

STATE OF COLORADO
Colorado Department of Education
Memorandum of Understanding with
Lilac DiplomaSender, LLC

TABLE OF CONTENTS

I. PARTIES	2
II. EFFECTIVE DATE AND NOTICE OF NON-LIABILITY.....	2
III. RECITALS	2
IV. DEFINITIONS	2
V. TERM	6
VI. STATEMENT OF WORK.....	6
VII. REPORTING – NOTIFICATION	9
VIII. DIPLOMASENDER RECORDS	9
IX. CONFIDENTIAL INFORMATION-STATE RECORDS	10
X. CONFLICTS OF INTEREST.....	19
XI. REPRESENTATIONS AND WARRANTIES	19
XII. INSURANCE	20
XIII. BREACH	23
XIV. REMEDIES	23
XV. NOTICES AND REPRESENTATIVES.....	25
XVI. GOVERNMENTAL IMMUNITY	26
XVII.GENERAL PROVISIONS.....	26

I. PARTIES

This Memorandum of Understanding (MOU), is entered into by and between the State of Colorado, for the use and benefit of the Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203, hereinafter referred to as CDE, the Department or State, and Lilac DiplomaSender, LLC, dba www.DiplomaSender.com, 2745 Broce Drive, Norman, Oklahoma 73072, hereinafter referred to as DiplomaSender.

II. EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This MOU shall not be effective or enforceable until it is approved and signed by the Colorado Department of Education (hereinafter called the Effective Date).

III. RECITALS

A. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this MOU.

B. Purpose

The purpose of the MOU is to provide all Colorado High School Equivalency (HSE) testing program documentation.

C. References

All references in this MOU 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.

IV. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

“Agency” means a business, academic institution, or public organization acting as a representative on behalf of a Test Taker.

“Covered Information” means Personally Identifiable Information (PII); High School Equivalency Test-Taker Data, and in the event that DiplomaSender obtains or is provided it, Student Data; in any media or format that is created or provided by a user (High School Equivalency Test-Taker, the State, a school district, a local education agency, a student, or the student’s parent or legal guardian) to DiplomaSender in the course of the user’s use of DiplomaSender’s services; or is gathered by DiplomaSender from any source and contains student PII or Student Data.

“Documents” means a Colorado High School Equivalency Diploma, Transcript, Letter Verifying HSE Results, and Letter of Certification (Verifying HSE Diploma).

“High School Equivalency Test-Taker Data” means any data collected and related to an individual outside of the K-12 education system, most likely an adult, who registers, prepares for, or takes any test supplied or owned by the HSE Vendors who is seeking to obtain a high school equivalency credential through the HSE Vendor’s examination. DiplomaSender will at all times maintain reasonable security measures to protect the data. In addition, DiplomaSender will have full rights to access and use any of the High School Equivalency Test-Taker data only as agreed to by the individual.

“HSE” means High School Equivalency.

“HSE Certificate”, HSE Credential”, HSE Diploma” and HSE Endorsement” and “High School Equivalency Diploma” all mean a diploma issued by the Department of Education which indicates that the holder has met the minimum score requirements on the State Board approved high school equivalency examination(s).

“HSE Test-Taker Data” means Test Taker data and test results, both present and historical, for all tests taken.

“HSE Transcript” means the official transcript of Test Takers’ permanent test results generated by DiplomaSender based on the data and scores provided to it by the HSE vendors; Data Recognition Corporation, Educational Testing Service, and GED Testing Service, LLC. The transcript shall contain all the information presented on both sides of the Official Transcript of the tests results printed on copy-safe paper, which, when copied, identifies the copy as a copy, not as an original. The transcript shall be revised to the HSE vendor’s specifications and shall not contain the candidate’s raw score or the candidate’s essay score.

“HSE Vendor” means the vendors authorized by the Department to provide a high school equivalency examination, for use in Colorado, aligned to the Colorado Academic Standards in English language arts (reading, writing, and communicating), mathematics, science, and social studies. Currently, the authorized vendors include: Data Recognition Corporation, Educational Testing Service, and GED Testing Service, LLC.

“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 communication and information resources of the State pursuant to C.R.S. Section 24-37.5-401 et seq. Incidents include, but are not limited to (i) successful attempts to gain unauthorized access to a State system, State Information, or High School Equivalency Test-Taker Data 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.

“Memorandum of Understanding” means this MOU, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this MOU, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

“Party” means the State or DiplomaSender and “Parties” means both the State and DiplomaSender.

“Personally Identifiable Information (PII) Data” means all information about an individual that could reasonably be used to identify such individual as defined in C.R.S. Section 24-72-501(2) and includes, but is not limited to, any combination of (i) first and last name, (ii) first name or first initial and last name, (iii) residence or other physical address, (iv) electronic mail address, (v) telephone number, (vi) birth date, (vii) credit card information, (viii) social security number, (ix) driver’s license number, (x) identification card number, or (xi) any other information that identifies an individual personally. PII also means a dataset that is linked to a specific individual that would allow a reasonable person in a school community, who does not have knowledge of the relevant circumstances, to identify the individual with reasonable certainty.

“Recipient” means the person or Agency identified as authorized to access and or receive the Test Taker’s document.

