**CMS Routing #**

**CT DAAA #**

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| **STATE OF COLORADO**  **Colorado Department of Education**  **CONTRACT**  **With**  **Insert Contractor’s Full Legal Name.** |

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# PARTIES

This Contract (“Contract”) is entered into by and between Insert Contractor’s Name (“Contractor”), and the STATE OF COLORADO acting by and through the Colorado Department of Education (“State” or “CDE”). Contractor and the State hereby agree to the following terms and conditions.

# EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (“Effective Date”). The State shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

# RECITALS

## Authority, Appropriation and Approval

Funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance, and coordination have been accomplished from and with appropriate agencies. The Contractor was selected in accordance with State law as a result of Insert RFP Number.

## 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 Contract.

## Purpose

Briefly describe the contract’s purpose.

## References

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.

# DEFINITIONS

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

## Contract

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

## Contract Funds

“Contract Funds” means funds available for payment by the State to Contractor pursuant to this Contract.

## Contract Term

“Contract Term” means the Initial Term and the Renewal Term, if any, as provided in **§5**.

## Deliverable

“Deliverable” means the outcome to be achieved or output to be provided, in the form of a tangible or intangible object that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor. Examples of Deliverables include, but are not limited to, report(s), document(s), server upgrade(s), software license(s), and may be composed of multiple smaller deliverables.

## Evaluation

“Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in **§6**, this Contract, and its Exhibits.

## Exhibits and Other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work), **Exhibit B** (Rates), and **Exhibit C** (Option Letter).Attachment).

## Fiscal Year

“Fiscal Year” means the State’s fiscal year, which begins on July 1 of each calendar year and ends on June 30 of the following calendar year.

## Force Majeure

“Force Majeure” means failures or delays in performance by a Party due to causes beyond its reasonable control, including war, strikes, lockouts, fire, flood, storm, or other acts of God. Both Parties agree to use their best efforts to minimize the effects of such failures or delays.

## Goods

“Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services Contractor renders hereunder.

## Initial Term

“Initial Term” means the Initial Term of this Contract as provided in **§5.A**.

## Party or Parties

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

## Renewal Term

“Renewal Term” means the extension of the Initial Term pursuant to an Option Letter as provided in **§5.C**.

## Review

“Review” means examining Contractor’s Work to ensure that it is adequate, accurate, correct, and in accordance with the criteria established in **§6**, this Contract, and its Exhibits.

## Services

“Services” means the required services to be performed by Contractor pursuant to this Contract.

## State Controller

“State Controller” means the Colorado State Controller or authorized designee of the Colorado State Controller.

## Subcontractor

“Subcontractor” means any third party engaged by Contractor to aid in performance of Contractor’s obligations.

## Work

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

## Work Product

“Work Product” means the tangible or intangible results of Contractor’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. Any COTS or MOTS system in existence prior to the issuance of the Contract shall remain the property of the Contractor as it will not have been in the performance of its obligations under the resulting contract.

# TERM AND EARLY TERMINATION

## Initial Term – Work Commencement

The Parties’ respective performances under this Contract shall commence on its Effective Date. This Contract shall terminate one (1) year from the Operational Start Date unless sooner terminated or further extended as specified elsewhere herein.

## Two (2) Month Extension

The State, at its sole discretion and upon written notice to Contractor as provided in **§16**, may unilaterally extend the Contract Term for a period not to exceed two (2) months if the Parties are negotiating a replacement contract (and not merely seeking a term extension) at or near the end of the Initial Term or any Renewal Term. The provisions of this Contract in effect when such notice is given, including, but not limited to, prices, rates, and delivery requirements, shall remain in effect during the two (2) month extension. The two (2) month extension shall immediately terminate when and if a replacement contract is approved and signed by the State Controller.

## State’s Option to Extend

The State may require continued performance of this Contract for four (4) Renewal Terms of one (1) year each beyond the Initial Term at the same rates and same terms specified in the Contract. If the State exercises the options, it shall provide written notice to Contractor at least thirty (30) days prior to the end of the Initial Term or Renewal Term in form substantially equivalent to **Exhibit B**, specifying the length of the Renewal Term. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five (5) operational years.

# STATEMENT OF WORK

## Completion

Contractor shall complete the Work and its other obligations as described in this Contract and its Exhibits on or before the termination date of the Contract set forth in **§5.A**. The State shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Contract.

## Goods and Services

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds available and shall not increase the maximum amount payable hereunder by the State. Contractor shall not enter into separate or individual contracts for the Goods and/or Services provided under this Contract with other State agencies during the term of this Contract without the express written consent of CDE.

## Employees

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

# PAYMENTS TO CONTRACTOR

The State shall, in accordance with the provisions of this **§7**, pay Contractor in the amounts and using the methods set forth below:

## Maximum Amount

The maximum Contract amount payable under this Contract to Contractor by the State is Insert Written Max $ Amount, e.g. One Thousand Dollars and Insert Pennies as Fraction, e.g. 56/100 Cents ($Insert Max $ Amount), as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract set forth herein and in this Contract’s Exhibits**.** The maximum amount payable by the State to Contractor during each State Fiscal Year of this Contract shall be:

|  |
| --- |
| Insert $ Amount **for Start-Up Period** in **FY 2018** |
| Insert $ Amount **in FY** 2019 |
| Insert $ Amount **in FY** 2020 |
| Insert $ Amount **in FY** 2021 |
| Insert $ Amount **in FY** 2022 |
| Insert $ Amount **in FY** 2023 |

## Payment

### Advance, Interim, and Final Payments

Any advance payment allowed under this Contract or in any of its Exhibits shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State. Invoices shall be sent to Governor’s Office of Information Technology, 601 E. 18th Avenue, Suite 150, Denver, CO, 80203. Attn: Accounting.

### Interest

The State shall fully pay each invoice within forty-five (45) days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within forty-five (45) days shall bear interest on the unpaid balance beginning on the forty-sixth (46th) day at a rate not to exceed one percent (1%) per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days’ interest to be paid, and the interest rate.

### Available Funds – Contingency – Termination

The State is prohibited by law from making commitments beyond the term of the State’s current Fiscal Year. Therefore, Contractor’s compensation beyond the State’s current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund this Contract, in whole or in part, the State’s performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State’s liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

### Erroneous Payments

At the State’s sole 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, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants, or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

## Use of Funds

Contract Funds shall be used only for eligible costs identified herein and/or in the Budget.

