



COLORADO

Transportation Investment Office

REQUEST FOR PROPOSAL (RFP)

SUBMISSION DEADLINE: March 15, 2023

Proposals Submitted Electronically To: pamela.hutchins@state.co.us

Transportation Planning, Modeling, and Advisory Services

The Colorado Transportation Investment Office (CTIO), a division of the Colorado Department of Transportation (CDOT), is requesting proposals from qualified individuals and/or firms interested in providing **Transportation Planning, Modeling and Advisory Services** for the next five (5) years. **The CTIO intends to select a pool of two or three qualified firms.** By selecting qualified firms, the CTIO is not guaranteeing a specific amount of work, and specific tasks will be assigned to the selected firms by the CTIO through Task Orders. CTIO is seeking firms to provide a wide variety of services, including:

1. Level One, Level Two, and Level Three (investment grade) Traffic and Revenue (T&R) Studies.
2. Transit and Rail Planning (including ridership and revenue studies).
3. Toll Rate Optimization Studies.
4. Real-Time Express Lanes Monitoring and Traffic Modeling.
5. Federal Grant Application Assistance.
6. General Advising and Program Level Planning Support.

Qualified firms may propose on one or more areas of services sought by the CTIO. Read this Request for Proposal (RFP) thoroughly before responding. Illegible responses may be rejected as non-responsive.

CTIO reserves the right to reject all bids or parts thereof, and to waive informalities or irregularities. By submission of a bid, Contractor agrees to the State of Colorado terms and conditions.

By submission of a proposal, bid, or quote, the Contractor agrees as follows:

- Except as replaced, modified, or supplemented by CTIO for this solicitation, all items in the State of Colorado Solicitation Instructions/Terms and Conditions are considered part of and are incorporated by reference into this document.
- Contractor testifies that bid prices were arrived at independently and there was no collusion involved.
- The Contractor guarantees to the State that they understand and agree to the terms and conditions of this RFP and that they will not default from performance by virtue of a mistake or misunderstanding. Contractors shall seek clarification from CTIO of any specifications, terms, and/or conditions that they determine to be unclear. The failure of a Contractor to seek clarification may be deemed a waiver of any such clarification.
- Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller
- **This award shall be available primarily for use by CTIO. Other State Agencies and Institutions, Local Governments, and Political subdivisions in the State of Colorado may be allowed to access use of this award ONLY if such use does not conflict with the work required under any contract with CTIO.**

All proposals must be submitted on this form and signed by secure electronic signature by an authorized officer or agent of the firm.

Vendor Name			
Vendor Address			
Vendor Phone			
F.E.I.N/SSN			
Name (Print)		Title	
Signature		Date	

NOTE: Results will be posted on the CTIO web site but will not be discussed by phone except as noted in the RFP document

REQUEST FOR PROPOSAL COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

SECTION 1 ADMINISTRATIVE INFORMATION

1.1 ISSUING OFFICE:

This RFP is issued by the Colorado Transportation Investment Office pursuant to its [Procurement Guidelines](#). All contact regarding this Request for Proposal (RFP) is to be directed electronically to:

Pamela Hutchins, CTIO Contract Support
pamela.hutchins@state.co.us

1.2 PURPOSE:

The purpose of this RFP is to obtain competitive bid proposals from qualified individuals and/or firms interested in providing Transportation Planning, Modeling, and Advisory Services to the CTIO as more specifically described below. This RFP provides prospective proposers with sufficient information to enable them to prepare and submit proposals for consideration by CTIO to satisfy the needs as outlined in the Scope of Work.

1.3 SCHEDULE OF ACTIVITIES:

ITEM	ACTIVITY DESCRIPTION	DATE	TIME (MST)
A.	RFP Published on CTIO Website	February 8	12 PM
B.	Prospective Proposers' Inquiry Deadline	February 16	4 PM
C.	Response to Proposer Questions	February 23	4 PM
D.	PROPOSAL SUBMISSION DEADLINE	March 15	4 PM
E.	Evaluation of Proposals	March 15-29	N/A
F.	Top Consultants Selected and Notified of Interview (estimate) <i>if determined necessary.</i>	March 29	2 PM
G.	Interviews with Short List of Consultants <i>if determined necessary.</i> (estimate)	April 1-5	N/A
H.	Consultant Selection (estimate)	April 8	12 PM

1.4 PROPOSAL SUBMISSION:

All proposals must be submitted electronically, and it is the responsibility of the proposer to ensure that their proposal is received by CTIO prior to the deadline. PROPOSALS RECEIVED AFTER THE ABOVE DATE AND TIME WILL NOT BE CONSIDERED. Proposals must be clearly identified as a proposal for the “**Transportation Planning, Modeling, and Advisory Services RFP**” and shall show such information on the **outside** of the electronic proposal packet. **Proposals shall not be longer than 20 pages**, not including the covers, index, tab sheets, required forms or certifications, resumes and appropriate appendices.

1.5 INQUIRIES:

Prospective proposers may make written inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date(s) and time(s) specified in the Schedule of Activities, Section 1.3. Questions must be submitted electronically to:

Pamela Hutchins, CTIO Contract Support
pamela.hutchins@state.co.us

Email inquiries must be clearly identified and marked “**Transportation Planning, Modeling, and Advisory Services RFP**” in the Subject Line. If needed, an addendum will be published on the CTIO website, at <https://www.codot.gov/programs/ctio/procurement>, responding to questions submitted regarding this RFP.

1.6 AMENDMENTS TO RFP:

In the event it should be necessary to revise any portion of this RFP, addenda will be published on the CTIO website. It is the prospective proposer’s sole responsibility to monitor the internet site, at <https://www.codot.gov/programs/ctio/procurement> addenda to this RFP.

1.7 RESPONSE MATERIAL OWNERSHIP:

All material submitted pursuant to this RFP becomes the property of the State of Colorado. Proposals may be reviewed by any person after the “Notice of Intent to Make an Award” letter has been issued, subject to the terms of Section 24-72-201 et. seq., C.R.S., as amended, Public (open) Records.

1.8 PROPRIETARY INFORMATION:

All material submitted in response to this RFP will become public record and will be subject to inspection after the CTIO executes a contract with the preferred proposer. Any material requested for treatment as proprietary and/or confidential must be clearly identified and easily separable from the rest of the proposal. Such request must include justification for the request. The request will be reviewed and either approved or denied by the CTIO Director. If denied, the proposer will have the opportunity to withdraw its entire proposal, or to remove the proprietary restrictions. Refer to Section 1.32 and Section 1.33 of this RFP for submission of Confidential/Proprietary information.

1.9 REJECTION OF PROPOSALS:

Pursuant to Procurement Rule 24-103-301, the CTIO reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is in the best interest of the State to do so. Failure to furnish all information or to follow the proposal format, requested in this RFP may disqualify the proposal. Any exceptions to the Scope of Work must be clearly identified and supported in the proposal. Inclusion of such exceptions does not guarantee acceptance by the CTIO of such variation and may instead lead to rejection of the proposal as non-responsive.

If award is NOT made to any proposer, or the CTIO cancels the RFP solicitation, all received proposals must remain confidential and not open for public inspection. The purpose for this condition is to prevent any future potential proposers an opportunity to review other bidders’ proposals and thereby gain any unfair advantage in submitting future proposals. Any cancellations occurring before the submittal due date will be returned to the appropriate bidder with a notice of cancellation letter.