“SFTP” means Secure File Transfer Protocol Secure FTP (File Transfer Protocol). Also known as "SSH File Transfer Protocol". A network protocol providing file transfer over a secure data stream which allows the scoring service to transfer large and small HSE Test-taker data records safely. SFTP might not be the best solution for Secure File Transfer Protocol. DiplomaSender’s Information Technology team, in collaboration with Microsoft’s Azure engineers, will make recommendations as improvements to security of FTP are improved and as best practices are implemented.

“Services” means the required services to be performed by DiplomaSender pursuant to this MOU.

“State Confidential Information” means all information, data, records, and documentary materials which are of a sensitive nature and belong to the State regardless of physical form or characteristics, including but not limited to any non-public State records, sensitive State data, protected State data, State personnel records, PII, PCI, and other information or data concerning individuals, which has been communicated, furnished, or disclosed by the State to DiplomaSender. Notwithstanding the foregoing, State Confidential Information shall not include State Records.

“Student Data” means data that is collected and stored by the DiplomaSender at the individual level and is included in an individual’s educational record and includes assessment results, including participation information, courses taken and completed, credits earned and other transcript information; course grades and grade point average; grade level and expected graduation year; degree, diploma credential attainment or other school exit information; attendance and mobility information between and within Colorado school districts; special education data and special education discipline reports limited to object information that is sufficient to produce the federal Title IV annual incident report; student gender, race, and ethnicity; and program participation information required by state or federal law. Notwithstanding anything contained herein, this definition shall not include High School Equivalency Test-Taker Data.

“State Information” means the combination of State Confidential Information and State Records. Notwithstanding anything contained herein, this definition shall not include High School Equivalency Test-Taker.

“State Records” means all information, data, records, and documentary materials which are not sensitive and belong to the State regardless of physical form or characteristics, including but not limited to any public State records, non-sensitive State data, and other 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 DiplomaSender which (i) is subject to disclosure pursuant to the Colorado Open Records Act, C.R.S. Sections 24-72-200.1, et seq.; (ii) is already known to DiplomaSender without restrictions at the time of its disclosure by DiplomaSender; (iii) is or subsequently becomes publicly available without breach of any obligation owed by DiplomaSender to the State; (iv) is disclosed to DiplomaSender, 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. Notwithstanding the foregoing, State Records shall not include State Confidential Information.

“Summary or De-identified Data” means data on public school students that has all identifiers enumerated in the definitions of PII and Student Data removed.

“Subcontractor” means third-parties, if any, engaged by DiplomaSender to aid in performance of its obligations.

“Test Taker” means a person who has one or more High School Equivalency scored tests.

“Upload” means receiving of data from a local computer system to the DiplomaSender system with the intent that the DiplomaSender system should store a copy of the data being transferred for use by the Test Taker.

“Work” means the tasks and activities DiplomaSender is required to perform to fulfill its obligations under this MOU, including the performance of the Services and delivery of the Goods.

“Work Product” means the tangible or intangible results of DiplomaSender’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

“XML” means Extensible Markup Language that defines a set of rules for encoding data for the purposes of moving the data from one system to another using an agreed upon schema. DiplomaSender relies upon the XML schema created for transferring test data from the HSE Vendors to DiplomaSender or from DiplomaSender to the HSE Vendors, or from DiplomaSender to CDE or recipients approved by CDE..

V. TERM

A. Initial Term-Work Commencement

The Parties’ respective performances under this MOU shall commence on the later of the Effective Date or March 28, 2016. This MOU shall terminate on December 31, 2019, unless sooner terminated or further extended as specified elsewhere herein. The previous MOU, issued between CDE and the DiplomaSender for Colorado HSE testing program documentation, shall terminate upon execution of this MOU.

B. Two Month Extension

The State, at its sole discretion upon written notice to DiplomaSender, may unilaterally extend the term of this MOU for a period not to exceed two months if the Parties are negotiating a replacement MOU (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this MOU in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The two-month extension shall immediately terminate when and if a replacement MOU is approved and signed by the Colorado State Controller.

VI. STATEMENT OF WORK

A. CDE shall:

1. Require HSE test center personnel and HSE examiners to direct Test Takers to the DiplomaSender website to view and/or purchase their diploma and transcript.
2. Communicate the HSE Vendors’ document fulfillment procedures to test centers and other organizations associated with the CDE HSE program in cooperation with DiplomaSender.

B. DiplomaSender shall:

1. Receive, manage, secure and store HSE Vendor test data for all series of HSE Vendor tests for the purpose of providing comprehensive secure document services on behalf of CDE which owns the records and authorizes the credential.