## Option to Increase or Decrease Statewide Quantity of Service

The Department may increase or decrease the statewide quantity of goods and services described in the Contract based upon the rates established in the Contract. If the Department exercises the option, it will provide written notice to Contractor in a form substantially equivalent to **Exhibit C**. Delivery/performance of goods and services shall continue at the same rates and terms. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original Contract.

# REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§21**, if applicable.

## Performance, Progress, Personnel, and Funds

State shall submit a report to Contractor, upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor’s performance and the final status of Contractor’s obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any; set forth in this Contract and its Exhibits.

## Litigation Reporting

Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor’s ability to perform its obligations hereunder, Contractor shall notify the State of such action and deliver copies of such pleadings to the State’s principal representative as identified herein. If the State’s principal representative is not then serving, such notice and copies shall be delivered to the Commissioner of the Colorado Department of Education and the Chief Information Officer of OIT.

## Performance outside the State of Colorado and/or the United States

***[Not applicable if Contract Funds include any federal funds]*** Following the Effective Date, Contractor shall provide written notice to the State, in accordance with **§16** and in form substantially equivalent to **Exhibit C**, within twenty (20) days of the earlier to occur of Contractor’s decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this **§8.C** shall be posted on the Colorado Department of Personnel & Administration’s website. Knowing failure by Contractor to provide notice to the State under this **§8.C** shall constitute a material breach of this Contract.

## Noncompliance

Contractor’s failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Contract.

## Subcontracts

Contractor, with the consent of the State, may enter into one or more written subcontracts for the performance of Contractor’s obligations under this Contract. Each subcontract shall comply with all applicable federal and state laws and provide that such subcontract shall be governed by the laws of the State of Colorado. Contractor shall notify the State immediately, in writing by certified mail, of any action or suit filed and prompt notice of any claim made against Contractor by any Subcontractor or vendor which in the reasonable opinion of Contractor may result in litigation related in any way to the Contract with the State. Contractor shall notify the State in writing, in accordance with **§16** below, within ten (10) days of discovering that a Subcontractor has been served with any pleading in a legal action filed with a court or administrative agency which may affect such Subcontractor’s ability to perform its obligations under a subcontract.

# CONTRACTOR RECORDS

## Maintenance

Contractor 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, and electronic media files, pertaining in any manner to the Work or to the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three (3) years after the date this Contract expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(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, until such audit has been completed and its findings have been resolved (collectively, the “Record Retention Period”).

## Inspection

Contractor shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, copy, and/or transcribe Contractor’s records related to this Contract during the Record Retention Period for a period of three (3) years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the Contract Term, including any extensions or renewals. If the Work fails to conform to the requirements of this Contract, the State may require Contractor to promptly bring the Work into conformity with Contract requirements at Contractor’s sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

## Monitoring

Contractor shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract 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 Contractor’s performance hereunder.

## Final Audit Report

If an audit is performed on Contractor’s records for any fiscal year covering a portion of the Contract Term, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein. Contractor shall ensure the provisions of this paragraph apply to any subcontract related to performance under the Contract. Contractor shall, at Contractor’s sole expense, reconstruct any records not preserved or retained as required by this paragraph.

# CONFIDENTIAL INFORMATION

## Definitions

### "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.

### “Data” includes Student Personally Identifiable Information and Educator Data.

### "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.

### “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.

### “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.

### “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.

### "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.

### “Subcontractor” means any third party engaged by Contractor to aid in performance of Contractor’s obligations.

### “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.

## General Provisions

### 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.

### 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.

### 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.

### 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.

## Confidentiality of State Confidential Information

### 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.

### 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.

### 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.

## Subcontractors

### 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.

### 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.

### 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.

### 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).

### 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.

## End of Agreement

### 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).

### 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.

### 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.

### 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.

## Use

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

#### To carry out the Contractor’s responsibilities listed in Exhibit A, Statement of Work.

#### [Vendor to insert additional services involving Data and the purposes for using Data].

### 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.

### 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:

#### 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

#### The student has transferred to another state and the receiving state has requested that the Contractor retain the student’s PII.

### If Contractor seeks to share or publicly 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 publicly. For data that is de-identified or aggregate, the following requirements apply:

#### 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.

#### Simple removal of direct identifiers from the data to be released shall not constitute adequate de-identification.

#### Contractor shall de-identify data to remove cumulative re-identification risks.

#### 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.

#### 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.

#### 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 publicly released will be considered an Incident, misuse of Data, or unauthorized disclosure of Data.

## Incident

### 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.

### 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.

### 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.

### 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.

### 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.

## Disallowed Activities

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

### Contractor shall not collect, use or share Data for any purpose not specifically authorized by the Contract. Contractor may use Data for a purpose not strictly authorized by the Contract only with the written consent of the State and, for uses of PII not authorized by the Contract, 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.

### 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.

### Contractor may use Data in a manner that is inconsistent with Contractor’s privacy policy without violating the terms of this Contract 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:

#### To ensure legal or regulatory compliance or to take precautions against liability.

#### To respond or to participate in the judicial process.

#### To protect the safety of users or others on Contractor’s website, online service, online application, or mobile application.

#### 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.

### 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.

### Contractor shall not use or share Data with any party for the purposes of Targeted Advertising to students or educators.

### 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).

## Data Security

### 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.

### 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.

### 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.

### 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 of this Contract or obtains access to Data shall be deemed to be current.

### Contractor shall have strong access controls in place.

### Workstations and other data processing devices must automatically lock when not in use, and must be manually locked when left unattended.

### 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.

### Contractor shall disable and/or immediately delete unused and terminated user accounts. Contractor shall periodically assess account inactivity for potential stale accounts.

### Contractor shall not share Data on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.

### Contractor shall implement annual intrusion penetration/vulnerability testing.

### 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.

### Contractor shall provide annual, mandatory security awareness and Data handling training for all of its employees/independent contractors handling Data pursuant to this Contract.

### 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.

### 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.

### Contractor shall have physical security in buildings housing Data, along with controlled physical access to buildings and/or data centers.

### 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.

### 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.

## Transparency Requirements

### Contractor acknowledges that the State will post this Contract to the State's website.

### If Contractor collects, stores or accesses PII, Contractor must comply with the following requirements for transparency:

#### 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. Contractor will send this information to dataprivacy@cde.state.co.us.

#### 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.

#### 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:

#### 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.

#### An explanation of how the PII will be shared with Subcontractors or disclosed to any third party.

* + - * 1. 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.

