# State of Colorado Information Technology Contract

## Cover Page

### State Agency

Colorado Governor’s Office of Economic Development and International Trade

**Contractor**

[Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...]

### Contract Number

[Insert CMS number or Other Contract Number]

### Contract Performance Beginning Date

The later of the Effective Date or [Month Day, Year]

### Initial Contract Expiration Date

[Month Day, Year]

### CORE Encumbrance Number

[Insert CORE Encumbrance Number]

### Interagency Agreement Number

[Insert CMS number or Other Contract Number]

### Contract Administrator

[Insert Contract Administrator's initials]

### Contract Maximum Amount

#### Initial Term

State Fiscal Year 2026: [$0.00]

Extension Terms

State Fiscal Year 2027: [$0.00]

Total for All State Fiscal Years [$0.00]

### Contract Authority

[Insert Brief Description of the Authority to enter into the Contract]

### Contract Purpose

**[Briefly describe the Contract's purpose]**

### Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Contract:

1. Exhibit A – Statement of Work
2. Exhibit B – Sample Option Letter
3. Exhibit C – Information Technology Provisions

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

1. Colorado Special Provisions in §19 of the main body of this Contract.
2. Exhibit C - Information Technology Provisions
3. The provisions of the other sections of the main body of this Contract.
4. Exhibit A - Statement of Work.
5. Executed Option Letter(s) (if any).

### Principal Representatives

#### For the State:

[Name]

[Department Name]

[Address Line 1]

[Address Line 2]

[City, State, Zip]

[E-mail]For Contractor:

[Name]

[Company Name]

[Address Line 1]

[Address Line 2]

[City, State, Zip]

[E-mail]

## Signature Page

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

### Contractor

[Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...]

By: [Name & Title of Person Signing for Contractor

Date:

### 

### State of Colorado

Jared S. Polis, Governor

Colorado Governor’s Office of Economic Development and International Trade

Eve Lieberman, Executive Director

By: Eve Lieberman, Executive Director

Date:

### State Controller

Robert Jaros, CPA, MBA, JD

By: Robert Jaros or Controller Delegate

Effective Date:

## Contract Provisions

### Parties

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

### Term and Effective Date

#### Effective Date

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

#### 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.

#### Extension Terms - State’s Option

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

#### End of Term Extension

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

#### Early Termination in the Public Interest

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

##### Method and Content

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

##### Obligations and Rights

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

##### Payments

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

### Definitions

The following terms shall be construed and interpreted as follows:

* 1. “**Breach of Contract**”means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a Breach of Contract. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a Breach of Contract.
  2. “**Business Day**” means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.
  3. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the State.
  4. “**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.
  5. “**Contract Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
  6. “**Contract Maximum Amount”** means an amount equal to the total of Contract Funds for all State Fiscal Years on the Signature and Cover Page of this Contract.
  7. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
  8. “**Deliverable**” means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor.
  9. “**Effective Date**” means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
  10. “**End of Term Extension**” means the time period defined in **§2.D**.
  11. “**Exhibits**” means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
  12. “**Extension Term**” means the time period defined in **§2.C**.
  13. “**Goods**” means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
  14. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.,* C.R.S., or the discovery or reasonable suspicion that there is or may be an imminent threat or vulnerability that jeopardizes the Information Technology that may result in exploitation or exposure, or any defect or vulnerability with the potential to impact the ongoing resilience, security, and/or integrity of systems accessing State Records or the State’s Information Technology. Incidents include, without limitation, any events impacting the State’s Information Technology or State Records regardless of where such information is located, such as: unauthorized access or modification, denial of service, malware, spyware, worms, trojans, rootkits, man-in-the-middle, SQL injection, cross site scripting, ransomware, dns tunneling, password attack, email events, including business email compromise, phishing (spear or otherwise), whaling, brute force attacks, insider threats, web attacks, session hijacking, or URL interpretation.
  15. “**Initial Term**” means the time period defined in **§2.B.**
  16. **“Information Technology”** means
      1. Any technology and equipment described in §24-37.5-102(12), C.R.S. and any related Work or Deliverable(s);
      2. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; or
      3. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in information technology.
  17. “**Party**” means the State or Contractor, and “Parties” means both the State and Contractor.
  18. “**Services**” means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
  19. “**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, State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
  20. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
  21. “**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.
  22. “**State Records**” means any and all State data, information, and records, regardless of physical form.
  23. “**Subcontractor**” means any third party engaged by Contractor to aid in performance of the Work.
  24. **“Term”** means the Initial Term, any Extension Term(s), and any End of Term Extension(s), collectively.
  25. “**Work**” means the Goods delivered and Services performed pursuant to this Contract.
  26. “**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 elsewhere in this Contract or in an Exhibit shall be construed and interpreted as defined in that section or in that Exhibit.