2. Maintain:
 - a. The database of record which contains all Test Taker records and is the centralized, legal, and final repository for all of Colorado's HSE test series data records from 1942 to the present.
 - b. The website at www.DiplomaSender.com to allow Test Takers to view, purchase, and distribute documents and to allow third party (aka agency) organizations to directly access Test Taker documents.
3. Be solely liable for the security of the records.
4. Provide document distribution status and tracking details to Test Takers.
5. Distribute Colorado HSE documents seamlessly, worldwide by USPS, UPS, FedEx, DHL, USPS Priority, fax, email, and browser.
6. Provide access and support to Test Takers and agencies through a "one call" call center.
7. Provide website access to Test Takers seven days a week, 24 hours a day.
8. Provide free verification of Test Taker pass/fail status for correction facilities and probation offices.
9. Provide research assistance to Test Takers who require assistance to locate records.
10. Electronically deliver all Test Taker documents within five minutes.
11. Provide automated reports to CDE through browser-based access on a monthly, quarterly, and annual basis.
12. Provide unlimited research access to HSE Test-Taker Data for matching Adult Basic Education (ABE) records and National Reporting System (NRS) reporting.
13. Provide basic explanation of CDE's HSE policy and regulations to Test Takers, as needed.
14. Coordinate the allocation of resources at test centers and the CDE HSE office to assist and assure DiplomaSender fulfills HSE document requests.
15. Answer the majority of policy and regulatory questions through e-response.
16. Answer complex questions through live response.

17. Upload HSE Test-Taker Data from all HSE Vendors. Receive data transfers on a daily basis, Monday through Friday, from the HSE Vendors' scoring services, Vendors' registration services, and other Vendors' authorized Subcontractors for the state of Colorado. The HSE Vendors shall transmit HSE data to a CDE Secure File Transfer Protocol (SFTP) location or if CDE requests, DiplomaSender will create and maintain an SFTP location on behalf of CDE.
 - a. Data will be transmitted as Extensible Markup Language (XML) files in a format acceptable to each HSE Vendor and acceptable to CDE.
 - b. The daily transfer will be scheduled at a mutually agreed time.
18. Notify CDE's principal representative a minimum of 30 days prior to making any changes in costs that may be established by DiplomaSender related to providing documents or executing services under this MOU.

C. Customer Service

1. Telephone and E-mail and Chat Support. DiplomaSender shall ensure that testers have access to live support via email, chat and a dedicated toll free phone number from at least 7:30 a.m. to 4:30 p.m. Mountain Time each weekday, excluding federal and Colorado state holidays. Call center personnel shall be trained specifically on the Colorado HSE program. Call center personnel must be able to clearly articulate spoken English. The call center and regional call centers must be located within the 48 contiguous states.
2. When call center staff are not available to take a call, a voicemail service system must be available to record the caller's message. Messages must be returned in a timely manner, always within one business day. For testers submitting questions via e-mail to DiplomaSender, a response must be received to their e-mail within 24 hours.
3. Customer Feedback. DiplomaSender shall maintain, administer, and improve the feedback process for customers contacting DiplomaSender with questions and requests via email and chat.
 - a. The feedback process must provide customers the ability to comment on their satisfaction with services including, but not limited to ordering diplomas, transcripts and verifications, fulfillment of the order(s), security of personally identifiable information, customer service, website functioning, etc.
 - b. DiplomaSender shall be responsible for compiling Colorado customer feedback and making the compilation available to CDE for review on a monthly or more frequently scheduled basis.
 - c. Customer feedback should indicate overall positive satisfaction with DiplomaSender services in at least 80% of instances.

D. Goods and Services

DiplomaSender shall procure Goods and Services necessary to complete the Work.

E. Employees

All persons employed by DiplomaSender or Subcontractors to perform Work under this MOU shall be DiplomaSender's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this MOU.

VII. REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this Section shall be in accordance with the procedures of and in such form as prescribed by the State.

A. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this MOU or which may affect DiplomaSender's ability to perform its obligations hereunder, DiplomaSender shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If neither of the State's principal representatives is then serving, such notice and copies shall be delivered to the Assistant Commissioner of CDE.

B. Noncompliance

DiplomaSender's failure to provide reports and notify the State in a timely manner in accordance with this Section may result in termination as provided under this MOU.

C. Subcontracts

Copies of any and all subcontracts and the associated non-disclosure agreements entered into by DiplomaSender to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by DiplomaSender related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

VIII. DIPLOMASENDER RECORDS

A. Maintenance

DiplomaSender shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. DiplomaSender shall maintain such records until the last to occur of: (i) a period of three years after the date this MOU expires or is sooner terminated, or (ii) the resolution of any pending MOU matters, or (iii) if an audit is occurring, or DiplomaSender has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the Record Retention Period).

B. Inspection

DiplomaSender shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe DiplomaSender's records related to this MOU during the Record Retention Period for a period of three years following termination of this MOU to assure compliance with the terms hereof. The State reserves the right to inspect the Work at all reasonable times and places during the term of this MOU, including any extensions or renewals. If the Work fails to conform to the requirements of this MOU, the State may require DiplomaSender promptly to bring the Work into conformity with MOU requirements, at DiplomaSender's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require DiplomaSender to take necessary action to ensure that future performance conforms to MOU requirements and exercise the remedies available under this MOU, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

DiplomaSender shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by DiplomaSender pursuant to the terms of this MOU using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with DiplomaSender's performance hereunder. All costs associated with monitoring or inspections activities of the State shall be paid for by the State.

D. Final Audit Report

If an audit is performed on DiplomaSender's records for any fiscal year covering a portion of the term of this MOU, DiplomaSender shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

IX. CONFIDENTIAL INFORMATION-STATE RECORDS

The Department does not intend to provide DiplomaSender with State Information in DiplomaSender's performance of the services listed in this MOU. However, in the event that DiplomaSender is provided or obtains State Information, DiplomaSender shall comply with and shall cause each of its Subcontractors and any other party performing Work under this MOU to comply with the provisions of this Section if it becomes privy to State Information in connection with its performance. In addition, this Section applies to Covered Information as specified in this Section.

