

PARTICIPATING ADDENDUM

By and Between Daikin Applied Americas Inc and the State of Iowa

This participating addendum ("Participating Addendum") is made and entered into effective as of January 1, 2021 (the "Effective Date") by and between Daikin Applied Americas Inc. ("Supplier") and the State of Iowa ("Customer") (each a "Party" and collectively the "Parties").

WHEREAS, the Region 4 Education Service Center ("the Principal Procurement Agency") entered into a Master Agreement dated October 1, 2020, Agreement No. R200401 ("Master Contract"). Region 4 ESC for purpose of a Cooperative Purchasing Network for use by state agencies and other governmental entities;

WHEREAS, the Customer authorized by State of Iowa statutes to utilize Customer contracts with the prior approval of the State of Iowa - Chief Procurement Officer desires to purchase products and services under the Master Contract. Within the State of Iowa, all state agencies, state facilities, cities, counties or education entities or any entity funded in part with state tax dollars ("Participating Members"), are eligible purchasers and authorized to purchase Products and Services under the terms of this Participating Addendum in lieu of a separate competitive selection process. (Exception: State of Iowa executive branch agencies must purchase according to applicable system standards and seek approval from the State of Iowa - Office of the Chief Information Officer when required as directed by Iowa Administrative Code before purchasing from this contract.)

WHEREAS, the Master Contract, as now or hereafter amended, is incorporated into this addendum ("Participating Addendum") as if set forth at length. Issues of interpretation and eligibility for participation are solely within the authority of the State of Iowa - Chief Procurement Officer.

NOW, THEREFORE, in consideration of mutual covenants, benefits and promises here in stated and in conjunction with the Master Contract, the Parties hereto agree to the following additional terms and conditions:

1. Terms

- a. The Customer is agreeing to the terms of the Master Contract only to the extent the terms are not in conflict with applicable law.

2. Modifications or Additions to the Master Contract

a. Reports

The Supplier shall submit quarterly reports to the Customer Contract Administrator showing all sales made quarterly against this Participating Addendum within the State of Iowa. Such reports will show the quantities and dollar volume of purchases by each qualifying Participating Member within the State of Iowa.

b. Pricing

Supplier's stated prices on the Omnia Partners website shall be discounted using the discounts and price lists approved and agreed to with the Supplier's Pricing List. The stated discounts are considered to be the minimum discount offered. The Supplier may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons. Minimum discounts listed in pricelist must be held firm for the duration of the Supplier's term. Customer and Participating Members shall be allowed to negotiate further discounting for large volume purchases.

c. Invoicing

For the duration of the Participating Addendum, all product pricing shown on invoices submitted to the Customer shall:

- Not fall short of the discounts quoted on the Pricing List.
- Items covered under this Participating Addendum are FOB Destination and shipping charges are not to be included on any invoice unless the Customer has ordered expedited shipment. For expedited shipment, Customer would submit their order including related shipping charges, which may not exceed the cost of delivery by the carrier.
- Be verifiable against the manufacturer's then current retail price list.

d. Administrative Fee

Without affecting the approved Product or Service prices or discounts specified in the Master Contract and this Participating Addendum, the Customer shall be entitled to receive a one percent (1.00%) administrative fee on all sales made within the State of Iowa against this agreement. The administration fee due to the Customer shall be paid quarterly by Supplier directly to the Customer, made payable to the "Iowa Department of Administrative Services".

Send to:
State of Iowa – DAS/Central Procurement
Attention: DAS – CPFSE COO
1305 E. Walnut St.
Des Moines, IA 50319

e. Payment Terms

Payment Terms shall be Net 60 days. Per Iowa Code § 8A.514 the Customer is allowed sixty (60) days to pay an invoice submitted by a Supplier. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

f. Terms and Conditions

The terms and conditions found in Attachment 1 shall govern this Participating Addendum. No other terms and conditions shall apply, including terms and conditions listed in the Supplier's response to the Solicitation, or terms listed or referenced on the Supplier's website, in the Supplier quotation/sales order or in similar documents subsequently provided by the Supplier. The solicitation language prevails unless a mutually agreed exception has been negotiated.

g. Orders

Any Order placed by an entity ordering under this Participating Addendum for a Product and/or Service available from this Master Contract shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Contract unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

h. Primary Contacts

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Supplier

Name	Shey Bauer
Address	13600 Industrial Park Blvd, Minneapolis, MN 55441
Telephone	563.777.0841
E-mail	shey.bauer@daikinapplied.com

