. (“Toshiba”)**

Participating State: **STATE OF SOUTH CAROLINA / Contract # 4400024835**

**Product Categories:** The following product groups are included in the contract portfolio and approved under this Participating Addendum (PA):

- **Group A – Multi-Function Device (MFD), A3** (Financial Options 1-4 apply)  
Designed to handle letter, legal, ledger and some smaller paper sizes such as postcards and envelopes.
- **Group B – MFD, A4** (Financial Options 1-4 apply)  
Same as A3 except ledger size paper is not an option.
- **Group C – Production Equipment** (Financial Options 1-4 apply)  
High speed, high quality device, typically has advanced finishing functionality.
- **Group D – Single-function Printers** (Financial Options 1 & 2 apply)  
Inkjet or laser device that only prints and is not capable of other functions such as copying, faxing or scanning.
- **Group E – Large/Wide Format Equipment** (Financial Options 1 & 2 apply)  
Device that prints on a large paper via a variety of output options
- **Group F – Scanners** (Finance Options 1 & 2 apply)  
CCD or CIS equipment, automatic feeder, letter or legal paper capacity, single pass duplex.

1. **Scope:** This Addendum covers the NASPO ValuePoint Master Agreement for Copiers and Managed Print Services led by the State of Colorado, for use by state agencies and other entities located in the Participating State/Entity and authorized by that state’s statutes to utilize state contracts with the prior approval of the state’s Chief Procurement Officer.

This Addendum is between Toshiba and all participating South Carolina public procurement units (as defined by S.C. Code Ann §11-35-4610 (5), as amended) or governmental bodies (as defined by S.C. Code Ann § 11-35-310 (18), as amended), hereafter referred to as Using Government Units (UGUs).

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions 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 Officer. Issues



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of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer.

Pursuant to Section 11-35-510 of the South Carolina Code of Laws, ITMO is authorized to act as the statutory procurement agent for every state governmental body (as defined by S.C. Code Ann. § 11-35-310(18), as amended). Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of such state governmental bodies.

Participation by local public procurement units (as defined by S.C. Code Ann. § 11-35-4610(3), as amended) in the Master Agreement is optional. By submitting an order and receiving delivery of an item pursuant to the Master Agreement, a local public procurement unit manifests its intent to be and is bound by the Master Agreement, including this addendum, unless the local public procurement unit has entered into a separate Participating Addendum.

3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Christina Fisher
Address:	25530 Commercentre Blvd., Lake Forest, CA 92630
Telephone:	(949) 462-6325
Email:	<a href="mailto:Christina.fisher@tabs.toshiba.com">Christina.fisher@tabs.toshiba.com</a>

Participating Entity

Name:	Carol Norfleet
Address:	1201 Main Street, Suite 600
Telephone:	(803) 737-3224
Email:	<a href="mailto:cnorfleet@mm.sc.gov">cnorfleet@mm.sc.gov</a>

4. **Participating Entity Modifications or Additions to The Master Agreement:** Modifications or additions apply only to actions and relationships within the Participating Entity. Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions. Unless otherwise stated, terms used herein shall have the definitions assigned by the



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Master Agreement. Note: Any and All applicable references of Colorado (CO) law are to be changed to read, South Carolina (SC).

5. **Available Financial Vehicle Options:** Contractor, or its Authorized Dealers are authorized under the Master Agreement and shall be limited to offering financial Options 1 through 4 under this Participating Addendum. State UGUs shall determine which option best fits their needs and circumstances.

- **Option 1 – Purchase**

Purchase of equipment offered under all Product Category Groups as described on Page 1 of this Participating Addendum.

- **Option 2 – Lease**

Leasing is authorized only through the Statewide Term Contract for IT Equipment Leasing for all Product Category Groups as described on Page 1 of this Participating Addendum.

Procedure: Upon request of the State UGU, Contractor shall issue a quote in accordance with the applicable purchase directly to the UGU. The quote shall include any applicable sales, use or similar front-end tax, any software costs or licensing fees, out-of-pocket costs incurred in delivering and installing the equipment and any similar costs with respect to the equipment. Upon receipt of the quote, the UGU shall then forward the quote, along with required forms to the Leasing Contractor.

