STATE OF COLORADO CONTRACT

Cover Page

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| State Agency  Colorado Department of Education | | | | Contract Number  CMS or other contract number  **CORE Encumbrance Number**  CORE encumbrance number |
| Contractor  Contractor's full legal name including "Inc.", "LLC", etc. | | | |
| Contract Maximum Amount  Initial Term | | | | Contract Performance Beginning Date  The later of the Effective Date or Month Day, Year |
|  | State Fiscal Year 20xx | $0.00 | | Initial Contract Expiration Date  Month, Day, Year |
| Extension Terms | | | |
|  | State Fiscal Year 20xx | $0.00 | | Contract Authority  Insert brief description of the authority to enter into the Contract |
|  | State Fiscal Year 20xx | $0.00 | |
|  | State Fiscal Year 20xx | $0.00 | |
|  | State Fiscal Year 20xx | $0.00 | |
| **Total for All State Fiscal Years** | | **$0.00** | |
| Contract Purpose  Briefly describe the Contract's purpose | | | | |
| Exhibits and Order of Precedence  The following Exhibits and attachments are included with this Contract:   1. Exhibit A – Statement of Work 2. Exhibit B – Rates 3. Exhibit C – Information Technology Provisions 4. Exhibit D – Education Data Privacy Provisions 5. Exhibit E – Sample Option Letter 6. Exhibit F – Federal Provisions 7. Exhibit G – PII Certification   In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:   1. Exhibit F – Federal Provisions 2. Colorado Special Provisions in Section 19 of the main body of this Contract. 3. Exhibit C – Information Technology Provisions 4. Exhibit D – Education Data Privacy Provisions 5. Exhibit G – PII Certification 6. The provisions of the other sections of the main body of this Contract. 7. Exhibit A – Statement of Work. 8. Exhibit B – Rates 9. Exhibit E – Sample Option Letter. | | | | |
| Principal Representatives | | | | |
| For the State: | | | For Contractor: | |
| Name | | | Name | |
| Department Name | | | Company Name | |
| Address | | | Address | |
| Address | | | Address | |
| City, State Zip | | | City, State Zip | |
| Email | | | Email | |

Signature Page

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

|  |  |
| --- | --- |
| **CONTRACTOR**  Contractor's full legal name including "Inc.", "LLC", etc.  By: Name & Title of Person Signing for Contractor  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **STATE OF COLORADO**  **Jared S. Polis, Governor**  Colorado Department of Education  By: Susana Córdova, Commissioner  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 2nd State or Contractor Signature if Needed  By: Name & Title of Person Signing for 2nd Signatory  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **LEGAL REVIEW**  **Philip J. Weiser, Attorney General**  By: Name & Title of Person Signing for AG  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| In accordance with § 24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.  **STATE CONTROLLER**  **Robert Jaros, CPA, MBA, JD**  State Purchasing and Contracts Office  By: Amanda Carroll, Central Contracts Specialist  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Effective Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

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1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Contract (the “State”). Contractor and the State agree to the terms and conditions in this Contract.

1. TERM and Effective Date
   1. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

* 1. Initial Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Cover Page for this Contract (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

* 1. Extension Terms – State’s Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

The State, at its discretion, shall have the option to increase or decrease the quantity of Goods and Services based upon the rates established in this Contract, and increase the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. If this clause is added to a Grant, then the terminology shall be revised to match the Grant’s terminology.

* 1. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§15**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Contract.

* 1. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for Breach of Contract by Contractor, which shall be governed by **§13.A.i**.

* + 1. Method and Content

The State shall notify Contractor of such termination in accordance with **§15**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

* + 1. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§13.A.i.a**.

* + 1. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

1. DEFINITIONS

The following terms shall be construed and interpreted as follows:

* 1. “**Breach of Contract**”means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
  2. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday, or any day on which the State observes one of the holidays listed in § 24-11-101(1), C.R.S.
  3. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the State.
  4. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
  5. “**Contract**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
  6. “**Contract Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
  7. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
  8. “**Deliverable**” means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor.
  9. “**Effective Date**” means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in § 24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
  10. “**End of Term Extension**” means the time period defined in Section **2.D.**
  11. “**Exhibits**” means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
  12. “**Extension Term**” means the time period defined in **§2.C**.
  13. “**Goods**” means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
  14. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation, **(i)** successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; **(ii)** unwanted disruption or denial of service; **(iii)** the unauthorized use of a State system for the processing or storage of data; or **(iv)** changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
  15. “**Initial Term**” means the time period defined in **§2.B.**
  16. “**Party**” means the State or Contractor, and “Parties” means both the State and Contractor.
  17. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.
  18. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
  19. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§ 24-72-501 and 24-73-101, C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et seq.*, C.R.S.
  20. “**Services**” means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
  21. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
  22. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
  23. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
  24. “**State Records**” means any and all State data, information, and records, regardless of physical form.
  25. “**Subcontractor**” means any third party engaged by Contractor to aid in performance of the Work.
  26. “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
  27. “**Work**” means the Goods delivered and Services performed pursuant to this Contract.
  28. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

1. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

1. PAYMENTS TO CONTRACTOR
   1. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that State Fiscal Year shown on the Cover Page for this Contract.