Customer

Name	Bobbi Pulley
Address	Hoover Bldg Fl 3, 1305 E Walnut, Des Moines, IA 50319
Telephone	515.725.2893
E-mail	bobbi.pulley@iowa.gov

The Parties will keep and maintain current at all times a primary point of contact for administration of this Participating Addendum.

i. Order of Precedence

In the event of any inconsistency between the terms of this Participating Addendum and language set forth in the Master Contract, the inconsistency shall be resolved by giving precedence in the following order:

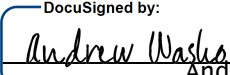

- The Participating Addendum;
- The Master Contract (includes negotiated Terms & Conditions)
- The Principal Procurement Agency's Solicitation including all Addendums; and
- Supplier's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Supplier terms and conditions that apply to this Master Contract are only those that are expressly accepted by the Principal Procurement Agency and must be in writing and attached to the Master Contract as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Supplier's response to the Solicitation, or terms listed or referenced on the Supplier's website, in the Supplier's quotation/sales order or in similar documents subsequently provided by the Supplier. The solicitation language prevails unless a mutually agreed exception has been negotiated.

j. Entire Agreement

This Participating Addendum, including Attachment 1, and the Master Contract (including all amendments and attachments thereto) constitute the entire agreement between the Parties concerning the subject matter of this Participating Addendum and replaces any prior oral or written communications between the Parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. This Participating Addendum may be modified only by a written document executed by the Parties hereto.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum by both Parties below.

Supplier	Customer
By: <div><div>DocuSigned by:</div><div></div></div>	By: 
Name: Andrew washo	Name: Bobbi Pulley
Title: Regional General Manager	Title: Purchasing Agent
Date: 11/23/2020	Date: November 23, 2020

ATTACHMENT 1 ADDITIONAL TERMS AND CONDITIONS

1.1 Definitions

The following words shall be defined as set forth below:

“Bid Proposal” means the Supplier’s quote, bid, or proposal submitted in response to the Competitive Bidding Document.

“Competitive Bidding Document” means the Request for Proposals, Request for Bids, or Request for Quotation (and any addenda thereto) identified in the Master Contract or Participating Addendum that was issued to solicit the Products and Services.

“Intellectual Property” shall include, without limitation, any inventions, technological innovations, discoveries, designs, drawings, specification, plans, formulas, know-how, processes, business methods, patents, trademarks, service marks, copyrights, computer software, ideas, creations, writings, illustrations, photographs, scientific and mathematical models, improvements to all such property, and all recorded material defining, describing, or illustrating all such property, whether in hard copy or electronic form.

“Participating Addendum” means the collective documentation memorializing the terms of the agreement between the Customer and the Supplier identified on the Master Contract, and includes, Additional Terms and Conditions, and Purchase Instrument.

“Master Contract” means the agreement between Supplier and Omnia Partners dated October 1, 2020 and numbered R200401. The collective documentation memorializing the terms of the agreement between the Customer and the Supplier incorporates by reference the Competitive Bidding Documents and Supplier’s Bid Proposal, and includes the signed Master Contract, the Additional Terms, and this Participating Addendum.

“Product” refers to any other products, goods, materials or items that are ordered, developed, produced, delivered, installed, licensed, performed, provided, or otherwise made available, under or through this Participating Addendum or Order. The term “Product” includes all related, provided, or supplied Documentation, updates, source code, upgrades, and enhancements.

“Purchase Instrument” means the documentation issued by the Customer to the Supplier for a purchase of Products or Services in accordance with the terms and conditions of the Participating Addendum. It may include an identification of the items to be purchased, the delivery date and location, the address where the Supplier should submit the invoices, and any other requirements deemed necessary by the Customer. Any pre-printed terms and conditions included on Supplier’s forms or invoices shall be null and void.

“Supplier” means the provider of the Products under the Participating Addendum.

“Customer” means the State of Iowa, the state agency identified in this Participating Addendum, and all state agencies, boards, and commissions, and any political subdivisions making purchases off of this Participating Addendum as permitted by the Competitive Bidding Document.

1.2 Availability of Participating Addendum to Other Entities

All other agencies of the Customer and all political subdivisions of the Customer may make purchases pursuant to the Participating Addendum as permitted by the Competitive Bidding Document.