Additional contract and contact information is available on the State’s website at:

<https://procurement.sc.gov/files/contracts/IT%20Leasing%20Update%201%2011%202019.pdf>

- **Option 3 – Equipment Rental/Cost per Copy**

NOTE 1: Under the Governmental Accounting Standards Board (GASB) GASB87 Statement, effective 7/1/2021 for fiscal year 2022 will require amortization of transactions completed under this Option. Guidance is available on the State of South Carolina Comptroller General’s website at <https://cg.sc.gov/guidance-and-forms-state-agencies/gasb-87-lease-accounting>.

NOTE 2: Cost per Copy (CPC) programs may be offered under this PA but pricing must not exceed Master Agreement pricing for the eligible product categories. Contractor must provide the UGU with their pricing breakdown which enables the State UGU to easily compare the pricing in the CPC structure against the pricing in this Master Agreement.

Method for placing Copier/MFDs with State UGUs where all costs are accounted for including equipment rental for 24 or 36 months, a minimum mono/color allowance and a cost per page for mono/color inclusive of all maintenance, parts and supplies excluding only paper. For each Copier/MFD placed under this rental program, the State Agency/Using Governmental Unit will guarantee the production of the guaranteed monthly mono/color volumes. On a monthly basis, Contractor shall reconcile the volumes of all Copier/MFDs placed under the rental program within each Segment placed with each State Agency/Using Governmental Unit. Overage Charges for



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each segment shall apply only when the combined monochrome or color volumes of all Copier/MFDs placed within each State Agency /Using Governmental Unit exceed the combined guaranteed monochrome or color volume. Monochrome and color volumes are to be kept separate and not combined. Shortage credits of aggregate volume shortfalls will not be credited by Contractor. This option is available for all products awarded by NASPO with allowances developed based on State Agency/Using Governmental Unit.

- **Option 4 – Cost per Copy / No Minimum Rental**

NOTE 1: Requirements of the Governmental Accounting Standards Board (GASB) GASB87 Statement, effective 7/1/2021 for fiscal year 2022 will not apply to transactions completed under this Option.

NOTE 2: Cost per Copy (CPC) programs may be offered under this PA but pricing must not exceed Master Agreement pricing for the eligible product categories. Contractor must provide the UGU with their pricing breakdown which enables the State UGU to easily compare the pricing in the CPC structure against the pricing in this Master Agreement.

State Agency/Using Governmental Units may opt to place Copier/MFDs under the all-inclusive cost-per-impression program using the pricing set forth. The State's definition of a true cost per impression program herein is as follows: A method for placing copier/MFDs with an UGU whereby all costs are accounted for including a cost per page for mono/color inclusive of all maintenance, parts and supplies excluding only paper. This offer will be defined on the attached exhibit for only set products and configurations at expected volumes.

**6. Supplemental Documents:**

The Contractor's Supplemental Documents included with the Master Agreement as Exhibits and/or Attachment apply to the products and services they support where authorized under this Participating Addendum. Terms and Conditions under Master Agreement Exhibits and/or Attachments, if applicable to a purchase, shall be reviewed and negotiated by each State UGU in accordance with individual associated risk and applicable State and UGU governing law, in which case, governing law shall govern in case of any conflicting requirements.

**7. Authorized Dealers:**

Contractor approved Authorized Dealers for the State of South Carolina shall be identified to the State upon execution of this Participating Addendum. Authorized Dealers are approved to accept orders and provide sales, maintenance and service support to participants. The Contractor Authorized Dealer's participation will be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum. The Contractor agrees to distribute its products to South Carolina governmental bodies through contractors registered with the South Carolina Secretary of State as an authorized South Carolina contractor at <http://www.scsos.com>.



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As recommended by the Contractor, Authorized Dealers may be issued a contract number for administrative system purposes of making sales, receiving purchase orders, submitting invoices and receiving payments. Contractor recommendations must be approved by the ITMO Procurement Officer. Dealers must be found to be responsive and responsible by the State, otherwise all sales will go through the Contractor on behalf of the Dealer. The Dealer will report all sales to the Contractor and the Contractor will remain solely responsible for all reporting and fee payments in either circumstance.

