

TABLE OF CONTENTS

	SIGNATURE AND COVER PAGE.....	1
1.	PARTIES	2
2.	TERM AND EFFECTIVE DATE.....	2
3.	AUTHORITY	4
4.	PURPOSE.....	4
5.	DEFINITIONS	4
6.	STATEMENT OF WORK	7
7.	PAYMENTS TO CONTRACTOR	7
8.	REPORTING - NOTIFICATION	8
9.	CONTRACTOR RECORDS.....	9
10.	CONFIDENTIAL INFORMATION.....	10
11.	CONFLICTS OF INTEREST.....	19
12.	INSURANCE	20
13.	BREACH.....	22
14.	REMEDIES	23
15.	DISPUTE RESOLUTION.....	24
16.	NOTICES AND REPRESENTATIVES	25
17.	RIGHTS IN WORK PRODUCT AND OTHER INFORMATION.....	25
18.	GOVERNMENTAL IMMUNITY	26
19.	STATEWIDE CONTRACT MANAGEMENT SYSTEM	26
20.	GENERAL PROVISIONS	27
21.	COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1).....	30
	EXHIBIT A, STATEMENT OF WORK	1
	EXHIBIT B, SAMPLE OPTION LETTER	1

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. 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.

B. Initial Term

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

C. 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 1 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 Exhibit B. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Effective Date absent prior approval from the State Purchasing Director in accordance with the Colorado Procurement Code.

D. 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 **§16**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 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 the Contract.

E. 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. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to **§14.A.i.a**.

iii. 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.

3. AUTHORITY

Authority to enter into this Contract exists in Insert statutory and/or other legal reference here.

4. PURPOSE

Briefly describe the Contract's purpose

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**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.
- B. “**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

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Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under 24-72-302 C.R.S.

- C. “**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.
- D. “**Contract Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- E. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- F. “**End of Term Extension**” means the time period defined in §2.D
- G. “**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 and Cover Page for this Contract.
- H. “**Exhibits**” means the following exhibits attached to this Contract:
 - i. **Exhibit A**, Statement of Work.
 - ii. **Exhibit B**, Sample Option Letter.
- I. “**Extension Term**” means the time period defined in §2.C
- J. “**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.
- K. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- L. “**Initial Term**” means the time period defined in §2.B
- M. “**Party**” means the State or Contractor, and “**Parties**” means both the State and Contractor.
- N. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- O. “**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; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.
- P. “**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.

- Q. “**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.
- R. “**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.
- S. “**State Fiscal Rules**” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- T. “**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.
- U. “**State Purchasing Director**” means the position described in the Colorado Procurement Code and its implementing regulations.
- V. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- W. “**Subcontractor**” means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- X. “**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.
- Y. “**Work**” means the delivery of the Goods and performance of the Services described in this Contract.
- Z. “**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.

6. 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.

7. PAYMENTS TO CONTRACTOR

A. 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 Signature and Cover Page for this Contract.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. 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.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.

ii. 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.

iii. 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.

iv. 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.

v. Erroneous Payments

The State may 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. The State may recover such payments 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.

8. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §19 or pursuant to any other Exhibit, for any contract having a term longer than 3 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 5 Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. 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 in §16.

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

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 §16, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States 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 §8.C shall constitute a breach of this Contract. This §8.C shall not apply if the Contract Funds include any federal funds.

9. CONTRACTOR RECORDS

A. 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 3 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").

B. Inspection

Contractor shall permit the State 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 2 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.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor

Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. 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.

10. CONFIDENTIAL INFORMATION

A. Definitions

- i. "Aggregate Data" means data collected and reported at the group, cohort, or institutional level that is aggregated using protocols that are effective for preserving the anonymity of each individual included in the data.
- ii. "Data" includes Student Personally Identifiable Information and Educator Data.
- iii. "Destroy" means to remove 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 Data is permanently irretrievable in the Contractor's and Subcontractor's normal course of business.
- iv. "Educator Data" includes, but is not limited to, the educator's name; any unique identifier, including social security number; and other information that, alone or in combination, is linked or linkable to a specific educator.
- v. "Health Insurance Portability and Accountability Act (HIPAA) Data" means any information, whether oral or recorded in any form or medium, that (i) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of any 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 (iii) identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual. HIPAA Data includes, but is not necessarily limited to, protected health information as defined in 45 C.F.R. Section 160.103 and 45 C.F.R. Section 164.501.
- vi. "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 or Student Personally Identifiable Information, Educator Data, or State Confidential Information 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.