1.10 ORAL PRESENTATION/SITE VISITS:

Proposers *may be* asked to make oral presentations and participate in a question-and-answer period conducted by the evaluation committee, to ensure that the proposers have the abilities offered in their proposal, to provide the services solicited specifically by the CTIO and, potentially, other State agencies. The *optional* oral presentation stage of the RFP selection process is designed solely for the benefit of the evaluation committee towards assisting it in making a final proposal selection. Oral presentations will be conducted at the sole discretion of the committee and be at the proposer’s expense. If invited to make a presentation, the proposer should be prepared to answer any possible questions of clarification related to the RFP requirements or the proposal submitted in response to this RFP solicitation. If invited to make an oral presentation, proposer must ensure attendance by those primary staff members anticipated to provide services under any resulting contract, and any other personnel identified by CTIO at the time of invitation.

1.11 PARENT COMPANY:

If a proposer is owned or controlled by a parent company, the name, main office address and parent company's tax identification number must be provided in the proposal.

1.12 EVALUATION PROCESS AND CRITERIA:

An evaluation will be made by a committee to determine the merit of proposals received in accordance with the evaluation criteria defined herein. The recommendations of this group will be forwarded to the CTIO Director for approval.

1.12.1 Failure of the proposer to provide in their proposal any information requested in this RFP may result in disqualification of the proposal and shall be the responsibility of the proposing individual or firm.

1.12.2 During the evaluation process, discussions may be conducted with proposers who submit proposals determined to be realistic candidates for the award. It will be the recommendation of the evaluation committee if discussions for clarification are needed, based on their experience with application of these services to CTIO specific projects.

1.12.3 The sole responsibility of the committee will be to recommend the bidder whose proposal is most responsive to the State's needs while within the available resources. The specifications within this RFP represent the minimum performance necessary for response.

1.12.4 Specific evaluation criteria are outlined in Section 3 entitled Evaluation Criteria.

1.13 PROPOSAL CONTENT / ACCEPTANCE OF RFP TERMS:

A proposal submitted in response to the RFP shall constitute a binding offer. Acknowledgment of this condition shall be indicated by the signature of the proposer, or an officer of the proposer legally authorized to execute contractual obligations. A submission in response to the RFP acknowledges acceptance by the proposer of all terms and conditions including compensation, as set forth herein. Proposer shall identify clearly and thoroughly any variations between its proposal and the RFP. Failure to do so shall be deemed a waiver of any rights to subsequently request modification of the terms of performance, except as outlined or specified in the RFP.

1.14 PROVISION FOR REQUIRED INSURANCE:

Award of a contract will be contingent upon the successful proposer submitting certificates of insurance in accordance with the provisions of the attached Provision for Required Insurance, provided in the Sample Contract, Attachment B to this RFP.

1.15 CONSULTANT CERTIFICATION:

Proposers must submit a signed Consultant Certification Form with their proposal, provided as Attachment A to this RFP.

1.16 CONFLICT OF INTEREST:

By submission of a proposal, proposer agrees that, at the time of contracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services. The proposer shall further covenant that, in the performance of the contract, it shall not employ any person having any such known interest. If there is any question of a known potential conflict of interest—for example, in respect of one or more of the projects CTIO or CDOT is known to be pursuing in the future—please identify it in your proposal. Any firm affiliated or related to an employee of the Transportation Commission, CDOT, the CTIO Board, or CTIO shall be ineligible to submit a proposal for the required services.

1.17 PROPOSAL PRICES:

Proposed cost information must include, at a minimum, rates associated with each staff position anticipated to work on this Project and any/all overhead multipliers. Although proposers are not asked to provide binding, specific costs at this time, they are urged to submit prices reflective of as accurate and reasonable a prediction of estimated costs as possible based upon the scope of work described in this RFP and the estimate of staff time required to complete. Proposers are alerted that any revisions, including costs, will be closely evaluated by the committee and /or licensed professional, to insure the elimination of any inequities and unacceptable conditions. In addition, proposers are advised that if, during performance of a contract

resulting from this RFP solicitation, any travel or per diem is required, those costs will be reimbursed at the rates outlined in the State of Colorado Fiscal Rules.

1.18 REQUEST FOR PROPOSAL/INVITATION FOR BID:

The Request for Proposal/Invitation for Bid Form - the cover page of this RFP - must be signed, electronically by a person authorized to bind the proposer, and returned with the proposal. In addition, any subsequent amendments (such as Responses to Inquiries), made to the RFP as per Section 1.6 must be acknowledged with signature by a person authorized to bind the proposer, and returned with the proposal.

1.19 BUDGETED FUNDS:

As the intent is to issue this as a master task order contract, overall funds for the contract are not disclosed at this time. Based upon the pricing agreed upon in concluding this contract, task orders will be budgeted and issued as appropriate. Prior to issuing a task order, CTIO will issue a scope of work to the pool of qualified firms and will give no more than two weeks for a bid. CTIO will select the bid that is determined most advantageous to the CTIOs need, and not necessarily the lowest cost.

1.20 INCURRED COSTS:

The CTIO is not liable for any cost incurred by proposers prior to issuance of a legally executed contract or procurement document. No property interest of any nature shall occur until a contract is awarded and signed by all concerned parties.

1.21 INTENT TO AWARD:

After a proposer is selected, an "Intent to Award" letter will be emailed to all firms who submitted a proposal. After Intent to Award has been issued, interested parties may review their proposal by making an appointment with:

Pamela Hutchins, CTIO Contract Support
pamela.hutchins@state.co.us

1.22 PROTESTED SOLICITATIONS AND AWARDS:

Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the CTIO Director, Ms. Piper Darlington. The protest shall be submitted electronically to piper.darlington@state.co.us within seven (7) working days after such aggrieved person knows, or should have known, of the facts giving rise thereto. Ref. Section 24-109-101 et seq., C.R.S., as amended; Section 24-109-201 et. seq., C.R.S. as amended; Section R-24-109-101 through R-24-109-206, Colorado Procurement Rules. Protests received after the seven-working-day period shall not be considered. The written protest shall include, as a minimum, the following:

- i. The name and address of the protestor;
- ii. Appropriate identification of the procurement by bid, RFP, or award number;
- iii. A statement of the reasons for the protest; and
- iv. Any available exhibits, evidence or documents substantiating the protest.

1.23 STANDARD CONTRACT:

The CTIO will incorporate standard State contract provisions into any contract resulting from this RFP (see Attachment B, Sample Contract). The CTIO anticipates issuing a task order contract for a five-year term.

1.24 SELECTION OF PROPOSAL:

All proposers will be notified in writing regarding the results of the RFP selection. Upon review and approval of the evaluation committee's recommendation for award, the CTIO Office will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer(s). Provided, however, that all proposers understand that such letter, by itself, does not grant any property interest or right of any nature in the RFP work/services or to a contract for the performance of such work/services. Contract terms that are consistent with the RFP and that are acceptable to the State must first be discussed, and a contract must then be completed and signed by all parties and the State Controller, before any such right exists. Therefore, the apparent successful proposer receiving a "Notice of Intent to Make an Award" letter shall not rely on that letter to make commitments to third parties, and the apparent successful proposer shall not take any actions(s) to prepare for, or start, the performance of the RFP work/services until a contract is so discussed and executed. If the parties are unable to agree on negotiated terms, for the contract, or if this desired schedule date is not met through no fault of CTIO, CTIO may elect to cancel the "Notice of Intent to Make an Award" letter and make the award to the next most advantageous proposer.