* 1. Payment Procedures
     1. Invoices and Payment
        1. The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
        2. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
        3. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.
        4. The acceptance of an invoice shall not constitute acceptance of any Work performed or Deliverables provided under this Contract.
     2. Interest

Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

* + 1. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor’s receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State’s review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

* + 1. Available Funds – Contingency – Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State’s obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State’s liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in **§2.E**.

1. REPORTING – NOTIFICATION
   1. Quarterly Reports.

In addition to any reports required pursuant to **§17** or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

* 1. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor’s ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State’s Principal Representative identified on the Cover Page for this Contract.

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

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with **§15** and in form designated by the State, within 20 days following the earlier to occur of Contractor’s decision to perform Services outside of the State of Colorado, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado. Such notice shall specify the type of Services to be performed outside the State of Colorado and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a Breach of this Contract. This sectionshall not apply if the Contract Funds include any federal funds.

* + 1. Performance Outside of the United States

Contractor shall request written approval from the State for Contractor to perform, or subcontract to perform, Services outside the United States. The State may approve or deny such request within the State’s sole discretion, whether or not services outside the United States are prohibited or restricted by the Statement of Work or by any Exhibit attached to this Contract. Following written approval from the State, Contractor shall comply with the notice provisions for performance outside the State of Colorado. Any notice provided to the State by Contractor regarding performance outside the United States shall be deemed ineffective if the State has not granted prior written approval for such performance.

* 1. SOC 1 Type II Annual Report

If Contractor performs Work for any of the State’s IT systems that impact the State’s Comprehensive Annual Financial Report as determined by the Colorado Office of the State Controller, Contractor, on an annual basis, shall deliver to the State, at Contractor’s sole cost and expense, Contractor’s System and Organization Controls 1 Type II Report (“SOC 1 Type II Report”) prepared by a qualified independent audit firm with respect to the Statement on Standards for Attestation Engagements, Reporting on Controls at a Service Organization (SSAE) as promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants, as amended, from time to time.

1. CONTRACTOR RECORDS
   1. Maintenance

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

* 1. Inspection

Contractor shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days’ notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

* 1. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Contractor’s performance of its obligations under this Contract using procedures as determined by the State or that governmental entity. The State shall monitor Contractor’s performance in a manner that does not unduly interfere with Contractor’s performance of the Work.

* 1. Final Audit Report

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

1. CONFIDENTIAL INFORMATION – STATE RECORDS
   1. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable; **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI; **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI; and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and in accordance with the HIPAA Business Associate Agreement attached to this Contract, as an Exhibit, if applicable. Contractor shall immediately forward any request or demand for State Records to the State’s Principal Representative.

* 1. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns, and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

* 1. Use, Security, and Retention

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

* 1. Incident Notice and Remediation

If Contractor becomes aware of any Incident, Contractor shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Contractor’s sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor’s planned remediation in response to any negative findings.

* 1. Data Protection and Handling

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

* 1. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a “Third-Party Service Provider” as defined in § 24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§ 24-73-101, *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, *et seq.*, C.R.S., Contractor, including, but not limited to, Contractor’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII or if a Contractor manages, hosts, or supports a database containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit \_\_\_ on an annual basis. Contractor’s duty and obligation to certify as set forth in Exhibit \_\_\_ shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

1. CONFLICTS OF INTEREST
   1. Actual Conflicts of Interest

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

* 1. Apparent Conflicts of Interest

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

* 1. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the actual or apparent conflict constitutes a Breach of Contract.

* 1. Contractor acknowledges that all State employees are subject to the ethical principles described in § 24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of § 24-18-105, C.R.S. with regard to this Contract.

1. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

* 1. Workers’ Compensation

Workers’ compensation insurance as required by state statute, and employers’ liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

* 1. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

* + 1. $1,000,000 each occurrence;
    2. $1,000,000 general aggregate;
    3. $1,000,000 products and completed operations aggregate; and
    4. $50,000 any one fire.
  1. Automobile Liability

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

* 1. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

* + 1. $1,000,000 each occurrence; and
    2. $2,000,000 general aggregate.
  1. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

* + 1. $1,000,000 each occurrence; and
    2. $1,000,000 general aggregate.
  1. Crime Insurance

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

* + 1. $1,000,000 each occurrence; and
    2. $1,000,000 general aggregate.
  1. Additional Insured

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

* 1. Primacy of Coverage

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

* 1. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§15** within seven days of Contractor’s receipt of such notice.

* 1. Subrogation Waiver

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

* 1. Public Entities

If Contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S. (the “GIA”), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintains at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor’s obligations under the GIA.

* 1. Certificates

Contractor shall provide to the State certificates evidencing Contractor’s insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that if Contractor’s subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor’s execution of the subcontract. No later than 15 days before the expiration date of Contractor’s or any Subcontractor’s coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section. Contractor shall submit all certificates of insurance required under this paragraph electronically via the following link:

<https://cdepurchasing.app.box.com/f/74d03b4e625249f182b3e5a5f00ee8a9>.

