

STATE OF COLORADO PROFESSIONAL SERVICES CONTRACT

COVER PAGE

State Agency Department of Natural Resources Division Name, ("Division Acronym") Division Address	Contract Number CMS Number: Encumbrance Number:		
Consultant Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc... Consultant's Address	Contract Performance Beginning Date The Effective Date OR The later of the Effective Date or Month Day, Year		
Contract Maximum Amount Entire Contract term for all applicable fiscal years: \$ OR Initial Term State Fiscal Year 20xx: \$ Extension Terms State Fiscal Year 20xx: \$ Total for All State Fiscal Years: \$	Initial Contract Expiration Date Month Day, Year Contract Authority Insert Brief Description of the Authority to enter into the Contract, including statutory citation(s) and/or bill #(s). Use this section to include a Federal Assistance Listing Number # for federal funding if applicable		
Contract Purpose Briefly describe the Contract's purpose Contract was a discretionary selection under 24-30-1403(2)(a), OR The Consultant was selected under, 24-30-1403(2)(a), Request for Qualifications Number: RFQ1 PXAA 201#*##### OR The Consultant was selected under 24-30-1407 C.R.S.			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: - Exhibit A – Statement of Work and Project Budget - Exhibit B – Wage Rate Schedule - Exhibit C - Sample Option Letter - Exhibit D – PII Certification - Exhibit E – Federal Provisions - Exhibit F – Global Warming Potential Limits In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: - Exhibit E – Federal Provisions - Colorado Special Provisions in §18 of the main body of this Contract. - The provisions of the other sections of the main body of this Contract. - Exhibit F – Global Warming Potential Limits - Exhibit A, Statement of Work and Project Budget. - Exhibit B – Wage Rate Schedule - Exhibit D – PII Certification - Exhibit C - Sample Option Letter			
Principal Representatives <table border="0"> <tr> <td style="vertical-align: top;"> For the State: Name Department Name Address Address City, State Zip Email </td> <td style="vertical-align: top;"> For Consultant: Name Company Name Address Address City, State Zip Email </td> </tr> </table>		For the State: Name Department Name Address Address City, State Zip Email	For Consultant: Name Company Name Address Address City, State Zip Email
For the State: Name Department Name Address Address City, State Zip Email	For Consultant: Name Company Name Address Address City, State Zip Email		

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

CONSULTANT INSERT-Legal Name of Consultant Signature: _____ Printed Name: _____ Title: _____ Date: _____	STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director Division Name Signature: _____ Printed Name: _____ Title: _____ Date: _____
In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD Signature: _____ Printed Name: _____ Title: _____ Agreement Effective Date: _____	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

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

C. Extension Terms

The State shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and

under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Consultant in a form substantially equivalent to the Sample Option Letter attached to this Contract. Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Consultant as provided in **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Consultant, which shall be governed by **§12.A.i**.

i. Method and Content

The State shall notify Consultant of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Consultant shall be subject to the rights and obligations set forth in **§12.A.i.a**.

iii. Payments

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

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Consultant, or the appointment of a receiver or similar officer for Consultant or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Consultant is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **“Business Day”** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.
- C. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- D. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- E. **“Contract”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- F. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. **“End of Term Extension”** means the time period defined in §D.
- I. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- J. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- K. **“Extension Term”** means the time period defined in §2.C.
- L. **“Goods”** means any movable material acquired, produced, or delivered by Consultant as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Consultant in connection with the Services.
- M. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation,

- (i) successful attempts to gain unauthorized access to a State system or State 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.
- N. **“Initial Term”** means the time period defined in §2.B
- O. **“Party”** means the State or Consultant, and **“Parties”** means both the State and Consultant.
- P. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- Q. **“PCI”** means payment card information including any data related to credit card holders' names, credit card numbers, or other credit card information as may be protected by state or federal law.
- R. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- S. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- T. **“Services”** means the services to be performed by Consultant as set forth in this Contract, and shall include any services to be rendered by Consultant in connection with the Goods.
- U. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Consultant which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Consultant without restrictions at the time of its disclosure to Consultant; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Consultant to the State; (iv) is disclosed to Consultant, without confidentiality obligations,

by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

- V. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- W. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- X. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- Y. **“Subcontractor”** means third-parties, if any, engaged by Consultant to aid in performance of the Work.
- Z. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- AA. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