1.25 AWARD OF CONTRACT - MERIT:

The award will be made to that proposer whose proposal conforms to the RFP terms and conditions and is judged by the committee to be the most advantageous to the State of Colorado and CTIO, price and other factors considered, subject to negotiation, successful discussion, and final execution of an acceptable contract as described above.

1.26 AWARD OF CONTRACT - TIMELINE:

It is the intent of CTIO to select a preferred proposal within 60 days of the deadline for receipt of proposals. However, as the evaluation process is dependent upon the number of proposals received, their length, and committee member's schedules, the schedule of activities after the proposal submission deadline, is strictly estimated and therefore, bid proposals must be firm and valid for award for at least 90 days after the deadline for receipt of proposals.

1.27 NEWS RELEASES:

News releases pertaining to this RFP shall NOT be made prior to execution of a contract, and then are to be made only with the approval of CTIO. Selected proposer will not be allowed to discuss this information or to copy records to third parties per State regulation.

1.28 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

1.28.1. By submission of this proposal each proposer certifies, and, in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

- (a) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor.
- (b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly to any other proposer or to any competitor.
- (c) No attempt has been made by the proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

1.28.2 Each person signing the Request for Proposal / Invitation for Bid form of this RFP certifies that:

He/she is the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 1.28.1 (a) through (c) above.

OR

He/she is not the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to 1.28.1 (a) through (c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 1.28.1 (a) through (c) above.

1.28.3 A proposal will not be considered for award where 1.28.1 (a) and 1.28(c) and/or 1.28.2 above have been deleted or modified. Where 1.28.1 (b) above has been deleted or modified, the proposal will not be considered for award unless the proposer furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the CTIO Office, or designee, determines that such disclosure was not made for the purpose of restricting competition.

1.29 TAXES:

The State of Colorado, as purchaser, is exempt from all Federal taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K) and from all State and Local Government Use Taxes (Ref. Colorado Revised Statutes Chapter 39-26.114[a]). Seller is hereby notified that when materials are purchased in certain political subdivisions the seller may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

1.30 PROJECT SERVICES AND FUNDING AVAILABILITY:

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the State of Colorado.

1.31 INTELLECTUAL PROPERTY AND OWNERSHIP RIGHTS:

All original materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material and related intellectual property developed or created by the successful Contractor pursuant to the services sought by this RFP, and subsequently provided and integrated by contract between CTIO and the successful proposer, shall become the sole property of the State. Any commercial off-the-shelf software (COTS), required by successful proposer to complete the works described for this Contract, will be licensed to CTIO at CTIO's expense either directly by CTIO, or on behalf of CTIO, by the successful proposer.

1.32 SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION:

The State neither requests nor encourages the submission of confidential/proprietary information in response to this RFP. Information submitted will be open for public inspection. However, written requests for confidentiality can be submitted to the CTIO Director, provided that the submission must be in STRICT accordance with the following procedures. Adherence to these procedures remains the SOLE RESPONSIBILITY of the proposer.

1.33 PROCEDURES FOR SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION:

- A. Written request for confidentiality shall be submitted, by the proposer, with the proposal documents.
- B. The written request will be enclosed in an envelope marked "REQUEST FOR CONFIDENTIALITY" and attached to the cover of the ORIGINAL copy of the proposer's proposal that contains the CTIO invitation for proposal page with the proposer's ORIGINAL autographic signature.
- C. The written request must state SPECIFICALLY AND IDENTIFY BY PAGE NUMBER, what elements of the proposal are to remain confidential. The request must also IDENTIFY THE BASIS for the claim of confidentiality, OTHER than a recitation of a SPECIFIC State or Federal statute. Confidential/Proprietary information MUST be readily IDENTIFIED, MARKED and SEPARATED / PACKAGED from the rest of the proposal. Co-mingling of confidential/proprietary information and other information is NOT acceptable.
- D. The CTIO Director will make a written determination as to the apparent validity of any request for confidentiality. The written determination of the Director will be sent to the proposer.
- E. Proposals that are determined to be at variance with this procedure may be declared non-responsive by the Director, and not given further consideration.

1.34 ASSIGNMENT AND DELEGATION:

Except for assignment of antitrust claims, neither party to any resulting contract stemming from this RFP, may assign or delegate any portion of the Contract without the prior written consent of the other party. This restriction includes contractor use of "out-of-state" personnel that may not have the ability to comply fully with CTIO Project scheduling constraints.

1.35 VENUE:

The laws of the State of Colorado shall govern in connection with the formation, performance, and the legal enforcement of any resulting contract. It is the intent of CTIO that the requirements of Title 24, C.R.S. as amended, Article 101 through 112 and Rules adopted to implement those statutes shall govern this procurement to the extent they may be applicable.

1.36 BACKGROUND

Organization History

The Funding Advancement for Surface Transportation and Economic Recovery Act (Part 8 of Article 4, Title 43, Colorado Revised Statutes [CRS]), otherwise known as FASTER, created the High-Performance Transportation Enterprise (HPTE) in 2009 as an independent, government-owned business within the Colorado Department of Transportation (CDOT). HPTE remains the name for the enterprise in all legal and legislative documents, but following the renaming in 2021, HPTE is now doing business as the Colorado Transportation Investment Office (CTIO).

The Colorado Transportation Investment Office (CTIO) was formed to aggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects that will improve the safety, capacity, and accessibility of the surface transportation system and can feasibly be commenced in a reasonable amount of time, will allow more efficient movement of people, goods, and information throughout the state, and will accelerate the economic recovery of the state. Such innovative means of financing projects include but are not limited to, public-private partnerships (toll revenue risk and availability payment models) and user fee-based project financing.

Express Lanes Network

Since its start-up in 2009, CTIO has leveraged these innovative means to finance and deliver Colorado's first Express Lanes projects on U.S. Highway 36 (US 36), Interstate 25 (I-25), Colorado State Highway 470 (C-470), and Interstate 70 (I-70). By 2025, there will be ten Express Lane projects in operation, and Express Lanes have led to the accelerated delivery of over \$3 billion in highway projects throughout Colorado. If not for the tolling and toll revenue-backed financing component, these projects would have been either significantly delayed, delivered with a significantly reduced scope, or advanced at the expense of other CDOT projects throughout Colorado. Even with the expansion of the Express Lanes network, highway infrastructure is severely congested and the rapid growth of Colorado's population points to even greater congestion in the decades ahead unless additional toll revenue-backed project financings are pursued. For a more detailed description of the CTIO and its various projects, please see the following website: www.codot.gov/programs/ctio.

1.37 SCOPE OF SERVICES BEING SOLICITED

This scope of services being solicited describes core work areas and *many* corresponding tasks and is intended to give interested proposers enough detail about the scope of the anticipated work to develop responsive RFP proposals.