### Statement of Work

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

### Payments to Contractor

#### Contract Maximum Amount

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

#### Payment Procedures

##### Invoices and Payment

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

##### Interest

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

##### Payment Disputes

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

##### Available Funds-Contingency-Termination

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

### Reporting - Notification

#### Quarterly Reports.

In addition to any reports required pursuant to **§17** or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report (“Quarterly Report”) specifying progress made for each specified performance measure and standard in this Contract. Such Quarterly Report shall be in accordance with the procedures developed and prescribed by the State. Quarterly Reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. Contractor acknowledges that all Quarterly Reports under this Contract are subject to the Colorado False Claims Act, §§24-31-1204, *et seq*., C.R.S.

#### Litigation Reporting

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

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

##### Performance Outside the State of Colorado

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

##### Performance Outside of the United States

Contractor shall request written approval from the State, prior to the Effective Date, acting through the Office of Information Technology, for Contractor to perform, or subcontract to perform, Services outside the United States, including accessing State Records or the State’ Information Technology. The State may approve or deny such request within the State’s sole discretion, whether or not services outside the United States are prohibited or restricted by any Exhibit attached to this Contract. Following written approval from the State, Contractor shall comply with the notice provisions for performance outside the United States, as set forth in §24-102-206, C.R.S. Any notice provided to the State by Contractor regarding performance outside the United States shall be deemed ineffective if the State has not granted prior written approval for such performance.

##### Notwithstanding anything to the contrary in this Contract, Contractor shall not access or process Federal Tax Information (“FTI”) or Criminal Justice Information (“CJI”), or the State’s Information Technology that connects to such information, from outside the United States, including accessing or processing by Contractor’s employees, agents, or Subcontractors.

### Contractor Records

#### Maintenance

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

#### Inspection

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

#### Monitoring

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

#### Final Audit Report

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

### Confidential Information-State Records

#### Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, as required by law, or approved in writing by the State. Contractor shall provide for, and shall require all Subcontractors to provide for, the security of all State Records, including State Confidential Information in accordance with all applicable laws, rules, publications, guidelines, and policies, including those promulgated by the Governor’s Office of Information Technology. Contractor shall immediately forward any request or demand for State Records to the State’s Principal Representative identified on the Cover Page of this Contract.

#### Other Entity Access and Nondisclosure Agreements

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

#### Use, Security, and Retention

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

#### Incident Notice and Remediation

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

#### Data Protection and Handling

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

### Conflicts of Interest

#### Actual Conflicts of Interest

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

#### Apparent Conflicts of Interest

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

#### Disclosure to the State

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

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

### Insurance

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State. Contractor shall ensure that Subcontractors carry insurance in amounts that are reasonable to the scope of work of any Subcontractors.

#### Workers’ Compensation

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

#### General Liability

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

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

#### Cyber/Network Security and Privacy Liability

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

* + 1. $5,000,000 each claim; and
    2. $10,000,000 general aggregate. Cyber liability insurance can be limited based on the total number of records being held by the Contractor.
       1. Less than 1,000,000 records - minimum limit $1,000,000/$2,000,000 per claim
       2. 1,000,001 - 3,000,000 records - minimum limit $2,000,000/$4,000,000 per claim
       3. Greater than 3,000,000 records - minimum limit $5,000,000/$10,000,000 per claim
       4. These limits grow throughout the life of the Contract. If the number of records grows over time, the minimum insurance limits must also grow.