1.3 Duration of Participating Addendum

The term of this Participating Addendum shall begin and end on the dates specified Master Contract, unless extended or terminated earlier in accordance with the applicable terms and conditions. Customer may exercise any applicable extension by giving the Supplier written notice of the extension decision at least thirty (30) days prior to the expiration of the initial term or renewal term.

1.4 Description of Goods

1.4.1 Specifications in Competitive Bidding Documents

The Supplier shall provide Products or Services that comply with the specifications contained in the Competitive Bidding Document identified by bid number in this Participating Addendum.

1.4.2 Product Shipment and Delivery

All products shall be shipped F.O.B. FirstDestination. FirstDestination shall be the location(s) specified in the Purchase Instrument. Supplier bears all risk of loss during shipment of Products. The Supplier shall properly package Products. The State will not accept noticeably damaged Products. The State reserves the right to inspect the Products at a reasonable time subsequent to delivery in the event the Customer is unable to perform an adequate inspection of the Products at the time of delivery. If the Customer discovers damaged or defective Products not readily apparent at the time of delivery, the Customer shall have the right to return Products at no cost to the Customer.

1.4.3 Non-Exclusive Rights

This Participating Addendum is not exclusive. The Customer reserve the right to select other contractors to provide Products similar or identical to Products described in the Master Contract during the term of this Participating Addendum.

1.4.4 No Minimums Guaranteed

The Participating Addendum does not guarantee any minimum level of purchases.

1.5 Compensation

1.5.1 Pricing

The Supplier will be compensated in accordance with the payment terms outlined in the Participating Addendum. Payment Terms and Scope of Work or described in the Additional Terms.

The Supplier shall submit, on the frequency established on the Participating Addendum an invoice for Products delivered or Services rendered in accordance with this Participating Addendum. The invoice shall comply with all applicable rules concerning payment of such claims. The Customer shall verify the Supplier's performance of the Products outlined in the invoice before making payment. The Customer shall pay all approved invoices in arrears and in conformance with [Iowa Code 8A.514](#). The Customer may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the Parties, the Supplier shall not be entitled to receive any other payment or compensation from the Customer for any Products provided by or on behalf of the Supplier under this Participating Addendum. The Supplier shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Participating Addendum.

1.5.2 Billings

The Supplier shall submit, on a regular basis an invoice for Products supplied to the Customer under the Participating Addendum at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The Customer shall verify the Supplier's performance of the services outlined in the invoice before making payment. The Customer shall pay all approved invoices in arrears and in accordance with applicable provisions of Iowa law.

1.5.3 Delay of Payment Due to Supplier's Failure

If the Customer determines that the Supplier has failed to perform or deliver any Service or Product as required by the Participating Addendum, the Supplier shall not be entitled to any compensation under the Participating Addendum until such Service or Product is performed or delivered. In this event, the Customer may withhold that portion of the Supplier's compensation which represents payment for Products that were not delivered.

1.5.4 Setoff Against Sums Owed by the Supplier

In the event that the Supplier owes the Customer any sum under the terms of the Participating Addendum, pursuant to any judgment, or pursuant to any law, the Customer may set off the sum owed to the Customer against any sum owed by the Customer to the Supplier in the Customer's sole discretion, unless otherwise required by law. The Supplier agrees that this provision constitutes proper and timely notice under the law of setoff.

1.6 Termination

1.6.1 Immediate Termination by the Customer

The Customer may terminate this Participating Addendum for any of the following reasons effective immediately without advance notice:

1.6.1.1 In the event the Supplier is required to be certified or licensed as a condition precedent to providing Products, the revocation or loss of such license or certification will result in immediate termination of the

Participating Addendum effective as of the date on which the license or certification is no longer in effect;

1.6.1.2 The Customer determines that the actions, or failure to act, of the Supplier, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;

1.6.1.3 The Supplier fails to comply with confidentiality laws or provisions;

1.6.1.4 The Supplier furnished any statement, representation or certification in connection with the Master Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

1.6.2 Termination for Cause

The occurrence of any one or more of the following events shall constitute cause for the Customer to declare the Supplier in default of its obligations under its Participating Addendum.