1. Level One, Level Two, and Level Three (investment grade) Traffic and Revenue (T&R) Studies

CTIO uses T&R studies to support its program in a variety of ways. This can include assessing the feasibility of securing toll revenue-backed financing for projects in development to updating long-term forecasts for projects that have already been in operations or revenue collections for several years. Tasks requested under this work area could range from:

- A Level 1 study is to develop and provide CTIO estimates of potential traffic demand and growth that CTIO might anticipate along potential tolled Express Lane corridors. The Consultant will (i) access and use readily available demographic and traffic planning data and reports prepared and issued by others; (ii) visually investigate the geographic area to be served by the tolled corridor; (iii) determine the potential for competing transportation infrastructure; and (iv) produce 40-year (or longer-term, determined by CTIO) revenue estimates based upon the investigations of the Consultant. CTIO will use the Consultant's estimates to determine whether the estimated revenues warrant the investment of additional State funds to produce more sophisticated traffic and revenue forecasts incorporating additional research and advanced analyses, e.g., Level II and Level III.

- A Level 2 study is to refine toll traffic forecasts and revenue estimates to strengthen and gain approval for the project financial plan and provide traffic operations support for the final design process. The traffic and revenue analysis at this level includes data collection to validate travel demand forecasts, desired travel patterns, and economic development assumptions. Level 2 may include conducting manned field traffic survey stations with origin and destination interviews and questionnaire surveys.
- A Level 3 study is to produce a final traffic and revenue report having the thoroughness and scientific basis necessary to support the issuance of revenue bonds or other debt instruments such as federal loans.

Please specify what level of T&R study can be provided by the proposer in your written response. Proposers can visit <https://www.codot.gov/programs/ctio> to learn more about our Express Lanes network and the status of our projects.

2. Transit and Rail Planning (including ridership and revenue studies)

CTIO has the legislative authority to support a variety of multimodal surface transportation infrastructure projects. CTIO support transits in different ways using its Express Lanes Network. For example, net toll revenue is used to support transit use through the Central 70 Globeville and Elyria-Swansea Tolling Equity Program and for a more reliable trip time transit providers use the Express Lanes. CTIO is looking to potentially partner with existing transit and rail organizations (such as CDOT's regional bus service Bustang or the Front Range Passenger Rail District) as well as assisting CDOT with exploring innovative financing options to accelerate key transit and rail projects (such as a passenger rail line to the mountains through Steamboat Springs). Tasks requested under this work area could range from:

- Reviewing existing transit and rail plans (such as the Statewide Transit Plan or the Colorado Freight Passenger Rail Plan or other service development plans) to help CTIO and CDOT identify projects to partner on.
- Developing initial feasibility and/or ridership studies to determine level of ridership and potential revenue collection of a proposed joint project.
- Estimating the costs and benefits associated with providing a proposed service.
- Collecting data to fill existing gaps to aid in decision making. This may involve collecting traffic data, ridership data, origin and destination data, and data through stated preference surveys. Data collection may also involve field reconnaissance.

3. Toll Rate Optimization Studies

CTIO currently uses both time of day and dynamic pricing across its network of tolled Express Lanes. Tasks under this work area will cover technical assistance and other activities to support pricing analyses of CTIO tolled Express Lanes corridors. Tasks may include:

- Data compilation, collection, and analysis.
- Evaluation and analysis of pricing strategies (both time of day and dynamic), toll rate adjustments, dynamic tolling parameter sensitivity testing, monte-carlo analysis, and other financial modeling techniques to determine optimal toll solutions based on revenue, throughput, or other metrics identified by CTIO
- Technical support for development and application of network models includes macroscopic modeling using regional and statewide travel demand models and microscopic modeling using detailed microsimulation software and models.
- Assistance preparing informational or educational materials for meetings, stakeholder communications, project briefings, or other coordination.
- Document preparation and production services, including drafting and design of technical memorandum or final study reports.
- Produce a comparison of revenue generated at existing toll rates over time instead of recommended toll adjustments.

4. Real-Time Express Lanes Monitoring and Traffic Modeling.

Tasks requested under this work area will cover technical assistance and support activities related to operational analyses of CTIO Express Lane corridors, resulting in recommendations to improve operations and/or revenue capture. Examples include:

- Review current Express Lane ingress and egress points to identify any operational issues, reduce leakage or improve capture rates.
- Review current traffic patterns to identify changes in driver behavior, peak travel times, or travel trends in a given corridor.
- Model any proposed changes to General Purpose Lane configurations or operations to demonstrate any impact on the Express Lanes.

5. Federal Grant Application Assistance

CTIO partners with CDOT to accelerate surface transportation infrastructure projects through innovative financing tools, including grants. Tasks under this work area will cover technical assistance and support activities related to the drafting, development, and preparing of grant applications, related documents, and general requests for information or documentation. Tasks may include:

- Strategic planning and policy support services.
- Coordination and engagement with grant partners and internal audiences.
- Data compilation, collection, and analysis.
- Economic analyses, including benefit-cost, economic-impact, return on investment, and life-cycle cost analysis, or other related cost, financial, and economic services.
- Technical editing, document preparation, graphic design, proofreading, and other production services

6. General Advising and Program Level Planning Support.

Tasks requested under this work area may vary and could include but are not limited to:

- Analyzing the impacts of proposed changes in CTIO policy, law, or state statute on traffic and revenue across the Express Lanes network. Examples could include:
 - i. Implementation of a network-wide tolling discount program,
 - ii. Expansion of the current tolling equity program and/ or
 - iii. Expansion or changes to the current High Occupancy Vehicle (HOV) 3+ program.
- Updating the existing Express Lanes Master Plan (ELMP) published in 2020. The ELMP identified technical and financial information about potential Express Lane projects throughout the state so that these projects could be prioritized for future study and development. CTIO may update the plan to reflect the projects that have been completed to better understand if the current prioritization of projects has shifted due to increased connectivity and changes in state level transportation priorities.

Consultant shall be responsible for performing all the tasks under the Scope of Services outlined above. Consultant services shall conform to the standards, criteria, and requirements of this Scope of Services.

- A. Consultant shall carry out the directions as received only from CTIO's Director, CTIO's Project Manager or designee. In addition, Consultant shall cooperate with other agencies, and other consultants providing services for this project and for adjacent or other related projects, as necessary.
- B. It is not the intent of the foregoing paragraph to relieve Consultant of professional responsibility during the performance of this Scope of Services. In those instances where Consultant believes a better design or solution to a problem is possible, Consultant shall promptly notify CTIO of these concerns, together with reasons, therefore.
- C. Consultant shall have sole responsibility for the accuracy and completeness of the reports and related material prepared by Consultant for the Project.
- D. The exhibits, studies, estimates, calculations, reports, and other documents furnished under this Scope of Services shall be of a quality acceptable to CTIO. The criteria for acceptance shall be a product of neat appearance, well organized, technically and grammatically correct.
- E. Consultant shall maintain a set of project files indexed in an appropriate database accessible to CTIO and CDOT.
- F. CTIO reserves the right to approve all project scope of services changes. Any changes resulting from the addition, deletion, or revisions to the Scope of Services will not be made without prior written approval from CTIO. The Consultant shall not be compensated for making any changes to the project Scope of Services other than those approved in writing by CTIO.
- G. Consultant shall not suspend performance of this Contract during the negotiations of any change orders except as they may be directed by CTIO. Consultant shall perform all changes in accordance with the terms and conditions of this Contract.
- H. At the completion of this Scope of Services, all electronic files and correspondence relating to the Project shall be turned over to CTIO and CDOT. This includes all working data, field data, and background information used in creating the deliverables listed in the Scope of Services.
- I. Consultant shall coordinate with all agencies involved or potentially impacted by the Project only as directed by CDOT and CTIO.
- J. Consultants are expected to stay informed on transportation issues and tolled express lane topics and cannot bill for education or research unless specifically requested and included in the task order. CTIO will not pay for items initiated by the consultant such as time spent clipping or reviewing news and video monitoring services or attending CTIO Board or staff meetings unless CTIO specifically makes requests for such services as part of an issued task order