#### Professional Liability Insurance

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

* + 1. $1,000,000 each claim; and
    2. $1,000,000 general aggregate.

#### Crime Insurance

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

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

#### 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.

#### Primacy of Coverage

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

#### Cancellation

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

#### Subrogation Waiver

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

#### Public Entities

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

#### Subcontractors

Contractor shall ensure that Subcontractors carry insurance in amounts that are reasonable, in Contractor’s discretion, to the scope of work of any Subcontractors. Exceptions to insurance requirements for Subcontractors may include Cyber Insurance, if Subcontractor is not hosting data in their system; and Professional Liability Insurance, if it does not apply to Subcontractor’s scope of work.

#### Certificates

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

### Limitation of Contractor’s Liability to State

The liability of Contractor, its Subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss of State Records or unauthorized disclosure of State Confidential Information, not to exceed three (3) times the Contract Maximum Amount payable by the State under this Contract or $1,000,000.00, whichever is greater. Director damages include data losses and Incident notice and Incident remediation costs.

No limitation on Contractor's liability to the State under this Section shall limit or affect:

* 1. Contractor’s indemnification obligations to the State under this Contract;
  2. Any claims, losses, or damages related to breach of Contractor’s security obligations under this Contract, including those for which coverage is available under any insurance required under this Contract;
  3. Claims or damages arising out of bodily injury, including death, or damage to tangible property of the State; or
  4. Claims or damages resulting from the recklessness, bad faith, or intentional misconduct of Contractor or its Subcontractors.

Contractor is not responsible for claims based on the sole actions of State employees acting without authority or unintended uses of the program.

### Breach of Contract

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

### Remedies

#### State’s Remedies

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

##### Termination for Breach of Contract

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

###### Obligations and Rights

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

###### Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If the State has made any advance payments to Contractor for any Work that has not been performed by Contractor and accepted by the State as of the date of termination, Contractor shall return such payments to the State within thirty (30) days. If, after termination by the State, the State agrees that Contractor was not in Breach of Contract or that Contractor’s action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under **§2.E**.

###### Damages and Withholding

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

##### Remedies Not Involving Termination

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

###### Suspend Performance

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

###### Withhold Payment and Require Contractor Promptly Correct its Work

Withhold payment to Contractor until Contractor promptly corrects its Work. At the State’s sole discretion and at no additional cost to the State, the State may require Contractor to provide a written remediation plan on how Contractor will correct its Work. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State.

###### Deny Payment

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

###### Removal

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

###### Intellectual Property

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

###### Remediation

Withhold future payment to or recover past payment from Contractor in such sum as may be necessary to address remediation of the effects resulting from any failure of previously accepted Work whose insufficiency was latent. Such remediation adjustment to payment shall be made by Contractor at the State’s reasonable discretion to offset costs incurred by the State (including internal costs) for all or a portion of these effects. The State may take into consideration the intervention of external parties as a source of the failure of the Work to such extent necessary to apportion the remediation adjustment with the latent defect in the Work.

#### Contractor’s Remedies

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

### Dispute Resolution

#### Initial Resolution

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

#### Resolution of Controversies

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

### 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 on the Cover Page for this Contract 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.

### Rights in Work Product and Other Information

#### Work Product

##### Copyrights

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

##### Patents

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

##### Assignments and Assistance

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

#### Exclusive Property of the State

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

#### Exclusive Property of Contractor

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

### Statewide Contract Management System

If the maximum amount payable to Contractor under this Contract is $100,000.00 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State’s contract management system (“Contract Management System” or “CMS”). Contractor’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller Policies.

### General Provisions

#### Assignment

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

#### Subcontracts

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

#### Binding Effect

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

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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. Nothing in this Contract shall restrict in any way the State’s right to promulgate, amend, rescind, or supplement any State statute, regulation, State Fiscal Rule, fiscal or administrative policy, or other authority. In addition, nothing in this Contract shall restrict in any way the State’ right to seek changes to existing laws.