#### 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.

## Exclusions:

#### This Section 10 does not:

### 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.

### Impede the ability of a student to download, export, or otherwise save or maintain his or her own PII or documents.

### Limit internet service providers from providing internet connectivity to public schools or to students and their families.

### 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.

### 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.

## This Section 10 does not prohibit Contractor’s use of PII to:

### Use adaptive learning or design personalized or customized education.

### Maintain, develop, support, improve, or troubleshoot a Contractor’s website, online service, online application, or mobile application.

### 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.

### 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.

### 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.

### 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.

### 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.

## Authorized Representative

* + 1. CDE designates Contractor as an Authorized Representative under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; and 34 C.F.R. Part 99.
    2. CDE will disclose to Contractor the following Data:
       1. [Vendor to Insert]
    3. CDE discloses Data to Contractor for the purposes of carrying out an audit or evaluation of Federal- or State-supported education programs or to enforce or to comply with Federal legal requirements that relate to those programs. Data will be used for the purposes stated in this Contract between CDE and Contractor and will be governed by the terms of this Contract.
    4. Contractor shall only disclose Data to Subcontractors who are designated as Authorized Representatives and who have legitimate interests in the audit or evaluation of a Federal- or State-supported education program or for compliance or enforcement of Federal legal requirements related to these programs.

# CONFLICTS OF INTEREST

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

# REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties for the benefit of the State on the date hereof, each of which was relied upon and will be relied upon by the State in entering into this Contract.

## Standard and Manner of Performance

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

## Legal Authority – Contractor Signatory

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

## Licenses, Permits, Etc.

Contractor 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, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, 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 Contractor to properly perform the terms of this Contract is material breach by Contractor and constitutes grounds for termination of this Contract.

# INSURANCE

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

## Contractor

### Public Entities

If Contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act, CRS § 24-10-101, et seq., as amended (the “GIA”), then Contractor shall maintain 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. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor 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.

### Non-Public Entities

If Contractor is not a “public entity” within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the same requirements set forth in **§13.B** with respect to Subcontractors that are not “public entities.”

## Contractors – Subcontractors

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

### Worker’s Compensation

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

### 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 commercial 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 Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

### 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.

### Professional Liability

Contractor agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of $1,000,000 per occurrence and $1,000,000 in the aggregate, written on an occurrence form that provides coverage for its work undertaken pursuant to this Contract. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this State Contract and for at least two (2) years beyond the completion and acceptance of the Work under this Contract, or, alternatively, a two (2) year extended reporting period must be purchased.

### Cyber Privacy Liability

Contractor agrees to maintain Cyber Privacy Insurance for claims and losses with respect to network, internet (cloud) or other data disclosure risks (such as data breaches, releases of confidential information, unauthorized access/use of information, and identity theft) with minimum limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate.

### Additional Insured

The State shall be named as additional insured on all Commercial General Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor or any Subcontractors hereunder.

### Primacy of Coverage

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

### Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least thirty (30) days’ prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§16** within seven (7) days of Contractor’s receipt of such notice.

### Subrogation Waiver

All insurance policies in any way related to this Contract and secured and maintained by Contractor or its Subcontractors as required herein 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.

## Certificates

Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven (7) days of the Effective Date of this Contract. No later than fifteen (15) days prior to the expiration of any such coverage, Contractor and each Subcontractor shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any subcontract, Contractor and each Subcontractor shall, within ten (10) days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

# BREACH

## Defined

In addition to any breaches specified in other sections of this Contract, 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 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 twenty (20) days after the institution or occurrence thereof, shall also constitute a breach.

## 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 in the manner provided in **§16**. If such breach is not cured within thirty (30) days of receipt of written notice, or if a cure cannot be completed within thirty (30) days, or if cure of the breach has not begun within thirty (30) days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15**. 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 Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

# REMEDIES

If Contractor is in breach under any provision of this Contract, the State shall have all of the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in **§14.B**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

## Termination for Cause and/or Breach

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

### Obligations and Rights

To the extent specified in any termination notice, Contractor 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, Contractor 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 the terms of this Contract. At the sole discretion of the State, Contractor shall assign to the State all of Contractor’s right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State’s property.

### Payments

The State shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined 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 the same as if this Contract had been terminated in the public interest, as described herein.

### 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 by virtue of any breach under this Contract by Contractor and the State may withhold any 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 loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services, or substitute Goods as cover.

## Early Termination in the Public Interest

The State is entering into this Contract 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 Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract 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 Contract by the State for cause or breach by Contractor, which shall be governed by **§15.A** or as otherwise specifically provided for herein.

### 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.

### Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in **§15.A.i**.

### Payments

If this Contract is terminated by the State pursuant to this **§15.B**, Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor’s obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than sixty percent (60%) completed, 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 hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

## Remedies Not Involving Termination

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

### Suspend Performance

Suspend Contractor’s performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling Contractor to any adjustment in price/cost or performance schedule. Contractor shall promptly cease performance 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 under this provision.

### Withhold Payment

Withhold payment to Contractor until corrections in Contractor’s performance are satisfactorily made and completed.

### Deny Payment

Deny payment for those obligations not performed, that due to Contractor’s actions or inactions cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

### Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor’s employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State’s best interest.

### Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret, or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the State’s option **(a)** obtain for the State or Contractor 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.

# 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:

|  |
| --- |
| Name of Contact |
| Colorado Department of Education |
| Address |
| Address |
| Email |

|  |
| --- |
| Brenda Berlin, CFO |
| Governor’s Office of Information Technology |
| 601 East 18th Avenue, Suite 150 |
| Denver, CO 80203 |
| OIT\_Contracts@state.co.us |

## Contractor:

|  |
| --- |
| Name and Title of Person |
| Company Name |
| Address 1 |
| Address 2 |
| Town, State, ZIP |
| Email Address |

# RIGHTS IN DATA, DOCUMENTS, and COMPUTER SOFTWARE

## State Materials

Except to the extent specifically provided elsewhere in this Contract, any State Information, pre-existing State software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State (collectively, “State Materials”). All State Materials shall be delivered to the State by Contractor upon completion or termination of this Contract. The State’s exclusive rights in any Work Product prepared by Contractor shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause, or permit any State Materials to be used for any purpose other than the performance of Contractor’s obligations hereunder without the prior written consent of the State.