SECTION 2

INFORMATION REQUIRED FROM PROPOSERS

GENERAL OFFEROR RESPONSE – SUBMISSION GUIDELINES

2.0 GENERAL SUBMISSION GUIDELINES:

A “proposal” is a responsive, conforming, unconditional, complete, legible, and properly executed offer from a qualified, responsible party interested in providing the services called for, and solicited by, this RFP. It shall be the sole responsibility of the proposer to ensure that the proposal is in the proper form and in CTIO’s possession at the designated location before the scheduled time on the due date of receipt. Proposals will not be returned unless the RFP solicitation is cancelled prior to the submittal due date, in which case such proposals will be returned unopened, or opened for identification purposes only. Any proposal received AFTER the submittal due date and time will be returned unopened or opened for identification purposes only. It is the primary proposer’s further responsibility to identify any anticipated subcontractors, and their anticipated work responsibilities.

2.1 PROPOSAL REQUIREMENTS:

Proposals must provide details of how your organization anticipates providing the services required. This format will allow for more efficient evaluation by the committee and provide proposers with a means of ensuring all requested information is included as part of the submitted documentation. This section of the proposal should contain information amounting to more than a mere duplication or rephrasing of the RFP, instead, the proposer should demonstrate an understanding of the CTIO’s needs and objectives. In other words, answer the question: What is the reason for this solicitation and work described herein?

Proposers should organize their material in the following sequence.

- Cover letter and executive summary (**excluded from the page limit**).
- Identification and brief description of the firm (or firms if relevant) included in the proposal as well as an organization chart.
- A description of why the firm would be the most qualified to handle the work solicited under this RFP.
- Clearly identify the Project Manager(s) and other key team members assigned to the engagement. Please identify the location and general availability of those team members to dedicate time to CTIO assignments. Please include resumes for all key members in the appendices.
- A description of how the engagement will be conducted that includes how the firm or team will address each of the four core work areas identified in section 1.37. Please identify key staff with expertise for the four core work areas and subsequent tasks.
- Provide up to **three (3) examples** of past work supporting client needs like those identified in Section 1.37. These three examples should be included in the main section and include the following:
 - Dates of the project
 - General budget
 - Names of those key team members involved and their roles in the project.
 - Challenges and/or complexities with the project and how the team approached those challenges to achieve a positive outcome for the client.
 - How those challenges and/or complexities might relate to CTIO’s upcoming projects
 - Additional, relevant project examples can be included as part of the appendices.
- Suggested changes, if any, to the Scope of Services outlined above in Section 1.37, including the rationale for the changes.
- Hourly rates and all cost information

The basic response may not exceed 20 pages. **One page shall equal one side of an 8 ½ X 11 inch sheet of paper, one column, single spaced in 12-point font (prefer Arial, Courier, or Verdana).** Describe in full the subject item. The description may be in narrative or outline format, while remaining as brief and concise as possible. Proposers are requested to avoid inclusion of general marketing material or place it in a clearly marked appendix. Resumes of key staff should be included as an appendix to the proposal and will not count towards the page limit.

2.2 ADMINISTRATIVE INFORMATION:

The proposal must include a brief statement of the proposer's understanding and compliance with the administrative terms and conditions set forth in Section 1 of this RFP.

2.3 CONFLICT IDENTIFICATION

Proposals must identify all current and former contract activity with any existing State agency or transportation authority reasonably related to the work described in this RFP that would affect its work with CTIO. Indicate when involvement occurred and the length of such involvement, the specific type of activity with the identified agency and/or transportation authority and indicate the extent of involvement with such entities.

2.3 WORK EXPERIENCE AND CAPABILITY:

CTIO anticipates that the firm or team selected will have expertise in the transportation infrastructure space, specifically transportation planning and multimodal planning (rail, transit, bike, pedestrian), modeling for various modes of travel, traffic, and revenue studies and how it relates to innovative financing techniques, general knowledge of toll road and Express Lane financing and operations.

Specifically, the proposal must address/provide each of the following Qualification factors as indicated:

- A brief history of the firm or the lead firm.
- A description of the firm's or lead firm's experience in providing the work.
- Provide at least three references CTIO may contact at its discretion. The references should be selected to discuss the proposer's breadth of expertise.
- Each reference must include contact names, email addresses, and telephone numbers for individuals familiar with the firms' or lead firm's work on similar projects.

2.4 PERSONNEL QUALIFICATIONS:

The proposal must identify all key personnel anticipated to be assigned to work. For key personnel identified, qualifications and background must be provided, supplemented with resumes of everyone listed and an estimate of the extent to which such individuals will participate in the Project analysis. Staff positions must also be identified for personnel anticipated to be assigned.

Please provide the same information for any sub-contractors identified as members of a proposing team. (Sub-contractors subsequently added to a team will be subject to review and approval by CTIO.)

The proposal will clearly define a strategy for replacement of team members who are no longer working on the Project. Any changes to staff, either before or during the term of the resulting contract, must be provided in writing to CTIO *prior* to their beginning work as part of the proposer's staff assigned to this Project.

2.5 COST:

Proposed cost information must include, at a minimum, rates associated with each core staff position anticipated to work on this Project and any/all overhead multipliers. Rates for support categories may be listed without the identification of specific personnel. This information must be presented in tabular form. Adding work and team members can require contract amendments; therefore, a comprehensive list is preferred as an element of this submission. Although proposers are not asked to provide binding, specific costs at this time, they are urged to submit prices reflective of as accurate and reasonable a prediction of estimated costs as possible based upon the scope of work described in this RFP. In addition, proposers are advised that if, during the performance of a contract resulting from this RFP solicitation, any travel or per diem is required, those costs will be reimbursed at the rates outlined in the State of Colorado Fiscal Rules.

CTIO's preference is for an hourly fee structure that provides the best value for CTIO.

2.6 PROPOSER'S ORGANIZATION:

The proposer is encouraged to provide information regarding its organization that has not been specifically requested, but which the proposer believes relevant and of benefit to the Project.

2.7 MBE/WBE PARTICIPATION:

The State encourages State agencies to utilize minority-owned and women-owned businesses to the greatest extent possible without sacrificing adequate competition. Proposers are reminded of the illegality of discrimination, and the provisions of Procurement Code Section 24-111-02.

SECTION 3 EVALUATION CRITERIA

3.0 AWARD OF BID:

This section will outline the specific evaluation criteria to be used by the evaluation committee in the review and selection of submitted proposals. At the conclusion of the evaluation, CTIO **may** request oral presentations from the top-ranked proposals. The **possible** interview of those top ranked proposals will be held at CDOT Headquarters, with each proposer given fair and equal treatment in this **possible** second phase of the evaluation.

Based on the final review and discussion of the proposals, and interview evaluations (IF conducted), the evaluation committee will recommend that the proposer enter contract discussions with the CTIO. Upon review and approval of the evaluation committee's recommendation for award, the CTIO Procurement Office will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer. It is the intent of CTIO to award a contract to that proposer whose proposal is deemed to be most advantageous to the State of Colorado, price, and other factors considered.