1.6.2.1 The Supplier fails to deliver or has delivered nonconforming Products or fails to perform, to the Customer's satisfaction, any material requirement of its Participating Addendum or is in violation of a material provision of the Participating Addendum, including but not limited to, the warranties made by the Contractor in this Participating Addendum;

1.6.2.2 The Customer determines that satisfactory performance of the Participating Addendum is substantially endangered or that a default is likely to occur;

1.6.2.3 The Supplier fails to make substantial and timely progress toward performance of the base and/or Subsequent contracts;

1.6.2.4 The Supplier becomes subject to any bankruptcy or insolvency proceeding under bankruptcy laws; the Supplier terminates or suspends its business; or the Customer reasonably believes that the Supplier has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

1.6.2.5 The Supplier has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Participating Addendum;

1.6.2.6 The Supplier has engaged in conduct that has or may expose the Customer or the Customer to liability, as determined in the Customer's sole discretion; or

1.6.2.7 The Supplier has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Customer, the Customer, or a third party.

1.6.3 Notice of Default

If there is a default event caused by the Supplier, the Customer shall provide written notice to the Supplier requesting that the breach or noncompliance be remedied within the period of time specified in the Customer's written notice to the Supplier. If the breach or noncompliance is not remedied by the date of the written notice, the Customer may:

1.6.3.1 Immediately terminate its Participating Addendum without additional written notice; and/or,

1.6.3.2 Procure substitute goods from another source and/or,

1.6.3.3 Enforce the terms and conditions of the Participating Addendum and seek any legal or equitable remedies.

1.6.4 Termination Upon Notice

Following 30 days' written notice, the Customer may terminate its Participating Addendum in whole or in part without the payment of any penalty or incurring any further obligation to the Supplier. Following termination upon notice, the Supplier shall be entitled to compensation, upon submission of invoices and proper proof of claim, for Products provided under the Participating Addendum to the Customer up to and including the date of termination.

1.6.5 Termination Due to Lack of Funds or Change in Law

The Customer shall have the right to terminate its Participating Addendum without penalty by giving 30 days' written notice to the Supplier as a result of any of the following:

1.6.5.1 Adequate funds are not appropriated or granted to allow the Customer to operate as required and to fulfill its obligations under the Participating Addendum;

1.6.5.2 Funds are de-appropriated or not allocated or if funds needed by the Customer, at the Customer's sole discretion, are insufficient for any reason;

1.6.5.3 The Customer's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Customer;

1.6.5.4 The Customer's duties are substantially modified.

1.6.6 Remedies of the Supplier in Event of Termination by the Customer

In the event of termination of the Participating Addendum for any reason by the Customer, the Customer shall pay only those amounts, if any, due and owing to the Supplier for Products actually rendered up to and including the date of termination of the Participating Addendum and for which the Customer is obligated to pay pursuant to its Participating Addendum or Purchase Instrument. Payment will be made only upon submission of invoices and federal or state law to the extent allowed by applicable federal or state law including proper proof of the Supplier's

claim. This provision in no way limits the remedies available to the Customer under the Participating Addendum in the event of termination. The Customer shall not be liable for any of the following costs:

- 1.6.6.1** The payment of unemployment compensation to the Supplier's employees;
- 1.6.6.2** The payment of workers' compensation claims, which occur during the Participating Addendum or extend beyond the date on which the Participating Addendum terminates;
- 1.6.6.3** Any costs incurred by the Supplier in its performance of the Participating Addendum, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Participating Addendum;
- 1.6.6.4** Any taxes that may be owed by the Supplier in connection with the performance of the Participating Addendum, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes, the Participating Member to provide Supplier a tax exemption certificate regarding tax..

1.6.7 The Supplier's Termination Duties

Upon receipt of notice of termination or upon request of the Customer, the Supplier shall:

- 1.6.7.1** Cease work under the Participating Addendum and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Participating Addendum, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Customer may require.
- 1.6.7.2** Immediately cease using and return to the Customer, any personal property or materials, whether tangible or intangible, provided by the Customer to the Supplier.
- 1.6.7.3** Comply with the Customer's instructions for the timely transfer of any active files and work product produced by the Supplier under the Participating Addendum.
- 1.6.7.4** Cooperate in good faith with the Customer, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Supplier.
- 1.6.7.5** Immediately return to the Customer any payments made by the Customer for goods that were not delivered or rendered by the Supplier.