1. Limitation OF CONTRACTOR’S LIABILiTY TO STATE

The liability of Contractor, its Subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive, or exemplary loss not to exceed three (3) times the Maximum Amount payable by the State under this Contract or $1,000,000.00 whichever is greater. No limitation on Contractor's liability to the State under this Section shall limit or affect:

* 1. Contractor’s indemnification obligations to the State under this Contract;
  2. Any claims, losses, or damages for which coverage is available under any insurance required under this Contract;
  3. Claims or damages arising out of bodily injury, including death, or damage to tangible property of the State; or
  4. Claims or damages resulting from the recklessness, bad faith, or intentional misconduct of Contractor or its Subcontractors.
  5. Damages resulting from the Contractor’s loss or improper disclosure of PII and data received in connection with this Contract.

1. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§13** for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under § 24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

1. REMEDIES
   1. State’s Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in **§12,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

* + 1. Termination for Breach of Contract

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

* + - 1. Obligations and Rights

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

* + - 1. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor’s action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under **§2.E**.

* + - 1. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State’s damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

* + 1. Remedies Not Involving Termination

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

* + - 1. Suspend Performance

Suspend Contractor’s performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State’s directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

* + - 1. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

* + - 1. Deny Payment

Deny payment for Work not performed, or that due to Contractor’s actions or inactions, cannot be performed or if they were performed are reasonably of no value to the State; provided, that any denial of payment shall be equal to the value of the obligations not performed.

* + - 1. Removal

Demand immediate removal of any of Contractor’s employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State’s best interest.

* + - 1. Intellectual Property

If any Work infringes or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State **(i)** secure that right to use such Work for the State and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

* 1. Contractor’s Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in Section **12** and the dispute resolution process in **§14**, shall have all remedies available at law and equity.

1. Dispute Resolution
   1. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

* 1. Resolution of Controversies

If the initial resolution described in **§14.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in § 24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§ 24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

1. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party’s principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

1. RIGHTS IN WORK PRODUCT And Other Information
   1. Work Product
      1. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

* + 1. Patents

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

* + 1. Assignments and Assistance

Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses, and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

* 1. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Contractor are the exclusive property of the State (collectively, “State Materials”). Contractor shall not use, willingly allow, cause, or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

* 1. Exclusive Property of Contractor

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

1. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is $100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§ 24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State’s contract management system (“Contract Management System” or “CMS”). Contractor’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller Policies.

1. GENERAL PROVISIONS
   1. Assignment

Contractor’s rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor’s rights and obligations approved by the State shall be subject to the provisions of this Contract.

* 1. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

* 1. Binding Effect

Except as otherwise provided in **§18.A**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.

* 1. Authority

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

* 1. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

* 1. Counterparts

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

* 1. Entire Understanding

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

* 1. Digital Signatures

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

* 1. Modification

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

* 1. Statutes, Regulations, Fiscal Rules, and Other Authority

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

* 1. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor’s or a Subcontractor’s website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

* 1. Severability

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

* 1. Survival of Certain Contract Terms

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

* 1. Taxes

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

* 1. Third Party Beneficiaries

Except for the Parties’ respective successors and assigns described in **§18.A,** this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

* 1. Waiver

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

* 1. CORA Disclosure

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

* 1. Standard and Manner of Performance

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

* 1. Licenses, Permits, and Other Authorizations

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

* 1. Indemnification
     1. General Indemnification

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

* + 1. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of **§8** may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys’ fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

* + 1. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Contractor under this Contract (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor’s obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or Contractor’s subsidiaries or affiliates; **(b)** specified by Contractor to work with the IP Deliverables; **(c)** reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or **(d)** is reasonably expected to be used in combination with the IP Deliverables.

* 1. Accessibility
     1. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor’s Office of Information Technology (“OIT”) pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards. The most current State of Colorado technology standards are found at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>.
     2. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor’s failure to comply with §§24-85-101, *et seq.*, C.R.S., or the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.
     3. The State may require Contractor’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Contractor’s Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

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

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

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

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

* 1. **FUND AVAILABILITY – § 24-30-202(5.5), C.R.S.**

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

* 1. **GOVERNMENTAL IMMUNITY**

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

* 1. **INDEPENDENT CONTRACTOR**

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

* 1. **COMPLIANCE WITH LAW**

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

* 1. **CHOICE OF LAW, JURISDICTION, AND VENUE**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference that conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

* 1. **PROHIBITED TERMS**

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

* 1. **SOFTWARE PIRACY PROHIBITION**

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor’s services and Contractor shall not employ any person having such known interests.