Notwithstanding anything contained herein to the contrary, including but not limited to restrictions on transfer, use, destruction requirements, liability, etc., DiplomaSender shall have all rights in the Covered Information to the extent the High School Equivalency Test-Taker requests, acknowledges or agrees.

A. DiplomaSender shall comply with all federal and state laws and regulations regarding standards for privacy and confidentiality including, but not limited to: the federal Family and Educational Rights and Privacy Act (FERPA), the federal Individuals with Disabilities Education Act (IDEA), and the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996.

B. Confidentiality

DiplomaSender shall keep all State records, Covered Information and other confidential information at all times and comply with all laws and regulations concerning confidentiality of information or data concerning Test Takers. Any request or demand by a third party for State records, Covered Information and other confidential information in the possession of DiplomaSender shall be immediately forwarded to the State's principal representative. This provision does not apply to requests or demands by a third party for Covered Information that the Test-Taker has authorized DiplomaSender to release to specified third parties.

C. Notification

DiplomaSender shall notify its agent, employees, Subcontractors and assigns who may come into contact with State records, Covered Information, and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

D. Use, Security, and Retention

Covered Information of any kind shall not be distributed or sold to any third party or used by DiplomaSender or its agents in any way, except as authorized by this MOU, authorized in writing by the Test-Taker, or approved in writing by the State. DiplomaSender shall provide and maintain a secure environment that ensures confidentiality of all State records, Covered Information and other confidential information wherever located. Covered Information shall not be retained in any files or otherwise by DiplomaSender or its agents, except as permitted in this MOU or approved in writing by the State.

E. Protection

If DiplomaSender provides physical or logical storage, processing or transmission of Covered Information, DiplomaSender shall provide, and shall cause its subcontractors to provide, physical and logical protection for State hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in the Memorandum of Understanding. DiplomaSender shall provide the State with access, subject to DiplomaSender's reasonable access security requirements, seven (7) days a week, twenty-four (24) hours a day, for the purpose of inspecting and monitoring access and use of Covered Information, maintaining State systems, and evaluating physical and logical security control effectiveness. DiplomaSender, if it retains, stores, or is given Covered Information, at all times shall maintain, and shall cause its subcontractor's to maintain, network, system, and application security, which includes network firewalls, intrusion detection, and annual security testing. DiplomaSender, if it retains, stores, or is given Covered Information, shall comply and shall cause its subcontractors to comply, with State and federal regulations and guidelines related to security, confidentiality and auditing, including but not limited to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g and 34 C.F.R. Part 99. DiplomaSender, if it retains, stores, or is given Covered Information shall ensure, and shall cause its subcontractors to ensure, that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments and shall promptly report all breaches or attempted breaches to a representative of the OIS. Neither DiplomaSender nor its subcontractors shall have any rights to use or access any OIT or other State agency data or information, except with the prior approval of the State. DiplomaSender shall review, on a semi-annual basis, the Colorado Cyber Security Program (CCSP), posted at <http://www.colorado.gov/es/Satellite/Cyber/CISO/1207820732279>, and its related documents, including its policies and procedures to ensure compliance with the standards and guidelines published therein. DiplomaSender shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS. DiplomaSender shall follow, and shall cause its Subcontractors to follow, the State's Data Handling and Disposal policy, which can be found at www.colorado.gov/oit/security_policies.

F. Background Checks

DiplomaSender shall perform, and shall cause its Subcontractors to 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 State Information or Covered Information provided under this MOU. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access to State Information or Covered Information shall be deemed to be current.

G. Security-Notice

DiplomaSender is responsible for the security of all Covered Information provided to it by the State and/or the HSE vendors. If Covered Information is provided to DiplomaSender or any subcontractor by the State and/or the HSE Vendors, DiplomaSender shall comply with and shall cause its subcontractors to comply with the State's Cyber Security Policies, which the OIS has promulgated pursuant to C.R.S. Sections 24-37.5-401 through 406 and 8 C.C.R. Section 1501-5. The Policies are posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>.

H. Security Breach Remediation

If DiplomaSender becomes aware of a data security breach, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless DiplomaSender can establish that DiplomaSender or any of its subcontractors is not the cause or source of the breach, DiplomaSender shall be responsible for the cost of notifying each Colorado resident and residents of other states whose Covered Information may have been compromised. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State. DiplomaSender shall be responsible for performing an analysis to determine the cause of the breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. DiplomaSender shall present such analysis and remediation plan to the State within ten (10) days of notifying the State of the data security breach. The State reserves the right to adjust this plan, in its sole discretion. If DiplomaSender cannot produce the required analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis, produce a remediation plan, and DiplomaSender shall reimburse the State for the reasonable costs thereof. A breach of Covered Information shall have occurred when there has been unauthorized acquisition of unencrypted Covered Information data (electronic or otherwise) used in performance of the Memorandum of Understanding, or any subcontract from the DiplomaSender's or any subcontractor's possession which compromises security, confidentiality, or integrity of such Covered Information. DiplomaSender agrees to be liable for any unauthorized disclosure of Covered Information in its possession or in the possession of its subcontractors as if DiplomaSender was the owner of the data. DiplomaSender acknowledges that any breach of Covered Information is a material breach of the Memorandum of Understanding. DiplomaSender shall notify the State immediately of any breach or suspected breach, but in no event later than twenty-four (24) hours after DiplomaSender learns of suspected breach. The State may establish required remediation procedures and DiplomaSender shall comply without limitation as directed by the State. DiplomaSender shall bear all costs of such remediation.