1.7 Confidential Information

1.7.1 Access to Confidential Data

The Supplier's employees, agents, and subcontractors may have access to confidential data maintained by the Customer to the extent necessary to carry out its responsibilities under the Participating Addendum. The Supplier shall presume that all information received pursuant to the Participating Addendum is confidential unless otherwise designated by the Customer. If it is reasonably likely the Supplier will have access to the Customer's confidential information:

1.7.1.1 The Supplier shall provide to the Customer a written description of its policies and procedures to safeguard confidential information;

1.7.1.2 Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

1.7.1.3 The Supplier must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Supplier in connection with the performance of the Participating Addendum; and

1.7.1.4 The Supplier shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Participating Addendum.

1.7.2 Ownership

The private or confidential data shall remain the property of the Customer at all times.

1.7.3 No Dissemination of Confidential Data

No confidential data collected, maintained, or used in the course of performance of the Participating Addendum shall be disseminated except as authorized by law and with the written consent of the Customer, either during the period of the Participating Addendum or thereafter. Any data supplied to or created by the Supplier shall be considered the property of the Customer. The Supplier must return any and all data collected, maintained, created or used in the course of the performance of the Participating Addendum, in whatever form it is maintained, promptly at the request of the Customer.

1.7.4 Subpoena

In the event that a subpoena or other legal process is served upon the Supplier for records containing confidential information, the Supplier shall promptly notify the Customer and cooperate with the Customer or the Customer in any lawful effort to protect the confidential information.

1.7.5 Reporting of Unauthorized Disclosure

The Supplier shall immediately report to the Customer any unauthorized disclosure of confidential information.

1.7.6 If Supplier requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Supplier shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. Customer may release the information or material with or without advance notice to Supplier if no judicial or administrative proceeding is initiated and Customer determines the information or material is not confidential under Iowa or other applicable law, or if Supplier failed to properly request confidential treatment under the RFP, or if Supplier rescinds its request for confidential treatment.

1.7.7 Survives Termination

The Supplier's confidentiality obligation under the Participating Addendum shall survive termination of the Participating Addendum.

1.8 Indemnification

1.8.1 The Supplier agrees to indemnify and hold harmless the Customer, the Customers, its officers, employees, volunteers and agents (collectively the indemnified parties) from all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the indemnified parties, related to or arising from but not limited to the following:

1.8.1.1 Any breach of the Participating Addendum;

1.8.1.2 Any negligent, intentional or wrongful act or omission of the Supplier or any employee, agent or subcontractor utilized or employed by the Supplier;

1.8.1.3 Any failure of goods to comply with applicable specifications, warranties, and certifications under the Participating Addendum;

1.8.1.4 The negligence or fault of the Supplier in testing, , manufacture, or otherwise with respect to the Products or any parts thereof provided under the Participating Addendum;

1.8.1.5 The Supplier's negligent performance or attempted performance of the Participating Addendum, including any employee, agent or subcontractor utilized or employed by the Supplier;

1.8.1.6 Any failure by the Supplier to comply with the Compliance with the Law provision of the Participating Addendum;

1.8.1.7 Any failure by the Supplier to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Supplier to conduct business in the State of Iowa or United States;

1.8.1.8 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right, excluding any infringement arising out of Participating Member furnished intellectual property.

1.8.1.9 Any failure by the Supplier to adhere to the confidentiality provisions of the Participating Addendum.

1.8.2 Survives Termination

The indemnification obligation of the Supplier shall survive termination of the Participating Addendum.

1.9 Insurance

1.9.1 Insurance Requirements

The Supplier, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Supplier's expense, insurance covering its work during the entire term of this Participating Addendum and any extensions or renewals. The Supplier's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Supplier's performance of this Participating Addendum regardless of the date the claim is filed or expiration of the policy. The Customer and the purchasing Participating Member shall be named as additional insureds or loss payees, or the Supplier shall obtain an endorsement to the same effect, as applicable.

1.9.2 Types and Amounts of Insurance Required

Unless otherwise requested by the Customer in writing, the Supplier shall cause to be issued insurance coverages insuring the Supplier and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Participating Addendum for each occurrence. In addition, the Supplier shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

1.9.3 Certificates of Coverage

All insurance policies required by this Participating Addendum shall remain in full force and effect during the entire term of this Participating Addendum and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the Customer. The Supplier shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Participating Addendum, to the Customer upon execution of this Participating Addendum. The certificates shall be subject to approval by the Customer. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Customer. Approval of the insurance certificates by the Customer shall not relieve the Supplier of any obligation under this Participating Addendum.