#### External Terms and Conditions

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

#### 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.

#### 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.

#### Taxes

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

#### Third Party Beneficiaries

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

#### 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.

#### 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.

#### Standard and Manner of Performance

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

#### Licenses, Permits, and Other Authorizations

* 1. Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations, including all documentation from Colorado’s Secretary of State necessary to demonstrate that Contractor is authorized to do business in the State, required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all licenses, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.
  2. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, a certificate of authority to transact business in the State of Colorado ad designate a registered agent in Colorado to accept service of process.

#### Indemnification

##### General Indemnification

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

##### Confidential Information Indemnification

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

##### Intellectual Property Indemnification

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

##### Accessibility Indemnification

Contractor shall indemnify, save, hold harmless, and assume liability on behalf of the State, its officers, employees, agents and assignees for any and all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and other amounts incurred by any of the Indemnified Parties in relation to Contractor’s noncompliance 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. State employees are considered third parties for the purposes of this section.

#### Accessibility

* + 1. Contractor shall comply with the*Accessibility Standards for Individuals with a Disability,* as adopted by the Office of Information Technology pursuant to §24-85-103, C.R.S.
    2. The State shall require that the Contractor’s compliance with the *Accessibility Standards for Individuals with a Disability* adopted by the Office of Information Technology pursuant to §24-85-103, C.R.S. is determined and tested by a qualified third party selected by the State. The State may ask Contractor to review the selection of the third party. Contractor shall be responsible for all costs associated with the third-party vendor’s assessment. If Contractor is not in compliance as determined by the third-party vendor, at the State’s request and at the State’s discretion, Contractor shall promptly take all necessary actions to come into compliance using a State-approved vendor, at no additional cost to the State.

#### Use of Artificial Intelligence Systems

* 1. All capitalized terms in this Section, not otherwise defined in this Agreement, are defined in §§6-01-1701, *et seq*., C.R.S., the Parties agree to comply with the provisions of §§6-01-1701, *et seq*., C.R.S., regarding Consumer Protections in Interactions with Artificial Intelligence Systems. These include, but are not limited to:
     1. Developer duty to avoid algorithmic discrimination, including documentation requirements;
     2. Deployer duty to avoid algorithmic discrimination including a risk management framework for artificial intelligence; and
     3. Disclosure of an Artificial Intelligence System to Consumer.
  2. The Parties are obligated to take extra precautions with High-Risk Artificial Intelligence Systems, which are any that, when deployed, make or are a substantial factor in making a Consequential Decision.
     1. Advance Approval for High-Risk AI Usage. Contractor shall obtain prior written approval from the State before utilizing High Risk Artificial Intelligence technologies in the provision of Services under this contract and purchasing instruments entered into pursuant to this Contract. Contractor shall clearly identify in writing the specific High-Risk Artificial Intelligence technologies to be employed, their intended functions, their potential impact on service delivery, and the benefit to the State.
     2. High-Risk Artificial Intelligence Systems Training Data Usage. Contractor shall not employ State Confidential Information to train High-Risk Artificial Intelligence Systems without obtaining prior written approval from the State. The intended usage of such data for High-Risk Artificial Intelligence Systems training must align with existing data usage rights, and Contractor shall ensure that data privacy and security are maintained throughout the process. Specifically, all PII, PHI, FTI, CJI, and PCI data must be managed as specified in the main body of this Contract and in any data management exhibits attached to this Contract. No data used for High-Risk Artificial Intelligence Systems training may be stored outside of the United States without prior written approval of the State.