## Contractor Materials

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

# INTELLECTUAL PROPERTY ESCROW

Contractor agrees to deposit the software, documentation, and/or all other related material(s) with a reputable software escrow agent (“Escrow Agent”) for the term of this Contract. For the purposes of this **§18**, software is the source code accompanied by a running object code version submitted on a virus-free magnetic or optical media, compiled and ready to be read by a computer; documentation is all materials sufficient for a trained computer programmer of general proficiency to maintain and support the software without further assistance from Contractor; and all other related material(s) is anything else related to the software or documentation necessary or required for the proper use of the same (collectively, software, documentation and/or all other related material(s) “Escrowed Software”). Contractor shall also have a continuing obligation to deposit any maintenance modifications, updates, upgrades, new releases, or documentation related to the Escrowed Software. Contractor agrees to enter into an “Escrow Agreement” with the Escrow Agent, which will instruct the Escrow Agent to independently verify the operation of Escrowed Software and cause delivery of the Escrowed Software in Contractor’s possession to the State if any one of the following events occurs:

* 1. Contractor agrees in writing to the delivery;
  2. Contractor ceases to do business and no successor shall have agreed to assume the Contractor’s obligations to the State;
  3. Contractor has failed to support the Escrowed Software or has otherwise defaulted under this Contract and has exhausted all cure periods to avoid such termination; or
  4. Contractor files for liquidation under the U.S. Bankruptcy Code, or files for reorganization under the U.S. Bankruptcy Code and does not remain debtor in possession.

Contractor shall grant the appropriate license rights in the Escrow Agreement to the Escrow Agent to allow the Escrow Agent to exercise its rights under this Contract. Contractor agrees that if the Escrow Agent delivers the Escrowed Software to the State, the State shall have the same license and rights to use the Escrowed Software as the State had under this Contract, including, but not limited to, the right to utilize the source code and create updates and derivative works consistent with the purpose of this Contract. All costs and fees associated with the Escrow Agreement between Contractor and the Escrow Agent for the Escrowed Software shall be the sole responsibility of Contractor. Contractor shall provide the State with a copy of the Escrow Agreement within sixty (60) days from the Effective Date.

# TRANSITION OF SERVICES

Upon expiration or earlier termination of this Contract or any Services provided hereunder, Contractor shall accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services or any other services provided by third parties hereunder. Contractor shall cooperate fully with the State or such replacement provider and promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services hereunder.

# 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, CRS § 24-10-101, et seq., and the risk management statutes, CRS § 24-30-1501, et seq., as amended.

# STATEWIDE CONTRACT MANAGEMENT SYSTEM

## Application

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 **§21** applies.

## Agreement

Contractor agrees to be governed, and to abide, by the provisions of CRS §§ 24-102-205, 24-102-206, 24-103-601, 24-103.5-101 and 24-105-102 concerning the monitoring of vendor performance of State contracts and inclusion of contract performance information in a statewide contract management system.

## Evaluation and Review

Contractor’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, and State Fiscal Rules, Policies, and Guidance. Evaluation and Review of Contractor’s performance shall be part of the normal contract administration process and Contractor’s performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to, quality, cost, and timeliness. Collection of information relevant to the performance of Contractor’s obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor’s obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review, and Rating shall be rendered within thirty (30) days of the end of the Contract Term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress. Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel & Administration, upon request by CDE and/or OIT, and upon showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review, and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS § 24-105-102(6)), or **(b)** under CRS § 24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§ 24-109-109, 107, 201, or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

## Notification

### Evaluation and Review

Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

### Rebuttal/Protest and Appeal

Contractor may contest the final Evaluation, Review, and Rating by filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS § 24-105-102(6)).

# GENERAL PROVISIONS

## Assignment and Subcontracts

Contractor’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, or subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

## Binding Effect

Except as otherwise provided in **§22.A**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successor, and assigns.

## Captions

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

## Counterparts

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one (1) agreement.

## Entire Understanding

This Contract 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 effect whatsoever, unless embodied herein.

## Indemnification

### General

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 the terms of this Contract; 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, CRS § 24-10-101 et seq., or the Federal Tort Claims Act, 28 USC § 2671 et seq., as applicable, as now or hereafter amended.

### Intellectual Property

Contractor shall indemnify, hold harmless, and defend, at Contractor’s sole expense, the State and its employees and agents against any and all loss, cost, expenses, or liability, including but not limited to attorney fees, court costs, and other legal expenses and damages arising out of a claim that any Deliverable, Good or Service, software, or Work Product provided by Contractor under this Contract (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor’s obligation hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or Contractor’s subsidiaries or affiliates, **(b)** specified by Contractor to work with the IP Deliverables, **(c)** reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function, or **(d)** is reasonably expected to be used in combination with the IP Deliverables.

## 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.

## Modification

### By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by the Parties in an 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 of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS – TOOLS AND FORMS.

### By Operation of Law

This Contract 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 shall automatically be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

## Order of Precedence

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

### Section 23 of this Contract (Colorado Special Provisions),

### The provisions of the main body of this Contract,

### Exhibit A – Statement of Work, and

### Other exhibits as applicable.

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision incorporated in any exhibit attached hereto, any provision incorporated in any terms and conditions appearing on Contractor’s or Subcontractor’s website, any provision incorporated into any click-through or online agreements, or any provision incorporated into any other document or agreement between the Parties that **(i)** requires the State to indemnify Contractor or any other party, **(ii)** is in violation of State laws, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State, or **(iii)** is contrary to any of the provisions incorporated into **§23** or the main body of this Contract.

## Severability

Provided this Contract 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 Contract in accordance with its intent.

## Survival of Certain Contract Terms

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

## 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 CRS §§ 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. the City and County of Denver) may require payment of sales or use taxes even though the product is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

## Third-Party Beneficiaries

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.

## Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, 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.

## CORA Disclosure

To the extent not prohibited by federal law, this Contract 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 § 24-72-200.1, et seq.

## Press Contacts/News Releases

Contractor shall not initiate any press and/or media contacts nor respond to press and/or media requests regarding this Contract and/or any related matters concerning the State without the prior written approval of the State representative listed in **§16**.

## Force Majeure

Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure event. A Party that becomes aware of a Force Majeure event that will significantly delay performances shall notify the other Party promptly (but in no event later than fifteen (15) days) after it discovers the Force Majeure event. If a Force Majeure event occurs, the Parties shall execute an amendment in accordance with **§22.H** to extend the Contract for a time period that is reasonable under the circumstances and in accordance with State of Colorado Fiscal Rules and State of Colorado Controller Policies.