1.9.4 Waiver of Subrogation Rights

The Supplier shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Customer. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Customer.

1.10 Performance Bond

When required, the Supplier shall post a performance bond in an amount equal to the amount shown on the Participating Addendum and provide a copy of the bond to the Customer within (10) days of execution of this Purchasing Instrument. The Supplier shall pay the cost of the bond. In the event that the Supplier or any subcontractor or any officer, director, employee or agent of the Supplier or any subcontractor or any parent or subsidiary corporation of the Supplier or any subcontractor fails to fully and faithfully perform any material requirement of this Participating Addendum, including without limitation the Supplier's obligation to indemnify the Customer and pay damages to the Customer, the performance bond shall be forfeited to the Customer. The bond shall be in a form customarily used in the Supplier's industry and shall be written by a surety authorized to do business in Iowa and that is acceptable to the Customer. The bond shall be in effect at all times during the term of this Participating Addendum and any extensions or renewals thereof and for one (1) year following the conclusion of the Participating Addendum. The Supplier warrants that it will maintain the required performance bond coverage as described herein without any lapse in coverage. A lapse of the bond will be a material breach of the Participating Addendum and shall be considered cause for the Customer to declare the Supplier in default under this Participating Addendum.

1.11 Warranties**1.11.1 Construction of Warranties Expressed in the Participating Addendum with Warranties Implied by Law**

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND THE SUPPLIER MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR USE AND/OR A PARTICULAR PURPOSE ARE HEREBY SPECIFICALLY DISCLAIMED.

The provisions of this Section apply during the term of the Participating Addendum and any extensions or renewals thereof.

1.11.2 Warranty – Nonconforming Goods

All Products delivered by Supplier to the Customer shall be free from any defects in material, or workmanship. If any Products offered by the Supplier are found to be defective in material or workmanship, or do not conform to Supplier's warranty, the Supplier shall offer have the option of returning, repairing, or replacing the defective Product at Supplier's expense. Payment for Products shall not constitute acceptance. Acceptance by the Customer shall not relieve the Supplier of its warranty or any other obligation under the Participating Addendum.

1.11.3 Compliance with Federal Safety Acts

Supplier warrants and guarantees to the Customer that the goods provided under the Participating Addendum are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and

Health Act; the Office of Management and Budget 2 CFR part 200 and the Anti-Kickback Act of 1986.

1.11.4 Concepts, Materials, and Goods Produced

Supplier represents and warrants that all the Products produced, or provided to the Customer pursuant to the terms of the Participating Addendum shall be wholly original with the Supplier or that the Supplier has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such Products. The Supplier represents and warrants that the Products and the Customer's use of same and the exercise by the Customer of the rights granted by the Participating Addendum shall not infringe upon any other work, other than material provided by the Participating Addendum to the Supplier to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the Products will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Supplier represents and warrants that it is the owner of or otherwise has the right to use and distribute the Products contemplated by the Participating Addendum.

1.11.5 Conformity with Contractual Requirements

The Supplier represents and warrants that the Products provided in accordance with the Participating Addendum will appear and operate in conformance with the terms and conditions of the Participating Addendum.

1.11.6 Authority to Enter into Participating Addendum

The Supplier represents and warrants that it has full authority to enter into the Participating Addendum and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Customer.

1.11.7 Obligations Owed to Third Parties

The Supplier represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Supplier pursuant to the Participating Addendum are or will be fully satisfied by the Supplier so that the Customer will not have any obligations with respect thereto.

1.11.8 Title to Product

The Supplier represents and warrants that title to any Products assigned, conveyed or licensed to the Customer is good and that transfer of title or license to the Customer is rightful and that all Products shall be delivered free of any security interest or other lien or encumbrance.

1.11.9 Industry Standards

The Supplier represents and expressly warrants that all aspects of the Products provided or used by it shall at a minimum conform to the standards in the Supplier's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Participating Addendum, which shall take precedence.

1.12 Product Recall

In the event that any of the Products are found by the Supplier, or court having jurisdiction to contain a defect, serious quality or performance deficiency, that such Product be recalled, the Supplier will promptly communicate all relevant facts to the Customer and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the Customer from taking such action as may be required of it under any such law or regulation. The Supplier shall perform all necessary repairs or modifications at its sole expense except to any extent that the Supplier and the Customer shall agree to the performance of such repairs by the Customer upon mutually acceptable terms.