I. Disclosure-Liability

Unauthorized disclosure of State records, Covered Information or other confidential information by DiplomaSender or any Subcontractor for any reason may be cause for legal action by third parties against DiplomaSender, the State or their respective agents. DiplomaSender 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 and related costs, incurred as a result of any act or omission by DiplomaSender, or its employees, agents, Subcontractors, or assignees pursuant to this Section. Notwithstanding any other provision of the Memorandum of Understanding, DiplomaSender shall be liable to the State for all consequential and incidental damages arising from a data security breach. The Work under the Memorandum of Understanding may require the State to supply data to DiplomaSender that contains Covered Information. The State, in its sole discretion may securely deliver such data directly to the facility where the data is used to perform the Work. The data is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes. DiplomaSender shall ensure that the data is not retained beyond time-frames established by the State.

J. End of Agreement Data Handling

- i. Upon request by the State made before or within sixty (60) days after the effective date of termination of the Memorandum of Understanding, DiplomaSender will make available to the State a complete and secure (i.e. encrypted and appropriately authenticated), download file of all system data in XML format, including all schema and transformation definitions, and/or delimited text files with documented, physical records, detailed schema definitions along with attachments in their native format.
- ii. At the State's request made before or within sixty (60) days after the effective date of termination of the Memorandum of Understanding, DiplomaSender will make available all information as listed in Subsection J.i. to the vendor, as specified by the Department, taking over the Colorado High School Equivalency (HSE) testing program documentation.
- iii. The Parties agree that on the termination of the provision of data processing services, DiplomaSender shall, at the choice of the State, return all the Covered Information transferred, and the copies thereof to the State, or shall destroy all the Covered Information and certify to the State that it has done so, unless legislation imposed on DiplomaSender prevents it from returning or destroying all or part of the Covered Information transferred. In that case, DiplomaSender warrants that it will guarantee the confidentiality of the Covered Information transferred and will not actively process the Covered Information transferred anymore.

K. Disposition of Data

The State retains the right to use the established operational services to access and retrieve State Information and Covered Information stored on DiplomaSender's infrastructure at its sole discretion. DiplomaSender and subcontractor warrant that upon request of the State and/or of the supervisory authority, that DiplomaSender will submit its data processing facilities for an audit of the measures referred to in ; VIII.D. The State reserves all right, title and interest, including all intellectual property and proprietary rights, in and to system data and content.

L. Safeguarding Covered Information

If DiplomaSender or any of its subcontractors will or may receive Covered Information under the Memorandum of Understanding, DiplomaSender shall provide for the security of such Covered Information, 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 and audits. DiplomaSender shall take full responsibility for the security of all Covered Information in its possession or in the possession of its subcontractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure of loss thereof.

M. Safeguarding Payment Card Industry (PCI) Data

If DiplomaSender or any of its subcontractors will or may receive PCI under the Memorandum of Understanding, DiplomaSender shall provide for the security of the PCI, in accordance with PCI Data Security Standard (DSS) 1.1. For the purposes of the Memorandum of Understanding, "PCI" shall mean any data related to card holders' names, credit card numbers, or other credit card information as may be protected by State and federal law. Security safeguards shall include, without limitation, supervision by responsible employees, approval of subcontractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of DiplomaSender's or its subcontractor's obligations under the Memorandum of Understanding, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications and inspections.

N. Data Security Assurances

1. Strong access control must be in place. All Covered Information must be at a minimum protected with a complex password, workstations and other data processing devices must automatically lock when not in use, and must be manually locked when left unattended. Passwords must be confidential and sharing of passwords is prohibited, must not be written down or stored in an insecure location, and periodically changed and not reused or a reasonable time period.

2. Unused and terminated user accounts must be disabled and/or deleted immediately; account inactivity must be periodically assessed for potential stale accounts. For the purpose of business continuity, terminated user accounts may remain active but the password will be changed.
3. Care must be exercised in inadvertently sharing Covered Information on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.
4. Systems must be in place for logging and monitoring access and use of Covered Information.
5. At a minimum, annual intrusion penetration/vulnerability testing will be implemented.
6. Laptop/mobile device password locks and full disk/storage encryption are required.
7. Covered Information at rest on central computing systems must be encrypted; any backup, backup media, removable media, tape or other copies must also be encrypted, and not used to transport data.
8. Mandatory annual Security awareness training on how to handle Covered Information is required.
9. Appropriate endpoint security anti-virus and anti-malware software must be installed and maintained on computers accessing or processing Covered Information.
10. Transmitting data must occur via a secure method such as Secure File Transfer Protocol (SFTP) or comparable and never sent via email or transported on removable media.
11. Physical security in buildings housing Covered Information, along with controlled physical access to buildings and/or data centers.
12. Ability to suppress small N-sizes for aggregated Test-Taker data reports is required. Aggregated Test-Taker data reports of any kind shall not be distributed or published by DiplomaSender or its agents in any way, except as approved in writing by the State.
13. After prescribed use is concluded, data disposal policies must apply for cleaning up all Covered Information. This includes secure scrubbing and securely overwriting data from storage, or physically destroying the storage media.