### Colorado Special Provisions (Colorado Fiscal Rule 3-3)

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

#### 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.

#### 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.

#### 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.

#### Independent Contractor.

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

#### Compliance with Law.

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

#### Choice of Law, Jurisdiction, and Venue.

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

#### Prohibited Terms.

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

#### Software Piracy Prohibition.

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

#### Employee Financial Interest/Conflict of Interest. §§24-18-201 and 24-50-507, C.R.S.

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

#### Vendor Offset and Erroneous Payments. §§24-30-202(1) and 24-30-202.4, C.R.S.

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

## Exhibit A, Statement of Work

## Exhibit B, Sample Option Letter

**Option Letter #**

### State Agency

[Insert Department's or IHE's Full Legal Name]

### Contractor

**[Insert Contractor's Full Legal Name]**

### Current Contract Maximum Amount

#### Initial Term

State Fiscal Year 20xx: $0

#### Extension Terms

State Fiscal Year 1: 20xx $0.00

State Fiscal Year 2: 20xx $0.00

State Fiscal Year 3: 20xx $0.00

State Fiscal Year 4: 20xx $0.00

Total for All State Fiscal Years $0.00

### Option Letter Number

[Insert the Option Number (e.g. "1" for the first option)]

### Original Contract Number

**[Insert CMS number or Other Contract Number of the Original Contract]**

### Option Contract Number

[Insert CMS number or Other Contract Number of this Option]

### Contract Performance Beginning Date

[Month Day, Year]

### Current Contract Expiration Date

[Month Day, Year]

### Options:

* 1. Option to extend for an Extension Term

### Required Provisions:

In accordance with section 2.C of the Original Contract referenced above, the State hereby exercises its option for an Extension Term, beginning [DATE] and ending on the Current Contract Expiration Date shown above, at the rates stated in the Original Contract, as amended.

### Option Effective Date:

* 1. The Effective Date of this Option Letter is upon the signature of the State Controller or an authorized delegate.

**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 contract will be routed to OSC for approval]

Option Effective Date:

## 

## Exhibit C, Information Technology Provisions

This exhibitregarding **Information Technology Provisions** (“IT Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this IT Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this IT Exhibit, all references to “Contract” shall include this IT Exhibit. If there is language in the main body of this Contract or any other Exhibit referencing “Force Majeure,” or anything substantially similar to Force Majeure, this IT Exhibit shall not be subject to the “Force Majeure” language. The provisions of this IT Exhibit are of vital importance to the State and the security of the State.

### Protection of System Data

* 1. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor accesses the State’s Information Technology (defined below) or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this IT Exhibit. All provisions of this IT Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
  2. The terms of this IT Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. “Information Technology” means:
     1. Any technology and equipment described in §24-37.5-102(2), C.R.S., and any related Work or Deliverable(s);
     2. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
     3. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
  3. Contractor shall, and shall require its Subcontractors to meet all of the following:
     1. Comply with all rules, policies, procedures, and standards issued by the Governor’s Office of Information Technology (“OIT”), including change management, project lifecycle methodology and governance, technical standards, accessibility, documentation, and other requirements posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>.
     2. Comply with State and federal laws, rules, and regulations related to security, privacy, confidentiality, integrity, availability, auditing, and Incident Reporting.
     3. Provide that security is not compromised by unauthorized access, including but not limited to: workspaces, computers, networks, software, databases, or other physical or electronic environments.
     4. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State’s Information Security Office (“ISO”).
  4. Subject to Contractor’s reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining or accessing the State’s Information Technology, and evaluating physical and logical security control effectiveness.
  5. Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its employees and agents, including any Subcontractors and employees of Subcontractors, performing services or having access to State Records, or maintaining or accessing the State’s Information Technology, provided under this Contracts. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be considered current.
     1. Upon request, Contractor shall provide written notice to a designated representative for the State indicating that background checks have been performed. Such written notice shall inform the State of any action taken in response to such background checks, including any decisions not to take action in response to information revealed by a background check.
     2. If Contractor will have access to Federal Tax Information (“FTI”) under the Contract, Contractor shall agree to the State’s requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the prohibitions on offshore access and the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