1.13 Contract Administration**1.13.1 Incorporation of Documents**

The parties acknowledge that the Participating Addendum consists of these contract terms and conditions as well as the Competitive Bidding Document and the Bid Proposal. The Competitive Bidding Document and the Supplier's Bid Proposal are incorporated into the Participating Addendum by reference, except that no objection or amendment by a Supplier to the Competitive Bidding Document requirements shall be incorporated by reference into the Participating Addendum unless the Customer has explicitly accepted the Participating Addendum Supplier's objection or amendment in writing. If there is a conflict between the Participating Addendum, the Competitive Bidding Document and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Participating Addendum; (2) the Master Contract (3) the Competitive Bidding Document; (4) the Bid Proposal.

1.13.2 Intent of References to Competitive Bidding Documents

The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the Competitive Bidding Document and the Supplier's Bid Proposal. The failure of the parties to make reference to the terms of the Competitive Bidding Document or the Supplier's Bid Proposal in this document shall not be construed as creating a conflict and will not relieve the Supplier of the contractual obligations imposed by the terms of the Competitive Bidding Document and the Supplier's Bid Proposal. The contractual obligations of the Customer cannot be implied from the Supplier's Bid Proposal.

1.13.3 Compliance with the Law; Nondiscrimination in Employment

The Supplier, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Supplier, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Participating Addendum, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers.

Upon the Customer's written request, the Supplier shall submit to the Customer a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Supplier, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Participating Addendum.

In the event Supplier contracts with third parties for the performance of any of the Supplier obligations under this Participating Addendum as set forth in section 1.13.8, Supplier shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Participating Addendum to the contrary, Supplier's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Participating Addendum and the Customer may cancel, terminate, or suspend, in whole or in part, this Participating Addendum. The Customer may further declare Supplier ineligible for future state contracts in accordance with authorized procedures or the Supplier may be subject to other sanctions as provided by law or rule.

1.13.4 Amendments

The Participating Addendum may be amended in writing from time to time by mutual consent of the parties. All amendments to the Participating Addendum must be in writing and fully executed by the parties.

1.13.5 Third-Party Beneficiaries

There are no third-party beneficiaries to the Participating Addendum. The Participating Addendum is intended only to benefit the Customer and the Supplier.

1.13.6 Choice of Law and Forum

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Participating Addendum without regard to the choice of law provisions of Iowa law. Any and all litigation commenced in connection with this Participating Addendum shall solely be brought in the District Court for the State of Iowa in the county where venue is appropriate. Alternatively, if venue is proper in federal court, suit shall solely be brought in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity, which may be available to the Customer.

1.13.7 Assignment and Delegation

The Participating Addendum may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the Customer. For the purpose of construing this clause, a transfer of a controlling interest in the Supplier shall be considered an assignment.

1.13.8 Use of Third Parties

The Customer acknowledges that the Supplier may contract with third parties for the performance of any of the Supplier obligations under the Participating Addendum. All subcontracts shall be subject to prior approval by the Customer. The Supplier may enter into these contracts to complete the project provided that the Supplier remains responsible for all goods delivered under the Participating Addendum and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Supplier under the Participating Addendum shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the Customer. The Customer shall have the right to request the removal of a subcontractor from the Participating Addendum for good cause.

1.13.9 Integration

The Participating Addendum represents the entire Participating Addendum between the parties. The parties shall not rely on any representation that may have been made which is not included in the Participating Addendum.

1.13.10 Headings or Captions

The paragraph headings or captions used in the Participating Addendum are for identification purposes only and do not limit or construe the contents of the paragraphs.

1.13.11 Not a Joint Venture

Nothing in the Participating Addendum shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and acting toward the mutual benefits expected to be derived herefrom. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Participating Addendum.

1.13.12 Joint and Several Liability

If the Supplier is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Participating Addendum, and for any default of activities and obligations.

1.13.13 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of the Customer and the Supplier, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Participating Addendum shall not be construed as affecting any subsequent right to require performance or to claim a breach.