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

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

Exhibit A, Statement of Work

Exhibit B, Rates

Exhibit c, information technology provisions

This Exhibitregarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

1. Protection of System Data
2. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
3. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. Information Technology is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
4. Any technology, equipment, or related services described in § 24-37.5-102(2), C.R.S.;
5. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
6. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
7. Contractor shall, and shall cause its Subcontractors to meet all of the following:
8. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
9. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
10. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
11. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
12. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of Colorado Department of Education’s Office of Information Management Services (“IMS”).
13. Comply with all rules, policies, procedures, and standards issued by IMS and the Governor’s Office of Information Technology (“OIT”), including change management, project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at https://oit.colorado.gov/standards-policies-guides/technical-standards-policies.
14. Subject to Contractor’s reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
15. Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its respective employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be deemed to be current.
16. Upon request, Contractor shall provide notice to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
17. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State’s requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and § 24-50-1002, C.R.S.
18. Data Handling
19. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of CDE’s IMS.
20. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor’s employees or agents, without the prior express written consent of IMS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
21. Upon request by the State made any time during the term of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State data.
22. This download file shall be made available to the State within 10 Business Days of the State’s request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
23. At any point during the term of this Contract, Contractor shall return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records, as directed by the State, and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State’s ability to access and retrieve State Records stored by Contractor.
24. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor’s infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract.
25. Delivery and acceptance
26. Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.
27. Contractor’s delivery of any Work or Deliverables to the State shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.
28. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. Such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor’s failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor’s gross negligence or willful misconduct.
29. warranty
30. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor’s warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
31. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the State to ascertain the feasibility, risks, and impacts of each recommendation. The State’s remedy for such defect or material non-conformity shall be:
32. Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or
33. Contractor shall refund to the State all amounts paid for such Work or Deliverable, as well as pay to the State any additional amounts reasonably necessary for the State to procure alternative goods or services of substantially equivalent capability, function, and performance.
34. Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.
35. Compliance
36. In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:
37. All policies and procedures of IMS and all Colorado Office of Information Security (“OIS”) policies and procedures which OIS has issued pursuant to §§ 24-37.5-401 through 406, C.R.S. and 8 CCR § 1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>.
38. All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor’s performance under the Contract. Such obligations may arise from:
39. Health Information Portability and Accountability Act (HIPAA);
40. IRS Publication 1075;
41. Payment Card Industry Data Security Standard (PCI-DSS);
42. FBI Criminal Justice Information Service Security Addendum;
43. CMS Minimum Acceptable Risk Standards for Exchanges; and
44. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration.
45. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor’s performance under the Contract.
46. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor’s compliance. Such access and information shall include:
47. An annual SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by IMS; or
48. The performance of security audit and penetration tests, as requested by IMS.
49. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide IMS with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application level risk assessments, and other security assessment activities as required by this Contract or reasonably requested by IMS. Contractor will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the State. The State will work with Contractor to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and IMS will consider such requests in accordance with their policies and procedures referenced herein.
50. transition of services

Upon request by the State prior to expiration or earlier termination of this Contract or any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any other contractor as directed by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State and/or any other contractor and shall promptly take all steps required to assist in effecting a complete transition of the Services as directed by the State. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Contract.

1. License or use audit rights
2. To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
3. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an “Audit Request”). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor (“Audit Certification”) within 120 days following the State’s receipt of the Audit Request.
4. If upon receipt of the State’s Audit Certification, the Parties reasonably determine that: (i) the State’s use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Contract (“Overuse”) and (ii) the State would have been or is then required to purchase additional maintenance and/or services (“Maintenance”), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.

Exhibit D, Education data privacy provisions

This exhibit (known by the following names: “Confidentiality and Protection of Personally Identifiable Information Agreement,” “PII Addendum,” “Privacy Addendum” or “Confidentiality Agreement”) regarding **Education Data Privacy Provisions** (the “Education Data Exhibit”) is an essential part of the agreement between the State and Contractor as described in Contract to which this Education Data Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Education Data Exhibit, all references to “Contract” shall include this Education Data Exhibit.