**8. Other Product and Service Offerings:**

The following products and services are authorized under the conditions stated below:

- Maintenance Agreement or Maintenance Service Level Agreement – as set forth in the Master Agreement with options determined by the individual UGU.
- Service Level Agreements – as set forth in the Master Agreement with options determined by the individual UGU.
- Preventative Maintenance – as set forth in the Master Agreement with options determined by the individual UGU.
- End-User Training – as set forth in the Master Agreement with options determined by the individual UGU.
- Consumable Supplies, except when available under existing State Term Contracts, i.e. toner and paper.
- Software Products that are Contractor Branded Software and/or Third Party Software included in the published pricing under this Contract with license agreements negotiated and incorporated under the Master Agreement.
- Accessories for Discontinued Base Units.

The following products and services are not authorized:

- Managed Print Services
- Third Party Software not priced under this contract or negotiated and incorporated under the Master Agreement.
- Remanufactured/Refurbished Equipment
- Open Market Items - Not Specifically Priced (NSP) Items
- Showroom Equipment
- Emerging Technologies
- Equipment Trade-Ins

The State of South Carolina reserves the right to add, delete or change Other Product Offerings, by a mutually agreed upon Change Order to this Participating Addendum.

**9. State of South Carolina Specific Terms and Conditions – Instruction/General:**



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**DEFINITIONS, CAPITALIZATION, AND HEADINGS (M)**

CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

AMENDMENT means a document issued to supplement the original solicitation document.

AUTHORITY or BOARD means the State Fiscal Accountability Authority or its successor in interest.

CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT see Order of Precedence in the Master Agreement: Participating Addendum (PA), Amendments and Change Orders to PA; NASPO ValuePoint Master Agreement Terms & Conditions, including all Exhibits; An Order issued against the Master Agreement; the Solicitation RFP-NP-18-001; Contractor's response to the Solicitation, as revised and accepted by the Lead State; and Contractor Supplemental Documents, including all Attachments.

ITMO means Information Technology Management Office established by South Carolina Code Section §11-35-820, as amended.

PARTICIPATING ADDENDUM defined in the Master Agreement, forms a part of the Master Agreement, and supersedes the Master Agreement to the extent of any inconsistency. The terms and conditions of this Addendum apply only to the relationship between SC Participants and Contractor. PROCUREMENT OFFICER means the person, or his successor, identified as such in this Participating Addendum.

SERVICES mean the furnishing of labor, time or effort by a Contractor to deliver a specific end product, other than reports which are merely incidental to required performance. The term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements, or services as defined in Section 11-35-310 (1)B.

STATE means the State of South Carolina and/or its Agency/Using Governmental Unit(s).

SUBCONTRACTOR means any person you contract with to perform or provide any part of the work.

USING GOVERNMENTAL UNIT State Agency, Entity, Ordering Entity, etc., means any South Carolina Public Procurement Unit that has submitted a Purchase Order pursuant to the contract that are eligible to purchase under the contract. See clauses "Purchase Orders" and "Statewide Contract."

WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

YOU AND YOUR means Contractor.

**ADMINISTRATIVE SERVICES FEE - COLLECTION AND REPORTING (M)**

(a) Procurement Services (PS) establishes and maintains master State contracts for the benefit of all South Carolina state and local public entities. These contracts allow all public entities both to maximize the State's purchasing power by aggregating their requirements and to benefit from increased efficiencies in the acquisition process. Procurement Services' cost for this central purchasing activity is offset by an administrative fee which each contractor includes in its contract pricing (though not



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separately itemized or invoiced) and is paid to the vendor by each participating public entity. The contractor collects the fee as a fiduciary for the State and remits the same as calculated in accordance with the clause titled "ADMINISTRATIVE SERVICES FEE - CALCULATION." The price stated in the contractor's bid or proposal must include all amounts necessary for contractor to meet this obligation.

**NOTE:** The Master Agreement allows Participating States and Entities to incorporate an administrative fee into the published Master Agreement pricing. The fees are included in the published Master Agreement pricing and not an addition to the pricing. **The Contractor shall report ACTUAL revenues that are billed for Equipment, Service and Supplies each month**

The initiation and submission of the quarterly reports are the responsibility of the Contractor. Contractor is responsible to collect and report all sales data including Authorized Dealer sales associated with the State Participating Addendum and the Master Agreement. If the Administrative Fee is not paid by the Due Date or Quarterly Reports are not received by the Due Date, then the Contractor will be in breach of the Contract. If Contractor has not cured any breach under this provision within 30 days of receipt of written notice of such alleged breach, the Contract may be canceled for cause. There will be no prompting or notification provided by the State or NASPO Contract Administrator.