3.1 EVALUATION PROCESS:

3.1.1 An evaluation committee will independently evaluate the merit of proposals received in accordance with the evaluation factors defined in the RFP. The recommendations of this committee will be forwarded to the CTIO Director for review and approval.

3.1.2 Failure of the proposer to provide any information requested in the RFP may result in disqualification of the proposal as non-responsive. It is the responsibility of the proposer to provide all information required by this RFP.

3.1.3 The sole objective of the evaluation committee will be to recommend the proposal most responsive to CTIO needs. The specifications detailed in this RFP represent the minimum performance necessary for such a response.

3.1.4 The proposal deemed most advantageous for CTIO will be recommended for award.

3.1.5 Proposal Scoring:

The sole objective of the evaluation committee will be to score the proposals and recommend the proposer whose response is determined most advantageous to the CTIO, taking into consideration the price and all evaluation factors set forth herein.

Oral Presentation:

At the conclusion of the evaluation and discussion of the written proposals, CTIO **may** (at the committee's sole discretion) conduct oral interviews.

IF the evaluation committee determines oral presentations will assist them in making a final proposal selection, the committee will conduct oral interviews for the purpose of:

- Allowing the proposer an opportunity to verbally present its proposal to the evaluation committee.
- Allowing the committee an opportunity to obtain further definitions of proposal aspects and attempt to resolve any uncertainties.
- Resolving suspected mistakes by calling such perceived errors to the proposer's attention without disclosing information concerning other proposers' proposals; and
- Allowing the committee an opportunity to ask specific questions of the proposer, regarding its proposal offer.

3.2 EVALUATION CRITERIA AND WEIGHT:

The complete proposal package will include, ***but not be limited to***, evaluation using the factors listed below. These factors are designed to incorporate specific evaluation of the items described in Sections 1.37 and 2.1 of this RFP.

Proposals must provide details of how your organization anticipates providing the services required. Detailed financial information must also be included, specifically addressing the providing of services and including proposed estimated cost(s) for providing each task.

As stated in Section 2.1, proposals should not simply repeat what is written in any Section of this RFP, but rather present evidence to the State as to the proposer's understanding of the RFP requirements, terms and conditions, and its ability to provide the services needed within a clearly defined and cost-effective budget.

During the evaluation phase, the committee will independently review each proposal and assign a total maximum score within each category, determined solely through the proposer's response to the criteria detailed in the following sections. The evaluation of each proposal will be scored based on a comparison of the information submitted by each proposer, as detailed in Section 2, against the specific evaluation criteria outlined below.

3.2.1 Capabilities, Experience and Qualifications: (40%) Describes relevant experience of the firm, proposed team member qualifications and clearly demonstrates expertise to deliver on the services being requested for this contract.

- The documented experience of the firm or lead firm with comparable engagements and delivering similar services as requested in Section 1.37,
- The documented experience of the firm or lead firm with working effectively with state Departments of Transportation (DOTs) or similar public agencies.
- The role played by key staff in supporting similar work for comparable engagements.
- The overall range of staff experience and skills.
- The degree to which the proposer has a familiarity with transportation projects in the State of Colorado.

3.2.2 Program Understanding and Project Approach: (35%) Proposer will demonstrate an understanding of CTIOs objectives and needs, including:

- Availability and commitment of personnel assigned to the project.
- Proposal evidences an understanding of the nature of the work required under this RFP and the methodologies involved.
- The submitted proposal is described in sufficient detail thereby inspiring confidence that the proposer can/will be successful in delivering the requested services.
- Clarity in the approach to deliver the services being solicited.
- Demonstration of an understanding of CTIOs program and role with Colorado Department of Transportation

3.2.3 Cost and Compensation Proposal (20%)

- The total cost to provide the required services.
- The timing and terms of payment for services.

3.2.4 Feasibility and Completeness (5%)

- The proposal is both comprehensive and complete, as defined by this RFP.
- The proposal inspires confidence that the quality of work and deliverables solicited by the RFP will be provided by the proposer,
- The proposal includes no unacceptable modification to the State's standard and special terms and conditions.

SECTION 4 TERMS OF CONTRACT

4.1 CONTRACT:

The successful proposer will be required to enter into a formal task order contract with CTIO. The contract will incorporate the RFP, standard contract terms, Colorado State Special Provisions, any published addenda, and the response/proposal of the successful proposer. Any contract resulting from this RFP may not be modified, amended, extended, or augmented except through an authorized contract modification executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party. CTIO reserves the right to eliminate or exclude aspects of the successful proposal which may be determined by CTIO as unnecessary, or those aspects CTIO decides to assume itself, or let out by separate contract.

4.2 CONTRACT TERMS:

Standard State of Colorado contract terms outside of the Scope of Work are not negotiable. Contract terms within the Scope of Work *may be* discussed **only if** the proposal includes specific and express requests for modification, including a detailed description for all such requests. If the proposal fails to raise a modification request for discussion, those non-identified portions of the Scope of Work will be considered acceptable to the proposer and incorporated into the final contract. Submittal of exceptions does not guarantee their acceptance by the State, however, and may, in fact, result in a lower final score, and the State may, in its *sole discretion*, waive the required application of any such term(s), if the State determines that is in its best interests under the circumstances to do so.

The contract will also stipulate that the CTIO will be provided with monthly invoices of actual hours of service and associated costs, and a monthly work statement providing a brief description of the services invoiced, specifically identifying staff member/positions assigned to the Work. The State may make payment to the successful proposer for monthly work actually and satisfactorily performed, such payments subject to the State's receipt and approval of the above-mentioned invoices and work statements.

4.3 LENGTH OF CONTRACT:

The term of this contract shall begin on the date indicating Controller approval and shall extend no more than five years from that date unless otherwise specified, earlier terminated, or extended pursuant to state fiscal rules provided that the vendor shall remain responsible for contract obligations which necessarily continue beyond such termination date, including final audit.

ATTACHMENT B SAMPLE CONTRACT

Note: Attached is a DRAFT State Contract similar to one which the selected Vendor will be required to enter into. It contains terms and conditions that are typical and/or required on State contracts. The terms and conditions contained in the FINAL contract may deviate from this draft depending on the outcome of the Request for Proposal. The State reserves the right to add or delete terms and conditions in accordance with the needs of the State or as may be mandated by State Statute.