## License or Use Audit Rights

Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once (1) per Fiscal Year to request via written notice in accordance with **§16** (“Audit Request”) that the State certify its compliance with any applicable license or use restrictions and limitations (“Audit”) contained in this Contract or its Exhibits. The State shall complete the Audit and provide certification of its compliance to Contractor (“Audit Certification”) within one hundred twenty (120) days following the State’s receipt of the Audit Request. If upon receipt of the State’s Audit Certification, the Parties reasonably determine: **(i)** the State’s use of licenses, use of software, use of programs, or any other use during the Audit period exceeded the use restrictions and limitations contained in this Contract or its Exhibits (“Overuse”) and **(ii)** that the State would have been or is then required to purchase additional maintenance and/or services (“Maintenance”), Contractor shall provide written notice in accordance with **§16** to the State identifying any Overuse or required Maintenance and request that the State brings its use into compliance with such use restrictions and limitations. Notwithstanding anything to the contrary in this Contract and its Exhibits, or incorporated as a part of Contractor’s or any Subcontractor’s website, click-through or online agreements, third-party agreements, or any other documents or agreements between the Parties, the State shall not be liable for the costs associated with any Overuse or Maintenance, regardless of whether the State may have been notified in advance of such costs.

# COLORADO SPECIAL PROVISIONS

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

## CONTROLLER’S APPROVAL. CRS § 24-30-202(1).

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

## FUND AVAILABILITY. CRS § 24-30-202(5.5).

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

## 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, CRS § 24-10-101 et seq., or the Federal Tort Claims Act, 28 USC §§ 1346(b) and 2671 et seq., as applicable now or hereafter amended.

## 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 **(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.

## 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.

## 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.

## 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.

## 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.

## EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§ 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 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.

## VENDOR OFFSET. CRS §§ 24-30-202(1) and 24-30-202.4.

***[Not applicable to intergovernmental agreements]*** Subject to CRS § 24-30-202.4(3.5), the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS § 39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

## PUBLIC CONTRACTS FOR SERVICES. CRS § 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]*** 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 or the State program established pursuant to CRS § 8-17.5-102(5)(c). 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 **(a)** shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, **(b)** shall notify the Subcontractor and the contracting State agency within three (3) days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(c)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS § 8-17.5-102(5), 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 CRS § 8-17.5-101 et seq., 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.

## PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS § 24-76.5-101.

Contractor, 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 CRS § 24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS § 24-76.5-103 prior to the effective date of this Contract.

SPs Effective 1/1/09

# SIGNATURE PAGE

Contract Routing Number Insert CMS #.

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

|  |  |  |
| --- | --- | --- |
| \* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor’s behalf and acknowledge that the State is relying on their representations to that effect. | | |
| **CONTRACTOR** | **STATE OF COLORADO** |
| **NAME** | **John W. Hickenlooper, GOVERNOR** |
|  | **Governor’s Office of Information Technology** |
|  | Suma Nallapati, Secretary of Technology and State Chief Information Officer |
|  |  |
|  |  |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Brenda Berlin, Deputy Chief Information Officer and Chief Financial Officer |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \*Signature |  |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| STATE OF COLORADO | **LEGAL REVIEW** |
| John W. Hickenlooper, GOVERNOR **Department of Education**  Katy Anthes, Ph.D., Commissioner | **Cynthia Coffman, Attorney General** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: Katy Anthes, Ph.D., Commissioner | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature – Senior Assistant Attorney General |
|  | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**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:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| State Controller Delegate |
|  |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |

Exhibit A, Statement of Work

1. Terminology
   1. In addition to the terms defined in **§5** of this Contract, acronyms and abbreviations are defined at their first occurrence in this Exhibit A, Statement of Work. The following list of terms shall be construed and interpreted as follows:
      1. Business Interruption - Any event that disrupts Contractor’s ability to complete the Work for a period of time, and may include, but is not limited to a Disaster, power outage, strike, loss of necessary personnel or computer virus.
      2. Closeout Period - The period beginning on the earlier of 90 days prior to the end of the last Extension Term or notice by the State of its decision to not exercise its option for an Extension Term, and ending on the day that the Department has accepted the final deliverable for the Closeout Period, as determined in the Department-approved and updated Closeout Plan, and has determined that the closeout is complete.
      3. CPI-U - The Consumer Price Index for All Urban Consumers published by the US Department of Labor, Bureau of Labor Statistics.
      4. Deliverable - any tangible or intangible object produced by Contractor as a result of the work that is intended to be delivered to the State, regardless of whether the object is specifically described or called out as a “Deliverable” or not.
      5. Disaster - An event that makes it impossible for Contractor to perform the Work out of its regular facility or facilities, and may include, but is not limited to, natural disasters, fire or terrorist attacks.
      6. Key Personnel - The position or positions that are specifically designated as such in this Contract.
      7. Operational Start Date - When the State authorizes Contractor to begin fulfilling its obligations under the Contract.
      8. Other Personnel - Individuals and Subcontractors, in addition to Key Personnel, assigned to positions to complete tasks associated with the Work.
      9. Start-Up Period - The period starting on the Effective Date and ending on the Operational Start Date.
2. COntractor’s General Requirements
   1. Contractor shall work cooperatively with State staff and, if applicable, the staff of other State contractors to ensure the completion of the Work. The State may, in its sole discretion, use other contractors to perform activities related to the Work that are not contained in the Contract or to perform any of the State’s responsibilities. In the event of a conflict between Contractor and any other State contractor, the State will resolve the conflict and Contractor shall abide by the resolution provided by the State.
   2. Deliverables
      1. All Deliverables shall meet State-approved format and content requirements. The State will specify the number of copies and media for each Deliverable.
      2. Each Deliverable will follow the Deliverable submission process as follows:
         1. Contractor shall submit each Deliverable to the State for review and approval.
         2. The State will review the Deliverable and may direct Contractor to make changes to the Deliverable. Contractor shall make all changes within 5 Business Days following the State’s direction to make the change unless the State provides a longer period in writing.
            1. Changes the State may direct include, but are not limited to, modifying portions of the Deliverable, requiring new pages or portions of the Deliverable, requiring resubmission of the Deliverable or requiring inclusion of information or components that were left out of the Deliverable.
            2. The State may also direct Contractor to provide clarification or provide a walkthrough of any Deliverable to assist the State in its review. Contractor shall provide the clarification or walkthrough as directed by the State.
         3. Once the State has received an acceptable version of the Deliverable, including all changes directed by the State, the State will notify Contractor of its acceptance of the Deliverable in writing. A Deliverable shall not be deemed accepted prior to the State’s notice to Contractor of its acceptance of that Deliverable.
      3. Contractor shall employ an internal quality control process to ensure that all Deliverables are complete, accurate, easy to understand and of high quality. Contractor shall provide Deliverables that, at a minimum, are responsive to the specific requirements for that Deliverable, organized into a logical order, contain accurate spelling and grammar, are formatted uniformly, and contain accurate information and correct calculations. Contractor shall retain all draft and marked-up documents and checklists utilized in reviewing Deliverables for reference as directed by the State.
      4. If any due date for a Deliverable falls on a day that is not a Business Day, then the due date shall be automatically extended to the next Business Day, unless otherwise directed by the State.
      5. All due dates or timelines that reference a period of days, months or quarters shall be measured in calendar days, months and quarters unless specifically stated as being measured in Business Days or otherwise. All times stated in the Contract shall be considered to be in Mountain Time, adjusted for Daylight Saving Time as appropriate, unless specifically stated otherwise.
      6. No Deliverable, report, data, procedure or system created by Contractor for the State that is necessary to fulfilling Contractor's responsibilities under the Contract, as determined by the State, shall be considered proprietary.
      7. If any Deliverable contains ongoing responsibilities or requirements for Contractor, such as Deliverables that are plans, policies or procedures, then Contractor shall comply with all requirements of the most recently approved version of that Deliverable. Contractor shall not implement any version of any such Deliverable prior to receipt of the State’s written approval of that version of that Deliverable. Once a version of any Deliverable described in this subsection is approved by the State, all requirements, milestones and other Deliverables contained within that Deliverable shall be considered to be requirements, milestones and Deliverables of this Contract.
         1. Any Deliverable described as an update of another Deliverable shall be considered a version of the original Deliverable for the purposes of this subsection.
   3. Stated Deliverables and Performance Standards
      1. Any section within this Statement of Work headed with or including the term "DELIVERABLE" or "PERFORMANCE STANDARD" is intended to highlight a Deliverable or performance standard contained in this Statement of Work and provide a clear due date for the Deliverables. The sections with these headings are for ease of reference not intended to expand or limit the requirements or responsibilities related to any Deliverable or performance standard, except to provide the due date for the Deliverables.
   4. Communication Requirements
      1. Communication with the State
      2. Communication with the Public
         1. Contractor shall create a Communication Plan that includes, but is not limited to, all of the following:
            1. A description of the communication methods, including things such as email lists, newsletters and other methods, Contractor will use to communicate with [Insert who Contractor will interact with here].
            2. The specific means of immediate communication with [Insert who Contractor will interact with here] and a method for accelerating the internal approval and communication process to address urgent communications or crisis situations.
            3. A general plan for how Contractor will address communication deficiencies or crisis situations, including how Contractor will increase staff, contact hours or other steps Contractor will take if existing communication methods for [Insert who Contractor will interact with here] are insufficient.
            4. A listing of the following individuals within Contractor’s organization, that includes cell phone numbers and email addresses:

An individual who is authorized to speak on the record regarding the Work, the Contract or any issues that arise that are related to the Work.

An individual who is responsible for any website or marketing related to the Work.

Back-up communication staff that can respond if the other individuals listed are unavailable.

* + - 1. Contractor shall deliver the Communication Plan to the State for review and approval.
         1. DELIVERABLE: Communication Plan
         2. DUE: Within 10 Business Days after the Effective Date
      2. Contractor shall review its Communication Plan on an annual basis and determine if any changes are required to account for any changes in the Work, in the State’s processes and procedures or in Contractor’s processes and procedures. Contractor shall submit an Annual Communication Plan Update that contains all changes from the most recently approved prior Communication Plan, Annual Communication Plan Update or Interim Communication Plan Update or shall note that there were no changes.
         1. DELIVERABLE: Annual Communication Plan Update
         2. DUE: Annually, by June 30th of each year
      3. The State may request a change to the Communication Plan at any time to account for any changes in the Work, in the State’s processes and procedures or in Contractor’s processes and procedures, or to address any communication related deficiencies determined by the State. Contractor shall modify the Communication Plan as directed by the State and submit an Interim Communication Plan Update containing all changes directed by the State.
         1. DELIVERABLE: Interim Communication Plan Update
         2. DUE: Within 10 Business Days following the receipt of the request from the State, unless the State allows for a longer time in writing
      4. Contractor shall not engage in any non-routine communication with the media or the public related to the Work without the prior written consent of the State.
  1. Business Continuity
     1. Contractor shall create a Business Continuity Plan that Contractor will follow in order to continue operations after a Disaster or a Business Interruption. The Business Continuity Plan shall include, but is not limited to, all of the following:
        1. How Contractor will replace staff that has been lost or is unavailable during or after a Business Interruption so that the Work is performed in accordance with the Contract.
        2. How Contractor will back-up all information necessary to continue performing the Work, so that no information is lost because of a Business Interruption.
           1. In the event of a Disaster, the plan shall also include how Contractor will make all information available at its back-up facilities.
        3. How Contractor will minimize the effects on [Insert who will be impacted here] of any Business Interruption.
        4. How Contractor will communicate with the State during the Business Interruption and points of contact within Contractor’s organization the State can contact in the event of a Business Interruption.
        5. Planned long-term back-up facilities out of which Contractor can continue operations after a Disaster.
        6. The time period it will take to transition all activities from Contractor’s regular facilities to the back-up facilities after a Disaster.
     2. Contractor shall deliver the Business Continuity Plan to the State for review and approval.
        1. DELIVERABLE: Business Continuity Plan
        2. DUE: Within 10 Business days after the Effective Date
     3. Contractor shall review its Business Continuity Plan at least semi-annually and update the plan as appropriate to account for any changes in Contractor’s processes, procedures or circumstances. Contractor shall submit an Updated Business Continuity Plan that contains all changes from the most recently approved prior Business Continuity Plan or Updated Business Continuity Plan or shall note that there were no changes.
        1. DELIVERABLE: Updated Business Continuity Plan
        2. DUE: Semi-annually, by June 30th and December 31st of each year
     4. In the event of any Business Interruption, Contractor shall implement its most recently approved Business Continuity Plan or Updated Business Continuity Plan immediately after Contractor becomes aware of the Business Interruption. In that event, Contractor shall comply with all requirements, Deliverables, timelines and milestones contained in the implemented plan.
  2. State System Access
     1. If Contractor requires access to any State computer system to complete the Work, Contractor shall have and maintain all hardware, software and interfaces necessary to access the system without requiring any modification to the State’s system. Contractor shall follow all State policies, processes and procedures necessary to gain access to the State’s systems.