1. The following definitions shall apply to this Education Data Exhibit:
   1. “Business Days” means any day other than Saturday, Sunday, or a Legal Holiday recognized by CDE.
   2. “Destroy” means to remove Education Data from Contractor’s systems, paper files, records, databases, and any other media regardless of format, in accordance with the standard detailed in NIST Special Publication 800-88 Guidelines for Media Sanitization so that the Education Data is permanently irretrievable in the Contractor’s normal course of business.
   3. “Education Data” includes Student Personally Identifiable Information and Educator Personally Identifiable Information.
   4. “Educator Personally Identifiable Information (Educator PII)” includes, but is not limited to, the educator’s name; any unique identifier, including social security number; other information that, alone or in combination, is linked or linkable to a specific educator; or any other information related to an educator protected by any applicable state or federal law.
   5. “Education Incident” means an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of Education Data. Incidents include, but are not limited to successful attempts to gain unauthorized access to Education Data regardless of where such information is located; or any suspected event that is reasonably believed may lead to a threat to Education Data.
   6. “Services” means the Services to be performed by Contractor as set forth in this Contract, and shall include any Services to be rendered by Contractor in connection with the Goods.
   7. “Student Personally Identifiable Information (PII)” means (i) information that is collected, maintained, generated, or inferred and that, alone or in combination, personally identifies an individual student or the student's parent or family; (ii) information that is collected and stored at the individual student level and is included in a student’s educational record; or (iii) any other information related to a student protected by any applicable state or federal law.
   8. “Subcontractor” means any third party engaged by Contractor to aid in performance of the Work.
   9. “Targeted Advertising” means selecting and sending advertisements to an individual based on information obtained or inferred over time from the individual’s online behavior, use of applications, or Education Data.
2. General Provisions
   1. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to Education Data in connection with Contractor’s performance under the Contract, Contractor shall protect all Education Data in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor having access to Education Data in connection with the Contract.
   2. For the avoidance of doubt, the terms of this Exhibit shall apply to the extent that any of the following statements is true in regard to Contractor access, use, or disclosure of Education Data:
      1. Contractor provides physical or logical storage of Education Data;
      2. Contractor creates, uses, processes, discloses, transmits, or disposes of Education Data; or
      3. Contractor is otherwise given physical or logical access to Education Data in order to perform Contractor’s obligations under this Contract.
   3. The State reserves all right, title, and interest to Education Data and all related data and content.
   4. Contractor shall comply with all laws and regulations concerning confidentiality of Education Data, including but not limited to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; 34 C.F.R. Part 99 and the Student Data Transparency and Security Act, C.R.S. Section 22-16-101, *et seq.*
   5. Contractor shall immediately forward to the State’s Principal Representative any request or demand from a third party for Education Data in the possession of Contractor or Subcontractors.
   6. Upon request of the State or by the Colorado State Board of Education and subject to Contractor’s reasonable access security requirements and with reasonable prior notice, Contractor shall provide the State or a State approved delegate with access to Contractor’s Education Data processing facilities for the purpose of inspecting and monitoring the use of Education Data and compliance with the measures referred to in this Education Data Exhibit.
   7. Contractor shall send the State a written notice, which includes a clear explanation of the proposed changes, prior to making a material change to Contractor’s privacy policies.
3. Subcontractors
   1. Contractor may not maintain or forward Education Data to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Any backup or disaster recovery contractor shall be considered a Subcontractor that shall comply with the Subcontractor requirements in this Contract.
   2. Contractor shall not allow remote access to Education Data from outside the United States, including access by Contractor’s employees or agents, without the prior express written consent of the State. Contractor shall communicate any request regarding non-U.S. access to Education Data to the State’s Principal Representative. The State shall have sole discretion to grant or deny any such request.
   3. Contractor shall not share or forward any Education Data to any party in a manner inconsistent with Contractor’s privacy policy. Contractor shall not use a Subcontractor or disclose Education Data to a Subcontractor unless and until the Contractor contractually requires the Subcontractor to comply with C.R.S. §§ 22-16-108 through 22-16-111 and the requirements of this Contract.
   4. No later than thirty (30) days after the execution of this Contract, Contractor shall provide the State with information detailing the purpose and the scope of contracts between the Contractor and all Subcontractor(s) and the types and uses of Education Data that Subcontractor(s) holds under contracts between the Contractor and Subcontractor(s). Contractor shall provide copies of Subcontractor agreements to the State upon written request.
   5. If Contractor, any Subcontractor, or any subsequent Subcontractor has committed a material breach of the contract between Contractor and Subcontractor that involves the misuse or unauthorized release of Education Data, Contractor acknowledges that the State may terminate the Contract with Contractor unless Contractor terminates the contract with the Subcontractor as soon as possible after Contractor knows or has reason to know of Subcontractors’ or any subsequent subcontractors’ material breach.
4. Termination
   1. Should Contractor not comply with the requirements of this Contract and that non-compliance results in the misuse or unauthorized release of Education Data by the Contractor, the State may terminate the Contract immediately as provided under this Contract and in accordance with C.R.S. § 22-16-105(5).
   2. Contractor shall perform one or more of the following duties in accordance with the State’s written instructions:
      1. Contractor shall make available to the State a complete, encrypted, and appropriately authenticated download file of all Education Data. This download file shall be made available to the State within 10 Business Days of the State’s request, and shall contain, without limitation, all Education Data with system schema and transformation definitions or delimited text files with documents and detailed schema definitions along with attachments in its native format.
      2. Contractor shall accomplish a complete transition of all Education Data from Contractor to the State or to any replacement provider as directed solely by the State without any interruption of or adverse impact on the Services or any other Services provided by third parties in this Contract. Contractor shall cooperate fully with the State and/or such replacement provider and promptly take all steps required to assist in effecting a complete transition of the Education Data as directed by the State. All Services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Contract.