(b) As used in this clause, the term "reporting period" means each full calendar quarter and any remaining periods less than a full calendar quarter during the term of this contract (Quarter 1: Jan. - Mar.; Quarter 2: Apr. - Jun.; Quarter 3: Jul. - Sep.; Quarter 4: Oct. - Dec.). For each reporting period, contractor shall report to PS its total sales pursuant to this contract for the period and shall remit the fee to the Procurement Services (PS) Reports Manager. Payment for each reporting period is due no later than the last day of the month immediately following the end of the reporting period (Example: payment for the reporting period ending March 31 is due April 30). If the amount due for a reporting period is less than \$10.00, no payment is required. The procurement officer will provide contractor an information packet, including a detailed explanation of reporting and payment requirements, within fifteen (15) calendar days following contract award. You may contact the Reports Manager at:

Procurement Services Division  
Attn: Reports Manager  
1201 Main Street, Suite 600  
Columbia, SC 29201  
Phone: (803) 737-0600 (ask to speak to the Reports Manager)

***Failure to receive the information packet does not relieve contractor from its obligations hereunder.***

(c) Contractor shall submit a usage report for each reporting period, even if no payment is due for the reporting period. The usage report shall include any information requested by PS to verify the amount due. At a minimum, each usage report shall reflect the following information for the applicable reporting period: contractor's name, contract number, contract description, reporting period/quarter, total dollar value of sales (excluding sales taxes and showing any adjustments for credits or refunds), total number



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of units (if practicable), and the number, date, and amount of contractor's check to PS. Unless otherwise specified by the reports manager, the usage report shall be submitted electronically according to instructions in the information packet. If the reports manager requires the contractor to provide a more detailed usage report, the reports manager will work directly with the contractor to determine the appropriate content and format of the report.

(d) During the term of this contract and for a period of three years thereafter, PS or its authorized representatives shall be afforded access at reasonable times to contractor's records (including, without limitation, bank statements, deposits, checks; invoices; correspondence; ledgers; receipts; transmittals) in order to audit all transactions involving goods sold, work performed, or fees due pursuant to this contract. If the audit indicates that contractor has materially underpaid PS, then contractor shall remit the balance found to be due (including any amounts assessed pursuant to subparagraph (e)) and reimburse PS for all costs of the audit.

(e) Payments of the fee which are due and unpaid by the contractor (including amounts disclosed by audit) shall accrue interest as provided in the Payment and Interest clause for amounts due to the State. In addition to the fee and interest, contractor agrees to pay to PS its reasonable expenses of collection, including costs and attorneys' fees (and fees for inside counsel), whether or not PS commences legal action.

(f) If the contractor fails to (i) timely submit accurate usage reports; (ii) remit to PS the fee when due; or (iii) promptly and fully cooperate with an audit request, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions:

- (1) direct the contractor to not accept any further orders under the contract until PS determines that the cause for such direction has been eliminated;
- (2) terminate this contract;
- (3) direct the contractor to not accept any further orders under any other master State contract established by PS until PS determines that the cause for such direction has been eliminated.

(g) For purposes of this clause, PS is intended as a third-party beneficiary of this contract.

### **ADMINISTRATIVE SERVICES FEE - CALCULATION - ITMO (M)**

For each reporting period, Contractor shall pay Procurement Services fees described below based on the **ACTUAL revenues that are billed for Equipment, Service and Supplies each month.**

- **Purchase (Option 1), Lease (Option 2), and Cost per Copy (Options 3 and 4), and authorized "Other Product and Service Offerings" (See 8. of this Participating Addendum) billings of Contractor and/or its Authorized Dealers:** For each reporting period, Contractor shall pay to PS **a fee equal to one (1.0%) percent of the total dollar amount** (excluding sales taxes and adjusted for credits or refunds) of purchases made by any public procurement unit from Contractor pursuant to this contract.