- vii. "State Confidential Information" means all information, data, records, and documentary materials, regardless of physical form or characteristics, which are of a sensitive nature and belong to the State, including but not limited to any non-public State records, sensitive State data, protected State data, State personnel records and other information or data concerning individuals, which has been communicated, furnished, or disclosed by the State to Contractor. Notwithstanding the foregoing, State Confidential Information shall not include Student Personally Identifiable Information or Educator Data and shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.
- viii. "Student Personally Identifiable Information (PII)" means 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. Student Personally Identifiable Information includes, but is not limited to a student's name; the name of a student's parent or other family member; the address of a student or student's family; a personal identifier such as a student's social security number, student number, or biometric record; other indirect identifiers such as a student's date of birth, place of birth, and mother's maiden name; a student's email address, cell phone number or any other information that allows physical or online contact with a student; a student's discipline or criminal records; a student's juvenile dependency records; a student's medical or health records including, without limitation, records regarding a student's disabilities; a student's socioeconomic information, political affiliations, or religion; a student's text messages, IP address, or online search activity; a student's photos and voice recordings; a student's food purchases; or geolocation information.
- Student Personally Identifiable Information also includes data that is collected and stored by CDE at the individual student level and is included in a student's educational record and includes State-administered 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; date of birth, full name, gender, race, and ethnicity; and program participation information required by state or federal law.
- ix. "Subcontractor" means any third party engaged by Contractor to aid in performance of Contractor's obligations.
- x. "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 Data. Targeted Advertising does not include advertising to an individual at an online location based on the individual's current visit to that location or in response to the individual's request for information or feedback and is without the collection and retention of an individual's online activities over time. Targeted Advertising also does not include adaptive learning, personalized learning, or customized education.

B. General Provisions

- i. The State reserves all right, title, and interest, including all intellectual property and proprietary rights, in and to system data, State Confidential Information, Data, and all related data and content.
- ii. Contractor shall comply with all laws and regulations concerning confidentiality of State Confidential Information and 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. Contractor shall immediately forward to the State's principal representative any request or demand from a third party for State Confidential Information or Data in the possession of Contractor.
- iii. Upon request of the State or of the Colorado State Board of Education, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Section 10 by the State or by a State approved delegate.
- iv. 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.

C. Confidentiality of State Confidential Information

- i. Contractor shall notify its agents, employees, Subcontractors, and assigns who may come into contact with State Confidential Information that each is subject to the confidentiality requirements set forth in this Contract, and shall provide each with a written explanation of such requirements before permitting them to access State Confidential Information.
- ii. State Confidential Information shall not be distributed or sold to any third party or used by Contractor or its agents except as authorized by this Contract or as approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. State Confidential Information shall not be retained by Contractor or its agents except as permitted in this Contract or approved in writing by the State.
- iii. Disclosure of State Confidential Information by Contractor 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 costs, expenses, claims, damages, liabilities, and court awards (including attorney fees and costs), incurred by the State in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with State Confidential Information.

D. Safeguarding HIPAA Data

If Contractor will or may receive HIPAA Data under this Contract, Contractor shall provide for the security and privacy of the HIPAA Data in accordance with the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 (42 U.S.C. §1320d, as amended, and its implementing regulations, 45 CFR Parts 160, 162, and 164).

E. Subcontractors

- i. Contractor shall not use a Subcontractor or disclose 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 Section 10.
- ii. If Contractor discovers that 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 Data, Contractor acknowledges that the State may terminate the contract with Contractor unless Contractor terminates the contract with Subcontractor as soon as possible after Contractor knows or has reason to know of Subcontractors' or any subsequent subcontractors' material breach.
- iii. Upon discovering the misuse or unauthorized release of Data held by a Subcontractor or any subsequent Subcontractor, Contractor shall notify CDE and the Office of Information Security ("OIS") within one calendar day, regardless of whether the misuse or unauthorized release by the Subcontractor is a result of a material breach of the terms of the Contract or results in an Incident.
- iv. No later than thirty (30) days after the signing of this Contract, Contractor shall provide the State with information detailing the purpose and the scope of the contract between the Contractor and all Subcontractor(s) and the types and uses of Data that Subcontractor(s) holds under the Contract between the Contractor and Subcontractor(s).
- v. Contractor shall not maintain or forward Data to or from any other facility or location except for backup and disaster recovery purposes. Any backup or disaster recovery contractor shall be considered a Subcontractor that must comply with the Subcontractor requirements in this Section 10.