      3. Contractor shall, within 15 calendar days after receiving a written destruction request from the State, Destroy all Education Data collected, generated, or inferred as a result of this Contract. Contractor shall notify the State in writing of the date upon which all of the Education Data is Destroyed. If legislation imposed upon Contractor prevents it from Destroying all or part of the Education Data provided by the State to Contractor, Contractor shall provide the State with a written explanation of the requirements and the specific Education Data that must be retained. Contractor shall only retain the specific Education Data impacted by that legislation and shall not actively process such Education Data anymore. Contractor’s obligations under this paragraph shall survive termination of the Contract.
5. Use
   1. The State retains the right to use established operational services to access and retrieve Education Data stored on Contractor’s infrastructure at its sole discretion.
   2. Contractor shall not use or share Education Data beyond the purposes listed in the Statement of Work. Contractor shall ensure that all uses and sharing of Education Data authorized by this Contract are included in Contractor’s privacy policy.
   3. Contractor may use Education Data for a purpose not strictly authorized by the Contract only as follows:
      1. With the written consent of the State and, for uses of Student PII, with the written consent of the student (provided that the student is over the age of 18) or the student’s parent or legal guardian; and
      2. Provided that the use does not involve selling or using Education Data for Targeted Advertising or creating a personal profile of the student or educator.
   4. Contractor may use Education Data without the written consent of the State only for one or more of the following purposes:
      * 1. To ensure legal or regulatory compliance or to take precautions against liability.
        2. To respond or to participate in the judicial process.
        3. To protect the safety of users or others on Contractor’s website, online service, online application, or mobile application.
        4. To investigate a matter related to public safety.
   5. During the term of this Contract, if the State requests in writing the destruction of Student PII belonging to an individual student collected, generated, or inferred as a result of this Contract, Contractor shall Destroy the information within fifteen (15) calendar days after the date of the request.
   6. If Contractor seeks to share or publicly release Education Data without complying with the requirements of this Contract for Subcontractors, Contractor must de-identify or aggregate Education Data prior to providing that information to a third party or releasing the data publicly. For data to be de-identified or aggregate, the following requirements apply:
      1. Aggregated or de-identified Education Data shall not include direct identifiers, such as names, student IDs, or social security numbers. Aggregated or de-identified Education Data shall also not include any other sensitive and non-sensitive information that, alone or combined with other information, is linked or linkable to a specific individual.
      2. Simple removal of direct identifiers from the data to be released shall not constitute adequate de-identification.
      3. Contractor shall de-identify Education Data to remove cumulative re-identification risks.
      4. Contractor shall remove all Education Data that, in conjunction with previous data releases and other reasonably available information from education records or other sources, would allow for identification of a particular individual.
      5. Contractor shall, at the request of the State, provide the State with a document that lists the steps and methods Contractor shall use to de-identify Education Data.
      6. Any Education Data that is not properly de-identified or aggregated in accordance with this Contract and is publicly released or transferred to a third party by Contractor or Subcontractors, shall be considered an Education Incident.
6. Incident
   1. If Contractor becomes aware of an Education Incident affecting Contractor, Subcontractors, or any of Contractor’s agents, it shall notify the State’s Principal Representative within twenty-four (24) hours and cooperate with the State regarding the recovery and remediation of the Education Incident and the necessity to involve law enforcement, if any.
   2. If an Education Incident results in or is reasonably likely to result in the loss or misuse of Education Data and if Contractor or any of its Subcontractors is the cause or source of the Education Incident, Contractor shall be responsible for the following:
      1. Contractor shall be responsible for the cost of notifying each person whose Education Data may have been compromised by the Education Incident.
      2. Contractor shall take steps to reduce the risk of incurring a similar type of Education Incident in the future as directed by the State. This includes, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. This remediation plan will be provided to the State within ten (10) Business Days after providing the State with notice of the Education Incident. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof.
      3. The State may, in its sole discretion and at Contractor’s sole expense, require Contractor to engage the Services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor’s planned remediation in response to any negative findings.
      4. Contractor shall provide the State or its designated representatives with seven (7) days a week, twenty-four (24) hours a day access to Contractor’s Education Data processing facilities for the purpose of evaluating, mitigating, or resolving the Education Incident.
   3. Unauthorized disclosure of Education Data by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Contract. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all direct, consequential, and incidental damages arising from an Education Incident caused by Contractor or its Subcontractors.
7. Disallowed Activities
   1. Contractor shall not knowingly engage in any of the following activities:
      1. Contractor shall not sell Education Data, except that this prohibition does not apply to the purchase, merger, or other type of acquisition of the Contractor, or any assets of the Contractor by another entity, so long as the successor entity continues to be subject to the provisions of this Contract.
      2. Contractor shall not use or share Education Data with any party for the purposes of Targeted Advertising to students or educators.
      3. Contractor shall not use Education Data to create a personal profile of a student or educator other than for supporting the purposes authorized by this Contract or, for uses of Student PII, with the consent of the student (provided that the student is over the age of 18) or the student’s parent or legal guardian.
8. Data Security
   1. Contractor shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of Education Data. At a minimum, the information security program shall include the requirements listed in this Section, Data Security.
   2. Contractor shall take full responsibility for the security of all Education Data in its possession, and shall hold the State harmless for any damages or liabilities resulting from an unauthorized disclosure or loss thereof.