### **ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (M)**

(a) Contractor shall notify the procurement officer with the State of South Carolina of acceptance and publication by the lead State of Colorado of any assignment, novation, and change of name, identity or structure of this contract. The procurement officer will instruct Contractor on necessary requirements





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for continued purchasing and payment activity under the new identify.

**AUTHORIZED AGENT (FEB 2015)**

All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract.

**AUTHORITY AS PROCUREMENT AGENT (DEC 2015)**

The Procurement Officer is an employee of the Authority acting on behalf of the State Agency/Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the State Agency/Using Governmental Units(s). The Authority is not a party to such contracts, unless and to the extent that the Authority is a Using Governmental Unit and bears no liability for any party's losses arising out of or relating in any way to the contract.

**CHOICE-OF-LAW (M)**

The Contract, any Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.

**CODE OF LAWS AVAILABLE (JAN 2006)**

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:

<http://www.scstatehouse.gov/code/statmast.php>

The South Carolina Regulations are available at:

<http://www.scstatehouse.gov/coderegs/statmast.php>

**CONTRACT LIMITATIONS (JAN 2006)**

No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment

**CISG (JAN 2006)**

The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.

**DISPUTES (JAN 2006)**

(1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor

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agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

**ILLEGAL IMMIGRATION (NOV 2008)**

An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

**MATERIAL AND WORKMANSHIP (JAN 2006)**

Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended.

**OPEN TRADE (JUN 2015)**

During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

**OWNERSHIP OF INFORMATION DATA and MATERIALS (JAN 2006)**

All government information, except unrestricted information, either furnished by or specifically prepared exclusively for the State pursuant to this contract shall belong exclusively to the State. Notwithstanding the above, this provision is subject to the Master Agreement and shall not apply to



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intellectual property previously developed by Contractor. Otherwise data, material and documentation prepared for the State pursuant to this contract shall belong exclusively to the State.

**PAYMENT and INTEREST (FEB 2015)**

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off.

**PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT**

The State of South Carolina requires all contractual activities to be in compliance with local, state, and federal mandates concerning "protection of human health and the environment". Any contractor doing business with the State will be required to document compliance and to specify prudent practices used by the contractor to address applicable mandates including, but not restricted to "the hazard communication standard" OSHA CFR 1910.1200 (SCRR Article 1,711910.1200). Contractor agrees to take all necessary steps to ensure compliance with the requirements applicable to Contractor and the Services it provides.

**PURCHASE ORDERS (JAN 2006)**

Contractor shall not perform any work prior to the receipt of a purchase order from the State Agency/Using Governmental Unit. The State Agency/Using Governmental Unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision

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qualifies as a purchase order.

**NOTE:** Any Order placed by a South Carolina Using Government Unit, for any product or service available under this agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) this Participating Addendum of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

Orders can be made out to (a) Contractor or (b) Authorized Dealers as approved by Contractor and State Procurement Services. To the extent the Contractor agree on additional terms, the terms will be documented on the Purchasing Entity Order, and signed by both parties.

All orders should contain the following (1) "PO is subject to NASPO ValuePoint Master Agreement, Contract #140604, and the Participating Addendum, State assigned Contract Number" (2) Purchasing Entity Name, Address, Contact, & Phone-Number (3) Order amount (4) Type of Order (Purchase, Lease, Cost per Copy Option, other authorized products and services), purchase amount, monthly payment amount, itemized list of accessories, type of Service program and rates and, (7) applicable supplemental documents, including Service Level Agreement, Exhibits or Attachments that apply.

**RELATIONSHIP OF THE PARTIES (JAN 2006)**

Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**RELATIONSHIP OF STATE AGENCY/USING GOVERNMENTAL UNITS (JAN 2006)**

Each State Agency/Using Governmental Unit's obligations and liabilities are independent of every other State Agency/Using Governmental Unit's obligations and liabilities. No State Agency/Using Governmental Unit shall be responsible for any other State Agency/Using Governmental Unit's act or failure to act.

**STATEWIDE TERM CONTRACT (M)**

The Participating Addendum and the NASPO ValuePoint Master Agreement and related contract documents, are established as a term contract (as defined in Section 11-35-310(35)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)).