F. End of Agreement

- i. Should Contractor not comply with the requirements of this Section and that non-compliance results in the misuse or unauthorized release of Data by the Contractor, the State may terminate the Contract immediately as provided under this Contract and in accordance with C.R.S. Section 22-16-105(5).
- ii. Upon request by the State made before or within thirty (30) calendar days after termination of the Contract, Contractor shall make available to the State a complete and secure (i.e. encrypted and appropriately authenticated) download file of all data, including, but not limited to, all Data, State Confidential Information, schema and transformation definitions, or delimited text files with documented, detailed schema definitions along with attachments in its native format.
- iii. Following the termination of this Contract, Contractor shall, within thirty (30) calendar days, Destroy all Data and State Confidential Information collected, generated, or inferred as a result of this Contract. The Contractor shall notify the State of the date upon which all of the Data and State Confidential Information is Destroyed.
- iv. The State retains the right to use the established operational services to access and retrieve Data and State Confidential Information stored on Contractor's infrastructure at its sole discretion.

G. Use

- i. The Contractor shall not use or share Data beyond the purposes set forth as follows:

- a. To carry out the Contractor's responsibilities listed in Exhibit A, Statement of Work.
- b. [Vendor to insert additional services involving Data and the purposes for using Data].
- ii. In the event the Contract requires Contractor to store, process or transfer Data, Contractor shall store, process, and transfer Data only in or to facilities located within the United States.
- iii. During the term of this Contract, if the State requests the destruction of Data collected, generated or inferred as a result of this Contract, the Contractor shall Destroy the information within five (5) calendar days after the date of the request. Contractor can retain a student's PII provided that:
 - a. The Contractor obtains the consent of the student (if the student is eighteen or older) or the student's parent or legal guardian if the student is under eighteen) to retain the student's PII; or
 - b. The student has transferred to another state and the receiving state has requested that the Contractor retain the student's PII.
- iv. If Contractor seeks to share or publically release Data without complying with the requirements of this Section 10 for Subcontractors, Contractor must de-identify or aggregate the Data prior to providing that information to a third party or releasing the data publically. For data that is de-identified or aggregate, the following requirements apply:
 - a. Data that must be aggregated or de-identified shall include not only direct identifiers, such as names, student IDs or social security numbers, but also any other sensitive and non-sensitive information that, alone or combined with other information that is linked or linkable to a specific individual, would allow identification.
 - b. Simple removal of direct identifiers from the data to be released shall not constitute adequate de-identification.
 - c. Contractor shall de-identify data to remove cumulative re-identification risks.
 - d. Contractor shall remove all Data that in conjunction with previous data releases and other reasonably available information, including publicly-available directory information and de-identified data releases from education records and other sources would allow for identification of a particular individual.
 - e. Contractor shall have specific steps and methods used to de-identify or aggregate information to protect the confidentiality of the individuals. Contractor shall, at the request of the State, provide the State with a document that lists the steps and methods the Contractor shall use to de-identify the information.
 - f. Any aggregate or de-identified data that is not properly de-identified or aggregated and is transferred to a third party without the controls of this Section 10 for Subcontractors or publically released will be considered an Incident, misuse of Data, or unauthorized disclosure of Data.

H. Incident

- i. If Contractor becomes aware of an Incident, misuse of Data, or unauthorized disclosure involving any Data, it shall notify the CDE and OIS within one (1) calendar day and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any.
- ii. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.
- iii. Contractor shall determine the cause of an Incident and produce a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present its analysis and remediation plan to the State within ten (10) calendar days of notifying the State of an Incident. The State reserves the right to adjust this plan, in its sole discretion. 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 reasonable costs thereof.
- iv. Disclosure of 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 Section 10. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all direct, consequential and incidental damages arising from an Incident caused by Contractor or its Subcontractors.
- v. In the event of an Incident, Contractor shall provide the State or its designated representatives with access seven (7) days a week, twenty-four (24) hours a day, for the purpose of evaluating, mitigating or resolving the Incident.