   3. Contractor shall provide for the security of such Education Data, in a form acceptable to the State, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, network firewalls, intrusion detection (host and network), data security logging and monitoring systems, and audits.
   4. Contractor shall perform, in a form reasonably acceptable to the State, current background checks on all of its respective employees and agents performing Services or having access to Education Data provided under this Contract. The background checks must include, but are not limited to, the following areas: County, State, National and Federal Criminal Records and a Sex Offender Registry Search. A background check performed within thirty (30) calendar days prior to the date such employee or agent begins performance on this Contract or obtains access to Education Data shall be deemed to be current. Contractor will provide notice to the State’s Principal Representative indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
   5. Contractor shall have strong access controls in place that ensure that all access to Education Data is limited to Contractor’s authorized employees and agents who require access to Education Data to perform Services under this Contract.
   6. Contactor shall ensure that all of Contractors’ workstations and other data processing devices storing or processing Education Data shall automatically lock when not in use and must be manually locked when left unattended.
   7. Contractor shall protect all Education Data with a complex password. Contractor shall ensure passwords are confidential and prohibit the sharing of passwords. Passwords shall not be written down or stored in an unsecure location. Contractor shall periodically change passwords and shall ensure passwords are not reused. Contractor shall have password locks for laptops and mobile devices.
   8. Contractor shall disable and/or immediately delete unused and terminated user accounts. Contractor shall periodically assess account inactivity for potential stale accounts.
   9. Contractor shall not share Education Data on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.
   10. Contractor shall implement annual intrusion penetration/vulnerability testing and shall remediate any findings a timely manner.
   11. Contractor shall encrypt Education Data at rest on central computing systems. Contractor shall also encrypt any laptop, mobile device, backup, backup media, removable media, tape or other copies that access, process, or store Education Data.
   12. Contractor shall provide annual, mandatory security awareness and Education Data handling training for all of its employees or agents handling Education Data pursuant to this Contract.
   13. Contractor shall install and maintain on computers accessing or processing Education Data appropriate endpoint security anti-virus and anti-malware software. Contractor shall ensure all Contractor’s data processing systems, servers, laptops, PCs, and mobile devices are regularly scanned and have all security patches applied in a timely manner.
   14. Contractor shall use a secure method such as Secure File Transfer Protocol (SFTP) or comparable method to transmit Education Data. Contractor shall never send Education Data via unencrypted email or transport Education Data on unencrypted removable media.
   15. Contractor shall have physical security in buildings housing Education Data, along with controlled physical access to buildings and/or data centers.
   16. Contractor’s devices used to copy or scan hard copies of Education Data must have encrypted storage. Contractor shall scrub storage devices when equipment is retired. Hard copies containing Education Data are discouraged and must be physically secured, not left unattended, and physically Destroyed.
   17. Contractor shall protect Education Data stored in cloud-based systems in the same manner as local Education Data. Use of free cloud based Services is prohibited. Contractor shall use secondary encryption to protect Education Data in cloud storage. Cloud environments, when used by Contractor, must be fully documented by Contractor and open to the State’s inspection and verification unless otherwise approved in writing by the State. Access to Contractor’s cloud based computing environments is only permitted via restricted access, by VPN, or least privileged access lists, and never accessible directly via the Internet.
9. Transparency Requirements
   1. Contractor acknowledges that the State will post this Contract to the State's website.
   2. If Contractor collects, stores, or accesses Student PII, Contractor must comply with the following requirements for transparency:
      1. Contractor shall facilitate access to and correction of any factually inaccurate Student PII in response to a request from the State.
      2. Contractor shall provide transparency to parents, school districts and the public about its collection and use of Student PII including posting the following information on its public website; Contractor shall update this information on its website as necessary to maintain accuracy:
         * 1. Contact information for an individual within Contractor’s organization that can provide information on or answer questions related to the use of Student PII by Contractor;
           2. An explanation of how Student PII will be shared with Subcontractors or disclosed to any third party;
           3. The types of Student PII Contractor collects, generates, or uses. This information must include all Student PII that is collected regardless of whether it is initially collected or ultimately held individually or in the aggregate; and
           4. An explanation of the Student PII, an explanation of how the Student PII is used, and the learning purpose for which the Student PII is collected and used.
10. Disclosure Allowances by Statute
11. The general rule under FERPA (the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; and 34 C.F.R. Part 99) is that PII from education records cannot be disclosed without written consent. However, FERPA includes several exceptions that permit the disclosure of PII from education records without consent.
12. The applicable FERPA Exception, allowing PII disclosure from education records is:
    * 1. The “Studies” Exception (20 U.S.C. § 1232g(b)(1)(F) and § 99.31(a)(6))  The Studies Exception allows for the disclosure of PII from education records without consent to organizations conducting studies for, or on behalf of, schools, school districts, or postsecondary institutions. Studies can be for the purpose of developing, validating, or administering predictive tests; administering student aid programs; or improving instruction.
      2. The “Audit or Evaluation” (20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5) and §§ 99.31(a)(3) and 99.35) : The audit or evaluation exception allows for the disclosure of PII from education records without consent to authorized representatives of the Comptroller General of the U.S., the Attorney General, the Secretary of Education, and State or local educational authorities (FERPA-permitted entities). Under this exception, PII from education records must be used to audit or evaluate a Federal- or State-supported education program, or to enforce or comply with Federal legal requirements that relate to those education programs (audit, evaluation, or enforcement or compliance activity). The entity disclosing the PII from education records is specifically required to use reasonable methods to ensure to the greatest extent practicable that its designated authorized representative complies with FERPA and its regulations.