STATE OF COLORADO MAIN TASK ORDER CONTRACT

COVER PAGE

<p>State Agency Insert Department's or IHE's Full Legal Name</p>	<p>Contract Routing Number Insert CMS number or Other Contract Number OLA Number Insert Contract OLA number</p>		
<p>Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...</p>	<p>Contract Performance Beginning Date The later of the Effective Date or Month Day, Year</p>		
<p>Contract Authority Insert Brief Description of the Authority to enter into the Contract and Solicitation Reference Number</p>	<p>Initial Contract Expiration Date Month Day, Year</p>		
<p>Contract Purpose Briefly describe the Contract's purpose.</p>			
<p>Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract:</p> <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work 2. Exhibit B – Sample Option Letter 3. Exhibit C – Form of Task Order 4. Exhibit D – PII Certification 5. Exhibit E – HIPAA BAA <p>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:</p> <ol style="list-style-type: none"> 1. HIPAA BAA 2. Colorado Special Provisions in §18 of the main body of this Contract. 3. The provisions of the other sections of the main body of this Contract. 4. Exhibit A, Statement of Work. 5. Exhibit D- PII Certification 6. Executed Option Letters (if any). 7. Executed Task Orders (if any). 			
<p>Principal Representatives</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>For the State:</p> <p>Name Department Name Address Address City, State Zip Email</p> </td> <td style="width: 50%; vertical-align: top;"> <p>For Contractor:</p> <p>Name Company Name Address Address City, State Zip Email</p> </td> </tr> </table>		<p>For the State:</p> <p>Name Department Name Address Address City, State Zip Email</p>	<p>For Contractor:</p> <p>Name Company Name Address Address City, State Zip Email</p>
<p>For the State:</p> <p>Name Department Name Address Address City, State Zip Email</p>	<p>For Contractor:</p> <p>Name Company Name Address Address City, State Zip Email</p>		

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.

<p>CONTRACTOR INSERT-Legal Name of Contractor</p> <p>_____</p> <p>By: Name & Title of Person Signing for Contractor</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <p>_____</p> <p>By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>
<p>2nd State or Contractor Signature if Needed</p> <p>_____</p> <p>By: Name & Title of Person Signing for Contractor</p> <p>Date: _____</p>	<p>LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p>By: _____</p> <p>Assistant Attorney General</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Effective Date: _____</p>	

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1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Contract (the “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.

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

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

C. Extension Terms - 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 five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract, 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.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract or any Task Order ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract or that Task Order 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 **§12.A.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract or a Task Order, and shall include, to the extent practicable, the public interest justification for the termination. A termination of all or a part of a Task Order shall not be interpreted to terminate this Contract or any other Task Order.

ii. 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 **§12.A.i.a**.

iii. Payments

If the State terminates this Contract or a Task Order 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 under all terminated Task Orders, as determined by the State, less payments previously made. Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Breach of Contract**” means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against 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. 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.
- B. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- C. “**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.
- D. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- E. “**Contract**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- F. “**Contract Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract and all Task Orders.
- G. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- H. “**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.
- I. “**End of Term Extension**” means the time period defined in §2.D.
- J. “**Exhibits**” means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- K. “**Extension Term**” means the time period defined in §2.C.
- L. “**Goods**” means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- M. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of

any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

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

- V. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- W. “**State Fiscal Year**” means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- X. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- Y. “**Subcontractor**” means any third-parties engaged by Contractor to aid in performance of the Work.
- Z. “**Task Order**” means a document issued in accordance with §4.B of this Contract that specifically describes the Work to be performed on a Project.
- AA. “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- BB. “**Work**” means the Goods delivered and Services performed pursuant to this Contract.
- CC. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

4. STATEMENT OF WORK AND TASK ORDERS

A. General Statement of Work

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A and any Task Order. 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 or a properly executed Task Order.

B. Task Orders

The State may execute Task Orders to authorize Contractor to perform portions of the Work. The State may execute Task Orders in its discretion and the State is not required to execute any minimum number of Task Orders under this Contract.

i. Task Order Development

To initiate a Task Order, the State will provide a request to Contractor describing the general scope and intent of the Work it desires Contractor to perform under that Task Order and the timeline for Contractor to submit a proposal in response to the request. Contractor shall submit a proposal to the State, within the timeline provided by the

State, in response to the State's request that contains, without limitation, a description of all of the following for the Project described in that Task Order:

- a. The final deliverables and other end results of the Project that the State will use to determine if the Project is complete and the dates on which those deliverables and other end results will be complete.
- b. All activities necessary for Contractor to complete the Project. This description may be in the form of a work breakdown structure if requested or approved by the State.
- c. All timelines and milestones that the State will use to determine if Contractor is on schedule to complete the Project. This description may be in the form of a project plan if requested or approved by the State.
- d. The total price of the Project, including a breakdown of any applicable materials costs, labor costs and other cost components as requested by the State as described in this Contract. The total price of a Project shall be determined based on the rates described in this Contract, and Contractor shall not include any work in a Task Order for which an applicable rate is not provided in this Contract.
- e. Contractor may complete a Project in phases, so long as all other requirements of this paragraph **4.B.i** are included for each phase of the Project.

The State may direct Contractor to make changes to any proposal Contractor submits to the State. Contractor shall make all changes as directed by the State and may modify its price for the Project contained in that proposal to account for those changes. The State may accept or reject any proposal Contractor submits at any time, and may choose to not proceed with a Project prior to execution of a Task Order for that Project, in its sole discretion.

ii. Task Order Issuance

If the State accepts a proposal from Contractor, then the State will include that proposal as the statement of work for a Task Order. The State shall execute that Task Order in a form substantially similar to the Form of Task Order attached to this Contract. Contractor shall not begin work on any Project until the Task Order for that Project is fully executed.

iii. Task Order Completion

Contractor shall perform the Project described in each Task Order that the State has executed, within the timelines and by the due dates described in that Task Order. The obligations and requirements of a Task Order shall be deemed to be obligations and requirements of this Contract.

iv. Task Order Modifications

When the Parties desire to modify a Task Order, Contractor shall update its proposal that was included in the Task Order to account for the modification the Parties desire to make. If both Parties agree to the updated proposal, they may modify the Task Order by executing an amendment to the Task Order that includes the updated proposal. No modified requirement of a Task Order shall be enforceable prior to the execution of the amendment to the Task Order that includes that modification. This paragraph **4.B.iv**

shall not apply to any modification to a Task Order that only modifies timelines within a Project without changing the due date of any deliverable or other end result, or only modifies the breakdown of costs within a Project without changing the total maximum amount for any State Fiscal Year, which may be made if the State approves of the modification in writing.

v. Task Order Termination

Regardless of the date of any deliverable or other end result of a Task Order, all Task Orders shall automatically terminate upon the date that this Contract expires or is terminated for any reason, unless the State directs otherwise in writing.

5. PAYMENTS TO CONTRACTOR

A. 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 Task Orders for that State Fiscal Year. The State shall not pay Contractor any amount under this Contract for a State Fiscal Year that exceeds the maximum of all Task Orders for that State Fiscal Year, and shall not pay any amount under any Task Order for a State Fiscal Year that exceeds the maximum amount shown on that Task Order for that State Fiscal Year.

B. Payment Procedures

i. Invoices and Payment

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

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

B. Litigation Reporting

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

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

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §14 and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a Breach of Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date 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").

B. 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.

C. 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. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

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

B. 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.

C. Use, Security, and Retention

Contractor shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment 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 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 Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. 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. Unless Contractor can establish that Contractor and its 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 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.

E. 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.

F. Safeguarding PII

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

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an

employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

D. 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.

10. 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.

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Protected Information

Liability insurance covering all civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and all loss income or extra expense as a result of actual or alleged breach, violation or infringement of a 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:

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

E. Professional Liability Insurance

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

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

F. Crime Insurance

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

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

G. Additional Insured

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

H. Primacy of Coverage

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

I. Cancellation

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

J. Subrogation Waiver

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

K. Public Entities

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

by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 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.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if 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.

12. REMEDIES

A. State's Remedies

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

i. Termination for Breach of Contract

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

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do

so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no

value to the State; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

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

e. Intellectual Property

If any Work infringes, 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.