14. Devices used to copy or scan hard copies of Covered Information must have encrypted storage and have storage devices appropriately scrubbed when equipment is retired. Hard copy containing Covered Information is discouraged and must be physically secured, not left unattended, and physically destroyed.
15. All data processing systems, servers, laptops, PCs, and mobile devices must be regularly scanned and have all security patches applied in a timely manner.
16. Covered Information stored in cloud based systems must be protected in the same manner as local Covered Information, as described throughout this document. Use of free cloud based services is prohibited, and secondary encryption must be used as appropriate to protect data in cloud storage.
17. Cloud environments, when employed, must be fully documented and open to CDE inspection and verification.
18. Access to cloud based computing environments is only permitted via restricted access, by VPN or least privileged access lists, and never accessible directly via the Internet.

O. Transparency Requirements

If DiplomaSender operates an internet website, an on-line service, including cloud computing services, an on-line application or a mobile application that uses, creates or acquires Covered Information shall not knowingly engage in any of the following activities with respect to its web site, service or application:

1. Engage in targeted advertising of students on DiplomaSender's web site, service or application, or target advertising on any other web site, service or application when the targeting of the advertising is based upon any information, including Covered Information and persistent unique identifiers, that DiplomaSender has acquired because of the student's or parent's use of that DiplomaSender's web site, service or application.
2. Use Covered Information, including persistent unique identifiers, created or gathered by the DiplomaSender's web site, service or application, to amass a profile about a public school student, except in furtherance of a public school purpose as determined by the State.
3. Sell Covered Information, including PII to any third party.
4. Disclose Covered Information to any party unless the disclosure is:
 - a. Reasonably necessary in furtherance of a public school purpose of the web site, service or application and the recipient of the Covered Information contractually agrees to comply with the requirements herein and to not further disclose the Covered Information,

- b. Required by state or federal law,
 - c. Necessary to respond to or participate in a judicial or administrative proceeding,
 - d. To protect the safety of users or security of the DiplomaSender's website, service or application, or
 - e. To the extent required by law, to provide Covered Information to law enforcement agencies or for an investigation of a matter of public safety.
5. DiplomaSender may not gather or use Covered Information from any source unless it has demonstrated a specific legitimate educational purpose for doing so and the use has been expressly authorized by the Department in the MOU.
6. DiplomaSender acknowledges that the State will post this MOU to the Department's website and post a privacy score based on the Department's determination of the DiplomaSender's privacy and security protections for Covered Information, with such criteria to include whether DiplomaSender has signed the Student Privacy Pledge, whether DiplomaSender has agreed to all of the Privacy and Security protections in the Department's Policy for Privacy and Security in Third Party Contracts, and the number of complaints received by the Department concerning DiplomaSender's collection or use of Covered Information.
7. DiplomaSender agrees to provide transparency to parents, HSE Test Takers, school districts and the public about its collection and use of Covered Information including:
- a. Post on DiplomaSender's website contact information for the DiplomaSender or Subcontractor that collects or generates Covered Information,
 - b. Post on DiplomaSender's website the types of Covered Information that is collected or generated by DiplomaSender, its Subcontractors or disclosed to a third party and how DiplomaSender shares and uses the Covered Information,
 - c. Post on DiplomaSender's website the educational purpose(s) for which the Covered Information is used,

- d. Post on DiplomaSender's website its policies and procedures regarding retention and disposal of Covered Information,
- e. Upon request, provide a school district or local education agency with information about the specific data elements that are collected or generated by DiplomaSender, DiplomaSender's security policies and any other data that is merged with Covered Information that it collects or generates,
- f. Provide notice on its website to the public before making changes to its privacy policies,
- g. Facilitate HSE Test Takers' access to and correction of Covered Information,
- h. Respond to the Department when an interested party reports an alleged violation of privacy or security laws or the provisions of this MOU, and
- i. Post on DiplomaSender's website whether or not DiplomaSender has signed the Student Privacy Pledge posted at studentprivacypledge.org.

X. CONFLICTS OF INTEREST

DiplomaSender shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of DiplomaSender's obligations hereunder. DiplomaSender acknowledges that with respect to this MOU, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, DiplomaSender shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of DiplomaSender's obligations to the State hereunder. If a conflict or appearance exists, or if DiplomaSender is uncertain whether a conflict or the appearance of a conflict of interest exists, DiplomaSender 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 apparent conflict constitutes a breach of this MOU.

XI. REPRESENTATIONS AND WARRANTIES

DiplomaSender makes the following specific representations and warranties, each of which was relied on by the State in entering into this MOU.

A. Standard and Manner of Performance

DiplomaSender shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in DiplomaSender's industry, trade, or profession and in the sequence and manner set forth in this MOU.

B. Legal Authority – DiplomaSender Signatory

DiplomaSender warrants that it possesses the legal authority to enter into this MOU and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this MOU, or any part thereof, and to bind DiplomaSender to its terms. If requested by the State, DiplomaSender shall provide the State with proof of DiplomaSender's authority to enter into this MOU within 15 days of receiving such request.