“Education program” is an important term under the audit or evaluation exception because PII from education records can only be disclosed to audit or evaluate a Federal- or State-supported “education program,” or to enforce or to comply with Federal legal requirements related to an education program. As specified in the FERPA regulations, Section99.3, an education program must be principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.

* + 1. N/A – PII from education records (student PII) is not being disclosed.

1. The State will disclose to Contractor the following Student PII:
2. [Program Staff to Insert]
3. N/A – PII from education records (student PII) is not being disclosed.

EXHIBIT E, SAMPLE OPTION LETTER

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| State Agency  Insert Department's or IHE's Full Legal Name | | | | **Option Letter Number**  Insert the Option Number (e.g. "1" for the first option) |
| Contractor  Insert Contractor's Full Legal Name | | | | Original Contract Number  Insert CMS number or Other Contract Number of the Original Contract |
| Current Contract Maximum Amount  Initial Term | | | | Option Contract Number  Insert CMS number or Other Contract Number of this Option |
|  | State Fiscal Year 20xx | $0.00 | |
| Extension Terms | | | | Contract Performance Beginning Date  The later of the Effective Date or Month Day, Year |
|  | State Fiscal Year 20xx | $0.00 | |
|  | State Fiscal Year 20xx | $0.00 | |
|  | State Fiscal Year 20xx | $0.00 | | Current Contract Expiration Date  Month Day, Year |
|  | State Fiscal Year 20xx | $0.00 | |
| Total for All State Fiscal Years | | | $0.00 |

1. OPTIONS:
2. Option to extend for an Extension Term
3. Option to change the quantity of Goods under the Contract
4. Option to change the quantity of Services under the Contract
5. Option to modify Contract rates
6. Option to initiate next phase of the Contract
7. REQUIRED PROVISIONS:
8. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above,theState hereby exercises its option for an additional term, beginning Insert start dateand ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
9. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract referenced above,theState hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Contract, as amended.
10. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above,theState hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
11. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Contract referenced above,theState hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start dateand end on Insert ending date at the cost/price specified in Section Number.
12. **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract’s Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.
13. Option Effective Date:
14. The effective date of this Option Letter is upon approval of the State Controller or      , whichever is later.

|  |  |
| --- | --- |
| **STATE OF COLORADO**  Jared Polis, Governor  Colorado Department of Education  By: Scott D. Jones, Chief of Staff  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | In accordance with § 24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.  **STATE CONTROLLER**  **Robert Jaros, CPA, MBA, JD**  By: NAME, TITLE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Option Effective Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Exhibit F, Federal Provisions

1. Applicability of Provisions.
   1. The Contract or Purchase Order to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Contract or Purchase Order, or any attachments or exhibits incorporated into and made a part of the Contract or Purchase Order, the provisions of these Federal Provisions shall control.
2. Compliance.
   1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. System for Award Management (SAM) and UNIQUE ENTITY ID Requirements.
   1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
   2. Unique Entity ID. Contractor shall provide its Unique Entity ID to its Recipient, and shall update Contractor’s information at http://www.sam.gov at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.
4. Contract Provisions Required by Uniform Guidance Appendix II to Part 200.
   1. **Contracts for more than the simplified acquisition threshold,** which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. The simplified acquisitions threshold is $250,000
   2. **All contracts in excess of $10,000 must address termination for cause and for convenience** by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
   3. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
   4. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
   5. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
   6. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
   7. **Clean Air Act (42 U.S.C. 7401-7671q.) and the federal Water Pollution Control Act (33 U.S.C. 1251-1387),** as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
   8. **Debarment and Suspension** (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
   9. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
   10. **Prohibition on certain telecommunications and video surveillance services or equipment §2 CFR 200.216**
       1. Recipients and sub recipients are prohibited from obligating or expending loan or grant funds to:
          1. Procure or obtain;
          2. Extend or renew a contract to procure or obtain; or
          3. Enter into a contract (or extend a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
   11. **Contracts with small and minority businesses, women’s business enterprises, and labor surplus area firms. (2 CFR §200.321).** The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
   12. **Domestic preferences for procurements. (2 CFR §200.322)** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
   13. **Procurement of recovered materials. (2 CFR §200.323)** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
5. Termination for Convenience of the Government
   1. Pursuant to §4.2 of these Federal Provisions, the State of Colorado may terminate this contract, in whole or in part, when it is in the Government’s interest. Solicitations and contracts shall include clauses as required by FAR 49.502 (2023). Termination for convenience of the government shall comply with the following provisions of the Federal Acquisition Regulations:
      1. For Fixed Price Contracts: FAR 52.249-2 (2023)
      2. For Contracts for Personal Services: FAR 52.249-12 (2023)
      3. For Construction Contracts for Dismantling, Demolition, or Removal of Improvements: FAR 52.249-3 (2023)
      4. For Educational and Other Nonprofit Institutions: FAR 52.249-5 (2023)
6. Event of Default.
   1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

**EXHIBIT G, PII CERTIFICATION**

**STATE OF COLORADO**

**Third Party ENTITY / ORGANIZATION Certification for Access TO PII through a Database or Automated Network**

Pursuant to § 24-74-105, C.R.S., I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (legal name of entity / organization) (the “Organization”), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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