4. **STATEMENT OF WORK**

- A. The Consultant shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate the Consultant for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.
- B. Buy Clean Colorado Act
 - i. The Buy Clean Colorado (BCCO) Act is focused on reducing embodied carbon emissions of state Public Projects by means of Eligible Material selection. Through design optimization and responsible selection of materials, the reduction of Embodied Carbon emissions from building materials can be accomplished. The BCCO Act requires the Office of the State Architect (OSA) to establish a maximum acceptable Global Warming Potential (GWP) limit for each category of Eligible Materials, which include: asphalt and asphalt mixtures, cement and concrete mixtures, glass, post-tension steel, reinforcing steel, structural steel, and wood structural elements.
 - ii. Capitalized terms used in this section of the Contract shall be construed and interpreted in accordance with the “Important Definitions” section of the OSA BCCO Act website <<https://osa.colorado.gov/energy-environment/buy-clean-colorado-act>>.
 - iii. The Consultant must produce designs that strive to reduce the Embodied Carbon content of the construction project. The Consultant shall specify an Environmental Product Declaration (EPD) for each Eligible Material within the project specifications included in the bid documents. When specifying materials, the Consultant shall

prioritize products with EPDs for the design. The Consultant must verify that the specified EPDs contain Global Warming Potential (GWP) values that are less than or equal to the maximum GWP limits established in Exhibit F. If an assembly containing one or more Eligible Materials must be installed, then a product-specific Type III EPD must be submitted for each Eligible Material component of the assembly. If the Embodied Carbon of each Eligible Material in the assembly is less than the GWP limit, then it can be reasonably assumed that the Embodied Carbon of the assembly is compliant with the BCCO Act. For glass GWP, the Consultant shall consider the EPD used for processed glazing products from the glass fabricator. The Consultant shall verify that glass fabricators utilize flat glass that meets OSA's limit. For concrete strengths between the stated values, use linear interpolation to determine embodied carbon limits, rounded to the nearest whole number. Example: For a 3300psi ReadyMix Concrete mix: $(301-255)/(4000-3000) = 0.046 \rightarrow (0.046 * (3300-3000)) + 255 = 268.8 \rightarrow 269$ is the Maximum GWP/m³ for a 3300psi mix.

- iv. The Consultant shall produce an EPD Submittal & Sign-Off sheet using the template published by OSA as Form EE-5.2. The Consultant shall produce designs with Eligible Materials that are obtainable and can be installed. If the Consultants determines that an Eligible Material with a compliant EPD is unobtainable, the Consultant shall notify the State with the State's approval may produce a design with an alternative product with a compliant EPD or a design that does not require the Eligible Material. If necessary, the Consultant may request a Design-Phase Waiver Form in the template provided by OSA as Form EE-5.30 and in consideration of the EPD Exemption Justifications published by OSA as Form EE-5.1. All of the OSA forms referenced in this section are available at <<https://osa.colorado.gov/energy-environment/buy-clean-colorado-act>>.

5. PAYMENTS TO CONSULTANT

A. Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Consultant in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A. Payments shall be made on a time and materials basis at the rates and costs set forth in Exhibit B. The Consultant shall successfully complete the contracted services in accordance with contract requirements within the not-to-exceed price specified herein.
- b. Consultant shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed

by Consultant and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then the Consultant shall make all changes necessary to correct that invoice.

- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Contract.

- ii. Interest

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

- iii. Payment Disputes

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

- iv. Available Funds-Contingency-Termination

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

Funding under this Contract may be provided via a funding source that, at the time of Effective Date, is not currently valid through the maximum potential term of this Contract. All payments beyond the currently valid funding end date are contingent upon the State receiving additional anticipated and budgeted appropriated or

nonappropriated funding. Should the State not receive such appropriated or non-appropriated funding and it also be unable to substitute valid replacement funding, which is not anticipated, the State will notify the Consultant that it has not received additional and necessary appropriated or nonappropriated funding. If Consultant is unsure if funding has been received for any period, Consultant should verify the availability of funding with the State prior to performing any Work for that period as the State shall not be liable for, and shall not make any payment to Consultant for, any Work performed during a period for which it has not received sufficient appropriated or nonappropriated funding, regardless of whether Consultant has performed Work during that period.

C. Consultant Certification and Adjustments for Errors

In accordance with §24 30 1404 (1), C.R.S. as amended, the Consultant has executed a schedule, which is attached hereto and made a part hereof by reference as **Exhibit B, Wage Rates**, in having a duly authorized representative of Consultant sign this Contract, Consultant hereby certifies that:

- i. The wage rates and other factual unit costs supporting the compensation to be paid by the State for these professional services are accurate, complete and current; and,
- ii. The Consultant understands the original Contract price and that any additions shall be adjusted to exclude any significant sums by which the State determines the contract price had been increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs; and,
- iii. All such Contract adjustments shall be made within one year following the end of this Contract.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any contract having a term longer than 3 months, Consultant shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than 5 Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

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

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

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Consultant shall provide written notice to the State, in accordance with §14 and in a form designated by

the State, within 20 days following the earlier to occur of Consultant's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Consultant to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONSULTANT RECORDS

A. Maintenance

Consultant shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Consultant Records"). Consultant Records shall include all documents, records, communications, notes and other materials maintained by Consultant that relate to any Work performed by Subcontractors, and Consultant shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Consultant shall maintain Consultant Records until the last to occur of: **(i)** the date 3 years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Consultant has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

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

C. Monitoring

The State, in its discretion, may monitor Consultant's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Consultant's performance in a manner that does not unduly interfere with Consultant's performance of the Work.

D. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Consultant shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Consultant shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use

by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in Writing by the State. Consultant shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If the Consultant or any of its Subcontractors will or may receive the following types of data, Consultant or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Consultant shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Consultant becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Consultant can establish that none of Consultant or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Consultant shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Consultant shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Consultant shall make all modifications as directed by the State. If Consultant cannot produce its analysis and plan within the allotted time, the State, in its discretion, may perform such analysis and produce a remediation plan, and Consultant shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Consultant's sole expense, require Consultant to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Consultant shall provide the State with the results of such audit and evidence of Consultant's planned remediation in response to any negative findings.

E. Data Protection and Handling

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

F. Safeguarding PII

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

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

Consultant acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval,

Consultant shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Consultant's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Consultant is uncertain whether a conflict or the appearance of a conflict has arisen, Consultant 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.

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

10. INSURANCE

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

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Protected Information

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

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

E. Cyber/Network Security and Privacy Liability, Protected Information and Professional Errors & Omissions

Cyber/ Network Security and Privacy Liability Insurance in an amount of not less than \$2,000,000 combined single limit to cover civil, regulatory and statutory damages,

contractual damage, as well as data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as confidential information of Company or Company Clients

F. Professional Liability Insurance

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

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

G. The above requirements for Cyber/Network Security and Privacy Liability, Protected Information and Professional Errors & Omissions can be met by separate policies or a combination of these coverages under one policy form with minimum limits \$2,000,000 each occurrence and in the aggregate.

H. Pollution Liability Insurance

If Contractor is providing directly or indirectly Work with pollution/environmental hazards, the Contractor must provide or cause those conducting the Work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. The State of Colorado must be included as additional insureds on the policy. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor/Vendor.

I. Additional Insured

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

J. Primacy of Coverage

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

K. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Consultant and Consultant shall forward such notice to the State in accordance with §14 within seven days of Consultant's receipt of such notice.

L. Subrogation Waiver

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

M. Public Entities

If Consultant is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Consultant shall maintain, in lieu of the liability

insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Consultant shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

N. Certificates

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

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Consultant is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Consultant is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section. in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Consultant until Consultant corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Consultant's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Consultant, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Consultant shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in § 24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-109-106, and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Consultant wishes to challenge any decision rendered by the Procurement Official, Consultant's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Consultant pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be

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

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Consultant assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Consultant is under contract with the State at the time, Consultant shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

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

ii. Patents

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

Consultant that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

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

C. Exclusive Property of Consultant

Consultant retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Consultant 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 Consultant under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Consultant Property"). Consultant Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

17. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

The Consultant shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Consultant shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Consultant in connection with this Contract shall comply with all applicable federal and

state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in §17.A, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

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

J. Statutes, Regulations, Fiscal Rules, and Other Authority

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

K. External Terms and Conditions

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

L. Severability

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

M. Survival of Certain Contract Terms

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

N. Taxes

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in § 17.A, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations

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

T. Indemnification

i. General Indemnification

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

ii. Confidential Information Indemnification

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

iii. Intellectual Property Indemnification

Consultant shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Consultant under this Contract (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Consultant's obligations hereunder shall not extend to the combination of any IP Deliverables provided by Consultant with any other product, system, or method, unless the other product, system, or method is (a) provided by Consultant or Consultant's subsidiaries or affiliates; (b) specified by Consultant 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.

U. Accessibility

i. Consultant shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by the

Governor's Office Of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Consultant shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

- ii. Consultant shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Consultant's failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.
 - iii. The State may require Consultant's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Consultant's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S..
- V. The Consultant warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract and that the Consultant has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this contract.
- W. Federal Provisions
- Consultant shall comply with all applicable requirements of the Federal Provisions Exhibit shown on the Cover Page at all times during the term of this Contract.

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

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

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

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

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

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

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and

28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

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

EXHIBIT C, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Grantee Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Agreement Number of the Original Contract
Current Agreement Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Option Agreement Number Insert CMS number or Other Agreement Number of this Option Agreement Performance Beginning Date Month Day, Year Current Agreement Expiration Date Month Day, Year

1. **OPTIONS:**

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Agreement
- C. Option to change the quantity of Services under the Agreement
- D. Option to modify Agreement rates
- E. Option to initiate next phase of the Agreement

2. **REQUIRED PROVISIONS:**

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Agreement, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.
- D. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
- E. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. **OPTION EFFECTIVE DATE:**

- A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later

STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE By: Name & Title of Person Signing for Agency or IHE Date: _____	In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Name of Agency or IHE Delegate-Please delete if agreement will be routed to OSC for approval Option Effective Date: _____
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EXHIBIT D-PII CERTIFICATION

STATE OF COLORADO THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

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

Signature: _____
Printed Name: _____
Date: _____

EXHIBIT D-PII CERTIFICATION

STATE OF COLORADO THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

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

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

Signature: _____
Printed Name: _____
Title: _____
Date: _____