### Data Handling

* 1. Contractor may not maintain or forward State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery, without the prior written consent of the State. Contractor shall not maintain or store State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of ISO.
  2. Contractor agrees to not disclose State Records except only to its employees, or Subcontractors, who have a need to know the information for the purpose of satisfying the requirements of the Contract. Contractor shall not disclose State Records to any third parties, or allow any third parties to access State Record, without the prior written authorization of the State.
  3. Contractor shall not access or process Federal Tax Information or Criminal Justice Information, or systems that connect to such data, from outside the United States, including accessing or processing by Contractor’s employees, agents, or Subcontractors.
  4. Within 60 days following the expiration or termination of this Contract, and upon request by the State, Contractor shall make available to the State a complete download file of all State Records.
     1. This download file shall be made available to the State within 10 Business Days of the State’s request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system schema as well as transformation definitions, or delimited text files with documents, and detailed schema definitions along with attachments in their native format.
     2. Upon the termination of Contractor’s provision of data processing services, Contractor shall, as directed by the State, return all State Records provided to Contractor by the State or its agents, and the copies thereof, to the State or destroy all such State Records and certify to the State that Contractor has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided to Contractor by the State or its agents, Contractor shall provide written notice to the State and guarantee the confidentiality of all State Records provided to Contractor by the State or its agents, and shall not access or actively process such data anymore. Contractor shall not interrupt or obstruct the State’s ability to access and retrieve State Records stored by Contractor.
  5. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor’s infrastructure at its sole discretion and at any time. Upon request of the State, the federal government, or the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this IT Exhibit in accordance with the terms of this Contract.

### Delivery and Acceptance

* 1. Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.
  2. Contractor’s delivery of any Work or Deliverables to the State shall constitute Contractor’s certification that such Work or Deliverable conforms to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.
  3. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. The state will provide communication of such acceptance or rejection within a reasonable time period after the delivery of the Work or Deliverable. Acceptance by the State shall be final, except in cases of Contractor’s failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor’s gross negligence or willful misconduct.

### Warranty

* 1. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor’s warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
  2. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 Business Days of the notice one or more recommendations for corrective action with sufficient documentation for the State to ascertain the feasibility, risks, and impacts of each recommendation. The State’s remedy for such defect or material non-conformity shall be either:
     1. Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or
     2. Contractor shall refund to the State all amounts paid for such Work or Deliverable, as well as pay to the State any additional amounts reasonably necessary for the State to procure alternative goods or services of substantially equivalent capability, function, and performance.
  3. Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date that the State accepts, in writing, the corrected or replacement Work or Deliverable.

### Compliance

In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:

* 1. All ISO policies and procedures that ISO has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5. These policies and procedures are posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>
  2. All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor’s performance under the Contract. Such obligations may arise from:
     1. Health Information Portability and Accountability Act
     2. IRS Publication 1075
     3. Payment Card Industry Data Security Standard
     4. Federal Bureau of Investigation’s Criminal Justice Information Service Security Addendum
     5. Centers for Medicare & Medicaid Services Minimum Acceptable Risk Standards for Exchanges
     6. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration
  3. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor’s performance under the Contract.
  4. Contractor shall allow the State access and shall provide the State with information required to assess Contractor’s compliance, at the Contractor’s sole cost and expense. Such access and information shall include, at the State’s sole discretion:
     1. An annual fiscal year SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by ISO, including the performance of security audit and penetration tests, as requested by ISO.
  5. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor shall provide ISO with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application level risk assessments, and other security assessment activities as required by the Contract or reasonably requested by ISO. Contractor shall make reasonable efforts to remediate any vulnerabilities or shall request a security exception from the State. The State will work with Contractor and ISO to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and ISO will consider such requests in accordance with their policies and procedures referenced herein. The State shall have sole discretion for determining a security exception or requiring remediation of the vulnerability by Contractor. Contractor’s obligations under this Contract are not altered by requesting a security exception under this section, unless and to the extent the request is approved by the State.

### Transition of Services

Upon request by the State and prior to expiration or termination of this Contract or of any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services designated by the State. Contractor shall perform all services related to such transition at no additional cost.

### License or use audit rights

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