1.13.14 Notice

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Participating Addendum on behalf

of the party at the address identified in the Participating Addendum Declarations & Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided:

1.13.14.1 At the time it is actually received; or,

1.13.14.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

1.13.14.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

1.13.15 Cumulative Rights

The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

1.13.16 Limitation of Liability

If the Participating Addendum, Master Contract, Bid Proposal or other document related to, incorporated in, or made a part of this Participating Addendum, including, but not limited to, Supplier's Limited Warranty contain any provision(s) limiting Supplier's liability or providing for sole and exclusive remedies, any such provision(s) shall be null and void.

1.13.17 Severability

If any provision of the Participating Addendum is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Participating Addendum. Further, if any provision of the Participating Addendum is determined to be unenforceable by virtue of its scope but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

1.13.18 Time is of the Essence

Time is of the essence with respect to the performance of the terms of the Participating Addendum. Supplier shall ensure that all personnel providing goods to the Customer are responsive to the Customer's requirements and requests in all respects.

1.13.19 Authorization

Supplier represents and warrants that:

1.13.19.1 It has the right, power and authority to enter into and perform its obligations under the Participating Addendum.

1.13.19.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Participating Addendum, and the Participating Addendum constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

1.13.20 Successors in Interest

All the terms, provisions, and conditions of the Participating Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

1.13.21 Record Retention and Access

The Supplier shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the Customer throughout the term of the Participating Addendum for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Supplier shall permit the Auditor of the State of Iowa or any authorized representative of the Customer and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Supplier relating to orders, invoices or payments or any other documentation or materials pertaining to the Participating Addendum, wherever such records may be located. The Supplier shall not impose a charge for audit or examination of the Supplier's books and records. If an audit discloses incorrect billings or improprieties, the Customer reserves the right to charge the Supplier for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

1.13.22 Solicitation

The Supplier warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Participating Addendum upon an agreement or understanding for commission, percentage, brokerage or contingency.

1.13.23 Immunity from Liability

Every person who is a party to the Participating Addendum is hereby notified and agrees that the Customer, and all of its employees, agents, successors, and assigns are immune from liability and suit for or from Supplier's and/or subcontractors' activities involving third parties and arising from the Participating Addendum.

1.13.24 Public Records

The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

1.13.25 Clean Air and Water Certification

Supplier certifies that none of the facilities it uses to produce goods provided under the Participating Addendum are on the Environmental Protection Agency (EPA) List of Violating Facilities. Supplier will immediately notify the Customer of the receipt of any communication indicating that any of Supplier's facilities are under consideration to be listed on the EPA List of Violating Facilities

1.13.26 Debarred, Suspended, and Ineligible Status

Supplier certifies that the Supplier and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Supplier will immediately notify the Customer if Supplier is debarred by the Customer or placed on the Consolidated List of Debarred, Suspended, and Ineligible Suppliers by a federal entity.

1.13.27 Use of Name or Intellectual Property

Supplier agrees it will not use the name or any intellectual property, including but not limited to, any Customer trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the specific Customer agency involved.

1.13.28 Taxes

The Customer is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Supplier's employee's wages. The Customer is exempt from Customer and local sales and use taxes on the Deliverables. [State of Iowa Tax Exempt Letter](#)

1.13.29 Certification Regarding Sales and Use Tax

By executing the Participating Addendum the Supplier certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(47) & (48). The Supplier also acknowledges that the Customer may declare the Participating Addendum void if the above certification is false. The Supplier also understands that fraudulent certification may result in the Customer or its representative filing for damages for breach of contract.

1.13.30 Supplier Assignments of Rights -Antitrust Claims

In consideration of the mutual promises contained herein, Supplier, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa relating to the subject of the Participating Addendum.

1.13.31 Delays or Impossibility of Performance

Neither party shall be in default under the Participating Addendum if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used

in this Participating Addendum includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Supplier or any parent, subsidiary, affiliated or associated company of Supplier; claims or court orders that restrict Supplier's ability to deliver the Deliverables contemplated by this Participating Addendum; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Supplier shall not be excused from compliance with the terms and obligations of the Participating Addendum unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Participating Addendum. If a "force majeure" delays or prevents the Supplier's performance, the Supplier shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

1.13.32 Obligations Beyond Participating Addendum Term

The Participating Addendum shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Participating Addendum. All obligations of the Supplier incurred or existing under the Participating Addendum as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Participating Addendum.

1.13.33 Counterparts

The parties agree that the Participating Addendum has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

1.13.34 Further Assurances and Corrective Instruments

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Participating Addendum.