C. Licenses, Permits, Etc.

DiplomaSender represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. DiplomaSender warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this MOU. Additionally, all employees, agents, and Subcontractors of DiplomaSender performing Services under this MOU shall hold all required licenses or certifications, if any, to perform their responsibilities. DiplomaSender, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for DiplomaSender to properly perform the terms of this MOU is a material breach by DiplomaSender and constitutes grounds for termination of this MOU.

XII. INSURANCE

DiplomaSender and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this MOU. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to DiplomaSender and the State.

A. DiplomaSender

1. Public Entities

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

2. Non-Public Entities

If DiplomaSender is not a "public entity" within the meaning of the GIA, DiplomaSender shall obtain and maintain during the term of this MOU insurance coverage and policies meeting the same requirements set forth in Section XII.B with respect to subcontractors that are not "public entities".

B. DiplomaSender – Subcontractors

DiplomaSender shall require each contract with subcontractors other than those that are public entities, providing Goods or Services in connection with this MOU, to include insurance requirements substantially similar to the following:

1. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of DiplomaSender or subcontractor employees acting within the course and scope of their employment.

2. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to DiplomaSender a certificate or other document satisfactory to DiplomaSender showing compliance with this provision.

3. 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.

4. Privacy Insurance

Such insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks (such as data breaches, release of confidential information, unauthorized access/use of information, identity theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) Minimum limit of coverage of \$1,000,000.00 per occurrence and \$2,000,000 aggregate.

5. Technology Errors & Omissions

Such insurance shall cover any and all acts, errors, omissions or negligence in the delivery, performance or non-performance of products and/or services under this MOU. Such Technology Errors & Omissions insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks and intellectual property infringement, such as copyrights, trademarks, services marks and trade dress. Minimum coverage shall be \$1,000,000.00.

6. Primacy of Coverage

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

7. Cancellation

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

8. Subrogation Waiver

All insurance policies in any way related to this MOU and secured and maintained by DiplomaSender or its subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against DiplomaSender or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

DiplomaSender and all subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this MOU. No later than 15 days prior to the expiration date of any such coverage, DiplomaSender and each subcontractors shall deliver to the State or DiplomaSender certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this MOU or any sub-contract, DiplomaSender and each subcontractors shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this Section.

XIII. BREACH

A. Defined

In addition to any breaches specified in other sections of this MOU, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against DiplomaSender, or the appointment of a receiver or similar officer for DiplomaSender or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in Section XIV. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this MOU in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

XIV. REMEDIES

If DiplomaSender is in breach under any provision of this MOU, the State shall have all of the remedies listed in this Section in addition to all other remedies set forth in other sections of this MOU following the notice and cure period set forth in Section XIII.B. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

The State may terminate this entire MOU or any part of this MOU. Exercise by the State of this right shall not be a breach of its obligations hereunder. DiplomaSender shall continue performance of this MOU to the extent not terminated, if any.

1. Obligations and Rights

To the extent specified in any termination notice, DiplomaSender shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, DiplomaSender shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this MOU's terms. At the sole discretion of the State, DiplomaSender shall assign to the State all of DiplomaSender's right, title, and interest under such terminated orders or subcontracts. Upon termination, DiplomaSender shall take timely, reasonable and necessary action to protect and preserve property in the possession of DiplomaSender in which the State has an interest. All materials owned by the State in the possession of DiplomaSender shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by DiplomaSender to the State and shall become the State's property.

2. Damages and Withholding

Notwithstanding any other remedial action by the State, DiplomaSender shall remain liable to the State for any damages sustained by the State by virtue of any breach under this MOU by DiplomaSender.

B. Early Termination in the Public Interest

The State is entering into this MOU for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this MOU ceases to further the public policy of the State, the State, in its sole discretion, may terminate this MOU in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this MOU by the State for cause or breach by DiplomaSender, which shall be governed by Section XIV.A or as otherwise specifically provided for herein.

1. Method and Content

The State shall notify DiplomaSender of such termination. The notice shall specify the effective date of the termination and whether it affects all or a portion of this MOU.

2. Obligations and Rights

Upon receipt of a termination notice, DiplomaSender shall be subject to and comply with the same obligations and rights set forth in Section XIV.A.1.

C. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

1. Suspend Performance

Suspend DiplomaSender's performance with respect to all or any portion of this MOU pending necessary corrective action as specified by the State. DiplomaSender shall promptly cease performance.

2. Removal

Notwithstanding any other provision herein, the State may demand immediate removal from performing work under this MOU of any of DiplomaSender's employees, agents, or subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this MOU is deemed to be contrary to the public interest or the State's best interest.

3. Intellectual Property

If DiplomaSender infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this MOU, DiplomaSender shall, at the State's option (a) obtain for the State or DiplomaSender the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

XV. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State:

Michelle Liu, Postsecondary Readiness Coordinator	
Colorado Department of Education	
201 E. Colfax Ave.	
Denver, CO 80203	
With a copy to:	Misti Ruthven, Director of Postsecondary Readiness
	Colorado Department of Education 201 E. Colfax Ave. Denver, CO 80203 Ruthven_M@cde.state.co.us

DiplomaSender:

Paul D. Hughey
paul.hughey@diplomasender.com
Lilac, LLC
2745 Broce Drive
Norman, OK 73072

XVI. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act Section 24-10-101, *et seq.* and the risk management statutes, C.R.S. Section 24-30-1501, *et seq.*, as amended.