(a) Use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is mandatory except under limited circumstances, as provided in Section 11-35-310(35). See clause entitled "Acceptance of Offers 10% Below Price". Use by local public procurement units is optional. Section 11-35-4610 defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(23) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts. No sales may be made pursuant to this contract for any item or service that is not expressly included in the Scope. No sales may be made pursuant to this contract after expiration of this contract. Knowing violation of this provision may result in termination of this contract and may subject Contractor to suspension or debarment.

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(b) The State shall be entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer.

(c) As used herein, "additional contract terms" means additional terms not otherwise allowed by the "Purchase Orders" clause. Notwithstanding the "Purchase Orders" clause, a purchase order may include additional contract terms but only if and to the extent necessary (i) to comply with a requirement directly related to the work and imposed on the State Agency/Using Governmental Unit either by law or as a condition of using state or federal assistance, grant, or contract funds, or (ii) for the State Agency/Using Governmental Unit to impose organizational, operational, or technical security measures designed to protect the integrity, availability, or confidentiality of the State Agency/Using Governmental Unit's data. Contractor may decline to honor a purchase order including additional contract terms.

(d) If the contractor is suspended or debarred pursuant to Section 11-35-4220, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions: (1) order the contractor to not accept any further orders under the contract until the suspension or debarment has been lifted; (2) terminate this contract; (3) order the contractor to not accept any further orders under any other statewide term contract; or (4) terminate the contractor's award of any other statewide term contract.

**STATEWIDE TERM CONTRACT – ACCEPTANCE OF OFFERS 10% BELOW PRICE**

Pursuant to Section 11-35-310(35), the state may purchase items available on this contract from a third party (an "alternate contractor") if the alternate contractor offers a price that is at least ten percent less than the price established by this contract and, after being offered an opportunity, you decline to meet the alternate Contractor's price. With regard to the items acquired, the alternate contractor must agree to be bound by all the terms and conditions of this contract. All acquisition pursuant to this clause must be documented by the procurement officer using the attached form.

**SUBSTITUTION**

No Substitutions will be allowed on Purchase Orders received from South Carolina procurement units without written permission from the issuing procurement unit.

**TAXES (JAN 2006)**

Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.

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**TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES**

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734- 0657, Fax: (803) 734-2498.

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)**

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**THIRD PARTY BENEFICIARY (JAN 2006)**

This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

**VENDOR REGISTRATION MANDATORY (M)**

Contractor and any Authorized Dealers must have a state vendor number. To obtain a state vendor number, visit [www.procurement.sc.gov](http://www.procurement.sc.gov) and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm> )



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**WAIVER (JAN 2006)**

The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-

**WARRANTY – MAINTENANCE AND SERVICES**

Service Provider warrants that any Service Provider serviced equipment will perform in accordance with the manufacturer's specifications. If equipment fails to perform in accordance with the manufacturer's specifications and the equipment cannot be repaired to perform within the products specifications, Service Provider will repair the equipment or replace the equipment with equipment of equal or greater functionality at no additional cost to the State. EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION, SERVICE PROVIDER DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE.

**10. State of SC Specific Terms & Conditions - Indemnification**

**NO INDEMNITY OR DEFENSE (FEB 2015)**

Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

**INDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL (NOV 2011)**

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive Optional. This clause may be used in any procurement and should be included if contractor's personnel will be on the State's property. Table of Clauses (SEP 2017) 48 Clause # Text Guidance on Use termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.



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**INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015)**

Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter “action”) of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

(b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitee's attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

**11. State of SC Specific Terms & Conditions – Information Security and Use:**

**INFORMATION SECURITY - DEFINITIONS (FEB 2015)**

The following definitions are used in those clauses that cross reference this clause.

**Compromise** means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term “compromise” includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.

**Data** means a subset of information in an electronic format that allows it to be retrieved or transmitted.





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**Government information** means information (i) provided to Contractor by, or generated by Contractor for, the Using Governmental Unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.

**Information** means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

**Information system** means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

**Public information** means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.

**Software** means any computer program accessed or used by the State Agency/Using Governmental Unit or a third party pursuant to or as a result of this contract.

**Third party** means any person or entity other than the State Agency/Using Governmental Unit, the Contractor, or any subcontractors at any tier.

**Unrestricted information** means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.

**Web-based service** means a service accessed over the Internet and acquired, accessed, or used by the State Agency/Using Governmental Unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services.

**INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)**

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause—

**Clearing** means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.

**Intrusion** means an unauthorized act of bypassing the security mechanisms of a system.

**Media** means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.

**Safeguarding** means measures or controls that are prescribed to protect information.

**Voice** means all oral information regardless of transmission protocol.

(b) *Safeguarding Information.* Without limiting any other legal or contractual obligations, contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, contractor shall apply security controls when the contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability.

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(c) Safeguarding requirements and procedures. Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

(1) Protecting information on public computers or Web sites: Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800–88, Guidelines for Media Sanitization, at [http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88\\_with-errata.pdf](http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf).

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise:

(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

(d) *Subcontracts*. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.

(e) *Other contractual requirements regarding the safeguarding of information*. This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems.

**INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)**

Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier.

**INFORMATION USE AND DISCLOSURE (FEB 2015)**

Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be



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broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.

(a) Definitions. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

(b) Legal mandates. Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide State Agency/Using Governmental Unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.

(c) Flow down. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.

(d) Collecting Information. Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.

(e) Rights, Disclosure and Use. Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give the State Agency/Using Governmental Unit detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

(f) Return. Notwithstanding the State Agency/Using Governmental Unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the State Agency/Using Governmental Unit (or destroy, at the State Agency/Using Governmental Unit's option) all government information in its possession as and upon written request of State Agency/Using Governmental Unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).

(g) Privacy Policy & Applicable Laws. Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards.

(h) Actions Following Disclosure. Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify State Agency/Using Governmental Unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the State Agency/Using Governmental Unit all information necessary to enable the State Agency/Using Governmental Unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the State Agency/Using Governmental Unit), Contractor shall reimburse State Agency/Using Governmental Unit for



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the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the State Agency/Using Governmental Unit, and (5) reimburse the State Agency/Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper us. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) Survival & Remedy. All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the State Agency/Using Governmental Unit may have, and notwithstanding any other term of this contract, Contractor agrees that State Agency/Using Governmental Unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the State Agency/Using Governmental Unit shall be entitled to pursue equitable remedies in the event of a breach of this clause.

**INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015)**

To the extent applicable:

(a) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the State Agency/Using Governmental Unit is not a licensee.

(b) Breach of security of State Agency/Using Governmental Unit data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Div, SC Code Ann Section 1-11-490.

(c) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the State Agency/Using Governmental Unit is not a licensee.

(d) South Carolina Family Privacy Protection Act of 2002, SC Code Ann Sections 30-2-10, et seq.

(e) Personal Identifying Information Privacy Protection, S.C. Code Ann. Sections 30-2-310 et seq.

(f) Data Breach Notification, 2014 Act No. 286, Section 117.117, as revised in any future annual appropriations act.

(g) Health Insurance Portability and Accountability Act of 1996; Privacy Rule at 45 C.F.R. 160 & 164.

(h) 42 CFR Part 431, Subpart F, and SCDHHS regulations 10 SC Code of State Regs §126-170, et seq.

(i) Confidentiality of Federal-State Unemployment Compensation Information, 20 CFR § 603.

(j) IRS Publication 1075.


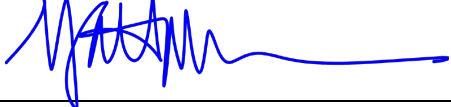
(k) IRC §6103(p)(4) (26 U.S.C. §6103(p)(4)).

(l) SC Code section 12-54-240 (Disclosure of tax records, reports, and returns filed with SCDOR prohibited).



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**IN WITNESS WHEREOF**, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: <b>State of South Carolina</b>	Contractor: <b>Toshiba America Business Solutions, Inc.</b>
By: 	By: 
Name: <b>Carol Norfleet</b>	Name: Walter Holloman
Title: <b>Procurement Manager</b>	Title: VP Enterprise Administration
Date: 10/5/2020	Date: 10/06/2020

*[Additional signatures may be added if required by the Participating Entity]*

For questions on executing a Participating Addendum, please contact:

**NASPO ValuePoint**

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	<a href="mailto:tfosket@naspovaluepoint.org">tfosket@naspovaluepoint.org</a>

***[Please email fully executed PDF copy of this document to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.]***