1. Contractor Personnel
   1. Personnel General Requirements
      1. Contractor shall provide qualified Key Personnel and Other Personnel as necessary to perform the Work throughout the term of the Contract.
         1. Contractor shall provide the State with a final list of individuals assigned to the Contract and appropriate contact information for those individuals.
            1. DELIVERABLE: Final list of individuals assigned to the Contract
            2. DUE: Within 5 Business Days following the Effective Date
         2. Contractor shall update this list upon the State’s request to account for changes in the individuals assigned to the Contract.
            1. DELIVERABLE: Updated list of individuals assigned to the Contract
            2. DUE: Within 5 Business Days following the State’s request for an update
      2. Contractor shall not permit any individual proposed for assignment to Key Personnel positions to perform any Work prior to the State’s approval of that individual to be assigned as Key Personnel.
      3. Contractor shall not voluntarily change individuals in Key Personnel positions without the prior written approval of the State. Contractor shall supply the State with the name, resume and references for any proposed replacement whenever there is a change to Key Personnel. Any individual replacing Key Personnel shall have qualifications that are equivalent to or exceed the qualifications of the individual that previously held the position, unless otherwise approved, in writing, by the State.
         1. DELIVERABLE: Name(s), resume(s) and references for the person(s) replacing anyone in a Key Personnel position during a voluntary change
         2. DUE: At least 5 Business Days prior to the change in Key Personnel
      4. If any individual filling a Key Personnel position leaves employment with Contractor, Contractor shall propose a replacement person to the State. The replacement person shall have qualifications that are equivalent to or exceed the qualifications of the individual that previously held the position, unless otherwise approved, in writing, by the State.
         1. DELIVERABLE: Name(s), resume(s) and references for the person(s) replacing anyone in a Key Personnel position who leaves employment with Contractor
         2. DUE: Within 10 Business Days following Contractor’s receipt of notice that the person is leaving employment, unless the State allows for a longer time in writing for Contractor to recruit a replacement.
      5. Contractor’s Key Personnel shall perform the majority of their work and responsibilities on this project in the Denver metropolitan area, unless the State grants permission otherwise in writing.
      6. If any of Contractor's Key Personnel or Other Personnel are required to have and maintain any professional licensure or certification issued by any federal, state or local government agency, then Contractor shall submit copies of such current licenses and certifications to the State.
         1. DELIVERABLE: All current professional licensure and certification documentation as specified for Key Personnel or Other Personnel
         2. DUE: Within 5 Business Days of receipt of updated licensure or upon request by the State
   2. Personnel Availability
      1. Contractor shall ensure Key Personnel and Other Personnel assigned to the Contract are available for meetings with the State during the State’s normal business hours, as determined by the State. Contractor shall also make these personnel available outside of the State’s normal business hours and on weekends with prior notice from the State.
      2. Contractor’s Key Personnel and Other Personnel shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.
      3. Contractor shall ensure that the Key Personnel and Other Personnel attending all meetings between the State and Contractor have the authority to represent and commit Contractor regarding work planning, problem resolution and program development.
      4. All of Contractor’s Key Personnel and Other Personnel that attend any meeting with the State or other State stakeholders shall be physically present at the location of the meeting, unless the State gives prior, written permission to attend by telephone or video conference. If Contractor has any personnel attend by telephone or video conference, Contractor shall provide all additional equipment necessary for attendance, including any virtual meeting space or telephone conference lines.
   3. Key Personnel
      1. Contractor shall designate people to hold the following Key Personnel positions:
         1. Project Lead
            1. The Project Lead shall have the following qualifications:
            2. The Project Lead shall be responsible for all of the following:

Serving as Contractor’s primary point of contact for the State.

Ensuring the completion of all Work in accordance with the Contract’s requirements. This includes, but is not limited to, ensuring the accuracy, timeliness and completeness of all work.

Overseeing all other Key Personnel and Other Personnel and ensuring proper staffing levels throughout the term of the Contract.

* + - 1. Additional Key Personnel
    1. Contractor shall not allow for any individual to fill more than 1 of the roles defined as Key Personnel.
  1. Other Personnel Responsibilities
     1. Contractor shall use its discretion to determine the number of Other Personnel necessary to perform the Work in accordance with the requirements of this Contract. If the State has determined that Contractor has not provided sufficient Other Personnel to perform the Work in accordance with the requirements of this Contract, Contractor shall provide all additional Other Personnel necessary to perform the Work in accordance with the requirements of this Contract at no additional cost to the State.
     2. Contractor shall ensure that all Other Personnel have sufficient training and experience to complete all portions of the Work assigned to them. Contractor shall provide all necessary training to its Other Personnel, except for State-provided training specifically described in this Contract.
     3. Contractor may subcontract to complete a portion of the Work required by the Contract. The conditions for using a Subcontractor or Subcontractors are as follows:
        1. Contractor shall not subcontract more than 40% of the Work.
        2. Contractor shall provide the organizational name of each Subcontractor and all items to be worked on by each Subcontractor to the State.
           1. DELIVERABLE: Name of each Subcontractor and items on which each Subcontractor will work
           2. DUE: The later of 30 days prior to the Subcontractor beginning work or the Effective Date