XVII. GENERAL PROVISIONS

A. Assignment and Subcontracts

DiplomaSender's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by DiplomaSender or the State are subject to all of the provisions hereof. DiplomaSender shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in Section XVIII.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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

D. Counterparts

This MOU may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This MOU represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification

DiplomaSender 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 and related costs, incurred as a result of any act or omission by DiplomaSender, or its employees, agents, subcontractors, or assignees pursuant to the terms of this MOU; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

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

H. Modification

1. By the Parties

Except as specifically provided in this MOU, modifications of this MOU shall not be effective unless agreed to in writing by both parties in an amendment to this MOU, properly executed and approved in accordance with applicable Colorado State laws.

2. By Operation of Law

This MOU is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this MOU on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this MOU shall govern the relationship of the State and DiplomaSender. In the event of conflicts or inconsistencies between this MOU and its exhibits and attachments, including, but not limited to, those provided by DiplomaSender, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions.

2. The provisions of the main body of this MOU.

J. Severability

Provided this MOU can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this MOU in accordance with its intent.

K. Survival of Certain MOU Terms

Notwithstanding anything herein to the contrary, provisions of this MOU requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if DiplomaSender fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. Sections 39-26-101 and 201 *et seq.* Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. DiplomaSender shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing DiplomaSender for such taxes.

M. Third Party Beneficiaries

Enforcement of this MOU 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 MOU are incidental to the MOU, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach under a term, provision, or requirement of this MOU, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this MOU and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, *et seq.*

P. Federal Audit Provisions

Office of Management and Budget (OMB) Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156). All state and local governments and non-profit organizations expending \$500,000 or more from all sources (direct or from pass-through entities) are required to comply with the provisions of Circular No. A-133. The Circular also requires pass-through entities to monitor the activities of sub-recipients and ensure that sub-recipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all sub-recipients to notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$500,000.

COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Contracts and MOUs except where noted in italics.

A. GOVERNMENTAL IMMUNITY.

No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. Section Section 1346(b) and 2671 et seq., as applicable now or hereafter amended.

B. INDEPENDENT CONTRACTOR.

DiplomaSender shall perform its duties hereunder as an independent contractor and not as an employee. Neither DiplomaSender nor any agent or employee of DiplomaSender shall be deemed to be an agent or employee of the State. DiplomaSender 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 DiplomaSender or any of its agents or employees. Unemployment insurance benefits shall be available to DiplomaSender and its employees and agents only if such coverage is made available by DiplomaSender or a third party. DiplomaSender shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this MOU. DiplomaSender shall not have authorization, express or implied, to bind the State to any contract, liability or understanding, except as expressly set forth herein. DiplomaSender shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

C. COMPLIANCE WITH LAW.

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

D. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this MOU. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this MOU, to the extent capable of execution.

E. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

F. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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

G. EMPLOYEE FINANCIAL INTEREST. C.R.S. Sections 24-18-201 and 24-50-507.

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

H. PUBLIC CONTRACTS FOR SERVICES. C.R.S. Section 8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] DiplomaSender certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this MOU and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this MOU, through participation in the E-Verify Program or the State program established pursuant to C.R.S. Section 8-17.5-102(5)(c). DiplomaSender shall not knowingly employ or contract with an illegal alien to perform work under this MOU or enter into a contract with a subcontractor that fails to certify to DiplomaSender that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this MOU. DiplomaSender (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this MOU is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if DiplomaSender has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this MOU, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. Section 8-17.5-102(5), by the Colorado Department of Labor and Employment. If DiplomaSender participates in the State program, DiplomaSender shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that DiplomaSender has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If DiplomaSender fails to comply with any requirement of this provision or C.R.S. Section 8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this MOU for breach and, if so terminated, DiplomaSender shall be liable for damages.

1. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. Section 24-76.5-101.

DiplomaSender, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of C.R.S. Section 24-76.5-101 et seq., and (c) has produced one form of identification required by C.R.S. Section 24-76.5-103 prior to the effective date of this MOU.

SPs Effective 1/1/09

THE PARTIES HERETO HAVE EXECUTED THIS MOU

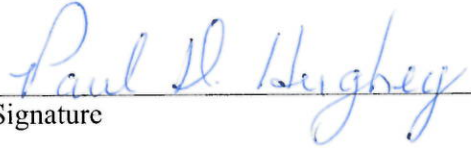
*** Persons signing for DiplomaSender hereby swear and affirm that they are authorized to act on DiplomaSender's behalf and acknowledge that the State is relying on their representations to that effect.**

DIPLOMASENDER:

By: Paul D. Hughey
Title: President & CEO

Lilac, LLC

dba DiplomaSender



*Signature

Date: March 23, 2016

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR

Department of Education
Rich Crandall, CPA, MBA, SNS, Commissioner



By: Rich Crandall, CPA, MBA, SNS, Commissioner

Date: 3/28/16