I. Disallowed Activities

A Contractor that uses, creates or acquires Data shall not knowingly engage in any of the following activities:

- i. Contractor shall not collect, use or share Data for any purpose not specifically authorized by the Purchase Order. Contractor may use Data for a purpose not strictly authorized by the Purchase Order only with the written consent of the State and, for uses of PII not authorized by the Purchase Order, 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.
- ii. Contractor shall not use Data in a manner or disclose Data to any third party that is materially inconsistent with the Contractor's privacy policy, except as stated in subsection 3, below, of this Article X, Section I.
- iii. Contractor may use Data in a manner that is inconsistent with Contractor's privacy policy without violating the terms of this Purchase Order provided that the use does not involve selling or using Data for Targeted Advertising or creating a personal profile of the student or educator, and the use is for one or more of the following purposes:
 - a. To ensure legal or regulatory compliance or to take precautions against liability.
 - b. To respond or to participate in the judicial process.

- c. To protect the safety of users or others on Contractor's website, online service, online application, or mobile application.
- d. To investigate a matter related to public safety.

If Contractor uses or discloses Data in accordance with this Section I.3., Contractor shall notify the State within two calendar days of the use or disclosure of the Data.

- iv. Contractor shall not sell 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.
- v. Contractor shall not use or share Data with any party for the purposes of Targeted Advertising to students or educators.
- vi. Contractor shall not use Data to create a personal profile of a student or educator other than for supporting the purposes authorized by the State or, for uses of PII, with the consent of the student (if the student is eighteen or older) or the student's parent or legal guardian (if the student is under eighteen).

J. Data Security

- i. Contractor shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality and integrity of Data. At a minimum, the information security program shall include the requirements listed in this Section J – Data Security. In addition to these requirements, Contractor shall review, on a semi-annual basis, all OIS policies and procedures which OIS has promulgated pursuant to C.R.S. Sections 24-37.5-401 through 406 and 8 C.C.R. Section 1501-5 and posted at <http://oit.state.co.us/ois>, to ensure compliance with the standards and guidelines published therein. All Data received from CDE shall be considered part of the High data security category and Contractor shall comply with all requirements in OIS policies and procedures required for data categorized as High. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee. In the event of conflicts or inconsistencies between this Section 10. Confidential Information and OIS policies and procedures, such conflicts or inconsistencies shall be resolved by giving priority to this Section 10. Confidential Information.
- ii. Contractor shall provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Contract. Contractor shall take full responsibility for the security of all Data in its possession, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof. Contractor shall provide for the security of such 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.

- iii. Contractor shall provide the State or its designated representatives with access, subject to Contractor's reasonable access security requirements, for the purpose of inspecting and monitoring access and use of Data, maintaining State systems, and evaluating physical and logical security control effectiveness.
- iv. 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 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 or obtains access to Data shall be deemed to be current.
- v. Contractor shall have strong access controls in place.
- vi. Workstations and other data processing devices must automatically lock when not in use, and must be manually locked when left unattended.
- vii. Contractor shall protect all Data with a complex password. Contractor shall ensure passwords are confidential and prohibit the sharing of passwords. Passwords must 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.
- viii. Contractor shall disable and/or immediately delete unused and terminated user accounts. Contractor shall periodically assess account inactivity for potential stale accounts.
- ix. Contractor shall not share Data on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.
- x. Contractor shall implement annual intrusion penetration/vulnerability testing.
- xi. Contractor shall encrypt Data at rest on central computing systems. Contractor shall also encrypt any backup, backup media, removable media, tape or other copies. In addition, Contractor shall fully encrypt disks and storage for all laptops and mobile devices.
- xii. Contractor shall provide annual, mandatory security awareness and Data handling training for all of its employees/independent contractors handling Data pursuant to this Contract.
- xiii. Contractor shall install and maintain on computers accessing or processing 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.
- xiv. Contractor shall use a secure method such as Secure File Transfer Protocol (SFTP) or comparable method to transmit Data. Contractor shall never send Data via email or transport Data on removable media.
- xv. Contractor shall have physical security in buildings housing Data, along with controlled physical access to buildings and/or data centers.