B. Contractor's Remedies

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

13. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §24-106-109, C.R.S., and §§24-109-101.1 through 24-109-505, C.R.S., (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.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt

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

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

i. Copyrights

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

ii. Patents

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

iii. 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. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made

for hire. 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.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to 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.

C. 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.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at 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.

17. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

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

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

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

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on 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.

L. Severability

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

M. Survival of Certain Contract Terms

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

N. Taxes

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

T. Indemnification

i. General Indemnification

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

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorney's 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.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any 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.

iv. Accessibility Indemnification

Contractor shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor’s failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

U. Accessibility

- i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by the Governor’s Office Of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Contractor’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Contractor’s Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express

or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

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.**

E. 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.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold 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.

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

J. **VENDOR OFFSET 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

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Option 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

1. **OPTIONS:**
 - A. Option to extend for an Extension Term
 - B. Option to extend for an End of Term Extension
2. **REQUIRED PROVISIONS:**
 - A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
 - B. **For use with Option 1(B):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an End of Term Extension, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
 - C. **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.
3. **OPTION EFFECTIVE DATE:**
 - A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

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

State Agency Insert Department's or IHE's Full Legal Name	Task Order Number Insert the Task Order Number (e.g. "1" for the first task order)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	Main Task Order Contract Routing Number Insert CMS number or Other Contract Number of the Main Task Order Contract
Task Order Maximum Amount State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Task Order Routing Number Insert CMS Number or Other Contract Number of this Task Order <hr/> Task Order Performance Beginning Date The later of the Task Order Effective Date or Month Day, Year <hr/> Task Order Expiration Date Month Day, Year

In accordance with §4.B of the Main Task Order Contract referenced above, Contractor shall complete the following Project:

1. **PROJECT DESCRIPTION**
 Contractor shall complete the Project described in Contractor's proposal that is attached hereto and incorporated herein (the "Proposal"). All terminology used in this Task Order and the Proposal shall be interpreted in accordance with the Main Task Order Contract unless specifically defined differently in this Task Order.
2. **PAYMENT**
 The State shall pay Contractor the amounts shown in the Proposal in accordance with the requirements of that Proposal and the Main Task Order Contract. The State shall not make any payment for a State Fiscal Year that exceeds the Task Order Maximum Amount shown above for that State Fiscal Year.
3. **PERFORMANCE PERIOD**
 Contractor shall complete all Work on the Project described in this Task Order by the Task Order Expiration Date stated above. Contractor shall not perform any Work on the Project described in the Proposal prior to the Task Order Performance Beginning Date or after the Task Order Expiration Date stated above.
4. **TASK ORDER EFFECTIVE DATE:**
 The effective date of this Task Order is upon approval of the State Controller.

CONTRACTOR INSERT-Legal Name of Grantee <hr style="width: 80%; margin: auto;"/> By: Name & Title of Person Signing for Contractor Date: _____	STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE <hr style="width: 80%; margin: auto;"/> By: Name & Title of Person Signing for Agency or IHE Date: _____
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In accordance with §24-30-202, C.R.S., this Task Order 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

Task Order Effective Date: _____

EXHIBIT D-PII CERTIFICATION

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

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

Signature: _____
Printed Name: _____
Date: _____

EXHIBIT D-PII CERTIFICATION

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

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

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

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

EXHIBIT E - HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as “Covered Entity” and the Contractor is referred to as “Business Associate”. Unless the context clearly requires a distinction between the Contract and this Agreement, all references to “Contract” shall include this Agreement.

1. Purpose

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information (“PHI”). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) enacted under the American Recovery and Reinvestment Act of 2009 (“ARRA”) Pub. L. No. 111-5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and all other applicable laws and regulations, all as may be amended.

2. Definitions

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

- a. **Business Associate.** “Business Associate” shall have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and shall refer to Contractor.
- b. **Covered Entity.** “Covered Entity” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and shall refer to the State.
- c. **Information Technology and Information Security.** “Information Technology” and “Information Security” shall have the same meanings as the terms “information technology” and “information security”, respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

3. Obligations and Activities of Business Associate

- a. **Permitted Uses and Disclosures.**
 - i. **Business Associate shall use and disclose PHI only to accomplish Business Associate’s obligations under the Contract.**
 - i. **To the extent Business Associate carries out one or more of Covered Entity’s obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.**

- f. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.**
- g. Amendment of PHI.**
 - i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.**
 - ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.**
- h. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.**
- i. Restrictions and Confidential Communications.**
 - i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:**
 - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or**
 - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.**
 - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.**
 - iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.**
- j. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.**
- k. Audit, Inspection and Enforcement.**
 - i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.**
 - ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA**

Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

l. Appropriate Safeguards.

- i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.**
- ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.**
- iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.**
- iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.**

m. Safeguard During Transmission.

- i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.**
- ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.**

n. Reporting of Improper Use or Disclosure and Notification of Breach.

- i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.**
- ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.**
- iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.**

- iv. **Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.**
- o. **Business Associate's Insurance and Notification Costs.**
 - i. **Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:**
 - A. **loss of PHI data;**
 - B. **Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and**
 - C. **claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.**
 - ii. **All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).**
 - iii. **Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.**
 - iv. **Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.**
- p. **Subcontractors and Breaches.**
 - i. **Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.**
 - ii. **Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.**
- q. **Data Ownership.**
 - i. **Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.**
 - ii. **Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted**

and maintains in encrypted form, or shall provide such information in unencrypted usable form.

- r. **Retention of PHI.** Except upon termination of this Agreement as provided in Section 5, below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h, above, for a period of six years.

4. Obligations of Covered Entity

- a. **Safeguards During Transmission.** Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.
- b. **Notice of Changes.**
 - i. **Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.**
 - ii. **Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.**

5. Termination

- a. **Breach.**
 - i. **In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.**
 - ii. **Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.**
- b. **Effect of Termination.**
 - i. **Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.**
 - ii. **If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.**

- iii. **If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.**

6. Injunctive Relief

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

7. Limitation of Liability

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

8. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

9. Certification

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

10. Amendment

- a. **Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.**
 - i. **In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.**
 - ii. **Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.**
 - iii. **Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent**

with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.

- iv. **Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:**
 - A. **Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or**
 - B. **Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.**
- b. **Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.**

11. Assistance in Litigation or Administrative Proceedings

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

12. Interpretation and Order of Precedence

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

13. Survival

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.

APPENDIX _____ TO HIPAA BUSINESS ASSOCIATE AGREEMENT

This Appendix (“Appendix”) to the HIPAA Business Associate Agreement (“Agreement”) is s an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to “Contract” or “Agreement” shall include this Appendix.

1. Purpose

This Appendix sets forth additional terms to the Agreement. Any sub-section of this Appendix marked as “Reserved” shall be construed as setting forth no additional terms.

2. Additional Terms

- a. **Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:**
 - i. **Reserved.**
- b. **Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:**
 - i. **Reserved.**
- c. **Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:**
 - i. **Reserved.**
- d. **Definition of Receipt of PHI. Business Associate’s receipt of PHI under this Contract shall be deemed to occur, and Business Associate’s obligations under the Agreement shall commence, as follows:**
 - i. **Reserved.**
- e. **Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate’s use and disclosure of PHI under the Contract:**
 - i. **Reserved.**
- f. **Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:**
 - i. **Reserved.**