1. Project Specific Statement of WOrk
2. Reporting Requirements
3. Start-Up and CLoseout Periods
   1. This Contract shall have a Start-Up Period and a Closeout Period.
   2. Start-Up Period
      1. Contractor shall not engage in any Work under the Contract, other than the Work described in this section, prior to the Operational Start Date. The State shall not be liable to Contractor for, and Contractor shall not receive, any payment for any period prior to the Operational Start Date under this Contract.
         1. The Operational Start Date shall not occur until Contractor has completed all requirements of the Start-Up Period, including, but not limited to, the completion of the operational readiness review contained in the Start-Up Plan, unless the State provides written approval otherwise.
      2. During the Start-Up Period, Contractor shall complete all of the following:
         1. Create a Policy and Procedures Manual that contains the policies and procedures for all systems and functions necessary for Contractor to complete its obligations under the Contract.
            1. DELIVERABLE: Policies and Procedure Manual
            2. DUE: The later of the Effective Date or 30 days prior to the Operational Start Date
         2. Prepare all documents, forms, training materials, and any other documents, information and protocols that require approval by the State prior to the end of the Start-Up period. Contractor shall deliver all documents, forms, training materials, and any other documents, information and protocols that require approval by the State to the State for review and approval in a timely manner that allows the State to review and approve those documents prior to end of the Start-Up Period.
         3. Create the Business Continuity Plan described in Section [Insert Section Reference Here].
         4. Create and implement the Communication Plan described in Section [Insert Section Reference Here].
         5. Create and implement the Start-Up Plan described in Section [Insert Section Reference Here].
         6. Complete all steps, Deliverables and milestones contained in the State-approved Start-Up Plan.
      3. Contractor shall provide weekly updates, to the State, throughout the Start-Up Period, that show Contractor’s status toward meeting the timelines and milestones described in the State-approved Start-Up Plan.
      4. Contractor shall ensure that all requirements of the Start-Up Period are complete by the deadlines contained in the State-approved Start-Up Plan and that Contractor is ready to perform all Work by the Operational Start Date.
   3. Closeout Period
      1. During the Closeout Period, Contractor shall complete all of the following:
         1. Implement the most recent Closeout Plan or Closeout Plan Update that has been approved by the State, as described in Section [Insert Section Reference Here] and complete all steps, Deliverables and milestones contained in the most recent Closeout Plan or Closeout Plan Update that has been approved by the State.
         2. Provide to the State, or any other contractor at the State's direction, all reports, data, systems, Deliverables and other information reasonably necessary for a transition as determined by the State or included in the most recent Closeout Plan or Closeout Plan Update that has been approved by the State.
         3. Ensure that all responsibilities under the Contract have been transferred to the State, or to another contractor at the State's direction, without significant interruption.
         4. Notify any Subcontractors of the termination of the Contract, as directed by the State.
         5. Notify all [Insert individuals impacted by this Contract here] that Contractor will no longer be the [Insert description of the type of work Contractor does here] as directed by the State. Contractor shall create these notifications and deliver them to the State for approval. Once the State has approved the notifications, Contractor shall deliver these notifications to all [Insert individuals impacted by this Contract here], but in no event shall Contractor deliver any such notification prior to approval of that notification by the State.
            1. DELIVERABLE: [Insert individuals impacted by this Contract here] Notifications
            2. DUE: 30 days prior to termination of the Contract
         6. Continue meeting each requirement of the Contract as described in the State-approved and updated Closeout Plan, or until the State determines that specific requirement is being performed by the State or another contractor, whichever is sooner. The State will determine when any specific requirement is being performed by the State or another contractor, and will notify Contractor of this determination for that requirement.
      2. The Closeout Period may extend past the termination of the Contract. The State will perform a closeout review to ensure that Contractor has completed all requirements of the Closeout Period. If Contractor has not completed all of the requirements of the Closeout Period by the date of the termination of the Contract, then any incomplete requirements shall survive termination of the Contract.
   4. Start-Up and Closeout Planning
      1. Start-Up Plan
         1. During the Start-Up Period, Contractor shall create a Start-Up Plan that contains, at a minimum, all of the following:
            1. A description of all steps, timelines and milestones necessary to fully transition the services described in the Contract from a prior [Insert description of the type of work Contractor does here] contractor to Contractor.
            2. A description of all steps, timelines, milestones and Deliverables necessary for Contractor to be fully able to perform all Work by the Operational Start Date.
            3. A listing of all personnel involved in the start-up and what aspect of the start-up they are responsible for.
            4. An operational readiness review for the State to determine if Contractor is ready to begin performance of all Work.
            5. The risks associated with the start-up and a plan to mitigate those risks.
         2. Contractor shall deliver the Start-Up Plan to the State for review and approval.
            1. DELIVERABLE: Start-Up Plan
            2. DUE: Within 5 Business Days after the Effective Date
      2. Closeout Plan
         1. Contractor shall create a Closeout Plan that describes all requirements, steps, timelines, milestones and Deliverables necessary to fully transition the services described in the Contract from Contractor to the State to another contractor selected by the State to be the [Insert description of the type of work Contractor does here] contractor after the termination of the Contract. The Closeout Plan shall also designate an individual to act as a closeout coordinator, who will ensure that all requirements, steps, timelines, milestones and Deliverables contained in the Closeout Plan are completed and work with the State and any other contractor to minimize the impact of the transition on the State. Contractor shall deliver the Closeout Plan to the State for review and approval.
            1. DELIVERABLE: Closeout Plan
            2. DUE: 30 days following the Effective Date
         2. Contractor shall update the Closeout Plan, at least annually, to include any technical, procedural or other changes that impact any steps, timelines or milestones contained in the Closeout Plan, and deliver this Closeout Plan Update to the State for review and approval.
            1. DELIVERABLE: Closeout Plan Update
            2. DUE: Annually, by June 30th of each year
4. COmpensation and Invoicing
   1. Compensation
   2. Detailed Invoicing and Payment Procedures
      1. Contractor shall invoice the State on a monthly basis, by the 15th Business Day of the month following the month for which the invoice covers. Contractor shall not invoice the State for a month prior to the last day of that month.
      2. The invoice shall contain all of the following for the month for which the invoice covers:
   3. Closeout Payments
      1. Notwithstanding anything to the contrary in this Contract, all payments for the final month of this Contract shall be paid to Contractor no sooner than 10 days after the State has determined that Contractor has completed all of the requirements of the Closeout Period.

EXHIBIT B, RATES

EXHIBIT C, FORM OF OPTION LETTER

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| --- | --- | --- | --- |
| **Date:** Date | Original Contract CMS # **#** | Option Letter # # | CMS Routing # # |

**1)** OPTIONS

A. Option to renew only for an additional term.

B. Option to change the quantity of Goods under the Contract

C. Option to change the quantity of Services under the Contract

D. Option to modify Contract rates

E. Option to initiate next phase of the Contract

**2)** In accordance with **§5.C** of the Contract, CMS# **#** between the State of Colorado, acting by and through the Colorado Department of Education, and Contractor , the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert end date at the same prices and rates as specified in the Contract and its Exhibits.

**3)** The effective date of this Option Letter is upon approval of the State Controller.

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| **STATE OF COLORADO**  John W. Hickenlooper, Governor  Colorado Department of Education  Katy Anthes, Ph.D., Commissioner  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: Katy Anthes, Ph.D., Commissioner  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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| **STATE OF COLORADO** |
| **John W. Hickenlooper, GOVERNOR** |
| **Governor’s Office of Information Technology** |
| Suma Nallapati, Secretary of Technology and State Chief Information Officer |
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| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Brenda Berlin, Deputy Chief Information Officer and Chief Financial Officer |
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| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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| **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.** |

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| **STATE CONTROLLER** |
| **Robert Jaros, CPA, MBA, JD** |
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| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| State Controller Delegate |
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| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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