- xvi. Contractor's devices used to copy or scan hard copies of Data must have encrypted storage. Contractor shall scrub storage devices when equipment is retired. Hard copies containing Data are discouraged and must be physically secured, not left unattended, and physically Destroyed.
- xvii. Contractor shall protect Data stored in cloud based systems in the same manner as local Data. Use of free cloud based services is prohibited. Contractor shall use secondary encryption to protect Data in cloud storage. Cloud environments, when employed by Contractor, must be fully documented by Contractor and open to CDE inspection and verification. 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.

K. Transparency Requirements

- i. Contractor acknowledges that the State will post this Contract to the State's website.
- ii. If Contractor collects, stores or accesses PII, Contractor must comply with the following requirements for transparency:
 - a. No later than thirty (30) calendar days after the signing of this Contract, Contractor shall provide the State with information detailing the purpose and the scope of the Contract, the types of PII that Contractor holds under this Contract, and the uses of PII under this Contract.
 - b. Contractor shall facilitate access to and correction of any factually inaccurate student PII in response to a request from a local education provider or from the State.
 - c. Contractor shall provide transparency to parents, school districts and the public about its collection and use of PII including posting the following information on its public website:
 - 1. Contact information for an individual within Contractor's organization that can provide information on or answer questions related to the use of PII by Contractor.
 - 2. An explanation of how the PII will be shared with Subcontractors or disclosed to any third party.
 - 3. The types of PII Contractor collects, generates, or uses. This information must include all PII that is collected regardless of whether it is initially collected or ultimately held individually or in the aggregate.
 - 4. An explanation of the PII, an explanation of how the PII is used, and the learning purpose for which the PII is collected and used.

Contractor shall update this information on its website as necessary to maintain accuracy. The Contractor acknowledges that the State will post this information on its public website.

L. Exclusions:

This Section 10 does not:

- i. Impose a duty on a provider of an interactive computer service, as defined in 47 U.S.C Sec. 230, to review or enforce compliance with this Contract.
 - ii. Impede the ability of a student to download, export, or otherwise save or maintain his or her own PII or documents.
 - iii. Limit internet service providers from providing internet connectivity to public schools or to students and their families.
 - iv. Prohibit a Contractor from marketing educational products directly to parents so long as the marketing does not result from the use of PII obtained by the Contractor as a result of providing its services under this Contract.
 - v. Impose a duty on a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this Contract on that software or those applications.
- M. This Section 10 does not prohibit Contractor's use of PII to:
- i. Use adaptive learning or design personalized or customized education.
 - ii. Maintain, develop, support, improve, or troubleshoot a Contractor's website, online service, online application, or mobile application.
 - iii. Provide recommendations for school, education, or employment purposes, provided Contractor does not receive any payment or other consideration from a third party to make or support the recommendation.
 - iv. Respond to a student's request for information or feedback provided Contractor does not receive any payment or other consideration from a third party for the information or feedback.
 - v. Identify, for a student, institutions of higher education or scholarship providers that are seeking students who meet specific criteria, only if Contractor has obtained the written consent of the student or the student's parent or legal guardian. Contractor may use PII for this purpose regardless of whether the institutions of higher education or scholarship providers provide payment or other consideration to the Contractor.
 - vi. In accordance with the terms of this Contract, produce and distribute, free or for payment or other consideration, student class photos and yearbooks only to the State, students, parents or individuals authorized by parents.
 - vii. Provide for the student, only with the express written consent of the student or the student's parent or legal guardian given in response to clear and conspicuous notice, access to employment opportunities, educational scholarships or financial aid, or postsecondary education opportunities, regardless of whether the Contractor receives payment or other consideration from one or more third parties in exchange for the PII. This exception applies only to Contractors that provide nationally recognized assessments that postsecondary institutions of higher education use in making admissions decisions.

11. CONFLICTS OF INTEREST

A. 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.

B. 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.

C. 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 this Contract.

12. 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 with an AM Best rating of A-VIII or better.

A. 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.

B. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and

completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. 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.

D. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

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

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

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

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. 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.

H. Primacy of Coverage

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

I. 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 §16 within 7 days of Contractor's receipt of such notice.

J. 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.

K. 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.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within 7 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 7 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 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

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, shall be a breach. 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.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 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 the Contract in order to protect the public interest of the State.

14. REMEDIES

A. 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 §13.B., shall have all of the remedies listed in this §14.A. 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.

i. Termination for Breach

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.

a. 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.

b. 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.

c. 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.

ii. Remedies Not Involving Termination

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

a. 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.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. 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.

d. 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.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State, (a) secure that right to use such Work for the State or Contractor; (b) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. 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 §13.B and the dispute resolution process in §15, shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. 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.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the purchasing director of Insert Dept. or IHE Acronym for resolution in accordance with the provisions of §§24-109-101, 24-109-106, 24-109-107, and 24-109-201 through 24-109-206 C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the purchasing director, 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.

16. NOTICES AND REPRESENTATIVES

Each individual identified below 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 (i) by hand with receipt required, (ii) by certified or registered mail to such Party’s principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. 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 below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

For the State:

Name and Title of Person
Department Name
Address 1
Address 2
City, State Zip
Email

For Contractor:

Name and Title of Person
Company Name
Address 1
Address 2
City, State Zip
Email

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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. 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.

i. 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.

ii. 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.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be 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.

18. 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 GIA; 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.

19. 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 anytime thereafter, this **§19** shall apply. Contractor agrees to be governed by and comply with the provisions of §24-102-205, §24-102-206, §24-103-601, §24-

103.5-101 and §24-105-102 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.

20. GENERAL PROVISIONS

A. 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

B. 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.

C. Binding Effect

Except as otherwise provided in **§20.A.**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. 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.

E. 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.

F. 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.

G. 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.

H. Jurisdiction and Venue

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.

I. 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 promulgated by the Colorado State Controller.

J. 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.

K. Order of Precedence

In the event of a conflict or inconsistency between this Contract and any Exhibits or attachments such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions in §21 of the main body of this Contract.
- ii. The provisions of the other sections of the main body of this Contract.
- iii. Exhibit A, Statement of Work.
- iv. Exhibit B, Sample Option Letter.

L. 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 the Contract.

M. Survival of Certain Contract Terms

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

N. 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 Colorado 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.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.B.**, 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 the Contract, and do not create any rights for such third parties.

P. 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.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-103.5-101 C.R.S., if any, are subject to public release through the CORA.

R. 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.

S. 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 license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

T. Indemnification

i. 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.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of **§10** 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 §10.

iii. 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 Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

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

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

A. CONTROLLER'S 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.

B. 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.

C. GOVERNMENTAL IMMUNITY.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101 *et seq.* C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (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.

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW.

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

G. BINDING ARBITRATION PROHIBITED.

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

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

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

I. 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.

J. VENDOR OFFSET. §§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.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101 et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101 et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK

DRAFT

EXHIBIT B, SAMPLE OPTION LETTER

Date:	Original Contract Routing # CMS #	Option Letter #	Contract Routing #
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1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.

- a. Option to renew only (*for an additional term*)
- b. Change in the amount of goods within current term
- c. Change in amount of goods in conjunction with renewal for additional term
- d. Level of service change within current term
- e. Level of service change in conjunction with renewal for additional term
- f. Option to initiate next phase of a contract

2) **REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:

- a. **For use with Options 1(a-e):** In accordance with Section(s) _____ of the Original Contract between the State of Colorado, Colorado Department of Education, and Contractor's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at a cost/price specified in Section _____, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Identify the Section, Schedule, Attachment, Exhibit etc.
- b. **For use with Option 1(f), please use the following:** In accordance with Section(s) _____ of the Original Contract between the State of Colorado, Colorado Department of education, and Contractor's Name, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc for the term beginning Insert start date and ending on Insert ending date at the cost/price specified in Section _____.
- c. **For use with all Options 1(a-f):** The amount of the current Fiscal Year contract value is increased/decreased by \$ _____ amount of change to a new contract value of tt to as consideration for services/goods ordered under the contract for the current fiscal year t. The first sentence in Section _____ is hereby modified accordingly. The total contract value including all previous amendments, option letters, etc. is _____.

3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p>STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Education</p> <hr style="border: 0.5px solid black;"/> <p>By: Insert Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
 Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval
 Date: _____