



STATE OF COLORADO
REQUEST FOR PROPOSAL



COVER SHEET

Date: June 4, 2015

RFP Number: RFP-DAA-2015000238

Return all Sealed Bids/Proposals to: Department of Education
201 E. Colfax Ave, Rm 409
Denver, CO 80203

Purchasing Agent: Eva Reynolds
reynolds_e@cde.state.co.us

RFP Opening Date: July 13, 2015

RFP Opening Time: 12:00 p.m. (MDT)

All Proposals Shall be Quoted F.O.B. Destination unless Otherwise Specified

TITLE: RFP-DAA-2015000238 Online School Level Financial Reporting (SLFR) Website
Per the attached specifications, terms and conditions

F.E.I.N.: _____ Payment Terms: _____
Delivery Date: _____ (Minimum of Net 30) _____

Authorized Signature: _____
Typed/Printed Name: _____
Title: _____

Company Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____ Fax Number: _____
Contact for Clarifications: _____
Title: _____
Phone Number: _____ Fax Number: _____
E-mail Address: _____

IMPORTANT:

The title of the RFP (noted above) must be on the outside of the Response Return Envelope.

Telegraphic or electronic bids (Fax, Western Union, Telex, e-mail, etc.) cannot and will not be accepted directly in the Purchasing Office as a sealed response. Prospective Offerors are urged to read the solicitation document thoroughly before submitting a bid/proposal. Show the following information clearly on the outside of the sealed package:

Offeror's Name _____
RFP # **RFP-DAA-2015000238 Online School Level Financial Reporting (SLFR) Website**
Proposal Due: **07/13/2015, 12:00 PM (MDT)**
Offeror's Email Address: _____

Checklist:

Confirm that you are aware that the award notice will be published on Colorado VSS _____ Yes
My Company is registered on Colorado VSS ____ Yes ____ NO
List the Number of RFP Modifications that you have seen on the VSS web site. _____
Confidential/Propriety Information: Included and as segregated pages ____ Yes ____ NO
Registered with the Colorado Secretary of State. ____ NO ____ Yes, and # _____

THIS FORM MUST BE COMPLETED, SIGNED AND RETURNED WITH YOUR RESPONSE

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SECTION 1 – ADMINISTRATIVE INFORMATION

A. Issuing Office

This RFP is issued by the State of Colorado (State) for the benefit of the Colorado Department of Education (CDE or department). The department's designated Purchasing Agent, Eva Reynolds, is to be the *sole* point of contact concerning this RFP. Ms. Reynolds' email address is reynolds_e@cde.state.co.us. All communication must be with Eva Reynolds. Other CDE personnel, as well as potential reviewers or observers, are not allowed to discuss this project or the RFP with Offerors. Contact with any of these personnel regarding this RFP is strictly prohibited and could result in Offeror disqualification.

B. Invitation to Submit Proposals

Notices are posted on the Vendor Self Service (VSS) website (<https://codpa-vss.hostams.com/webapp/>). It is very important that Offerors check VSS on a regular basis, as this is the sole means for communicating any clarifications or changes to RFP content and/or requirements. Offerors who have an interest may submit a proposal in accordance with the terms of the RFP. Offerors must be registered with VSS in order to respond to these bidding opportunities. To register on VSS, see: <https://codpa-vss.hostams.com/webapp/>.

B.1. Purpose. This RFP provides Offerors with sufficient information to enable them to prepare and submit proposals for consideration by the State to satisfy the need for expert assistance in the completion of the goals in this RFP.

B.2. Instructions. This RFP contains instructions governing the proposal to be submitted and the material to be included therein, mandatory requirements which must be met to be eligible for consideration, and other requirements to be met by each proposal. The State of Colorado Solicitation Instructions and Terms and Conditions linked through the VSS Solicitation Page govern except as modified or supplemented in these instructions.

Schedule of RFP Activities and Timeline

ACTIVITY	DATE / TIME (MDT)
1. RFP Publication. RFP Notice published on VSS .	6/4/2015 (estimated)
2. Offeror’s Intent to Respond due. See Section 1.C, “Offeror’s Intent to Respond to RFP” , below.	6/19/2015, 5:00 PM
3. Deadline for written inquiries. See Section 1.D, “Inquiries” , below, for the process for submitting inquiries.	6/22/2015, 5:00 PM
4. Written inquiry responses published on VSS .	6/30/2015 (estimated)
5. PROPOSAL SUBMISSION DEADLINE. SEE SECTION 1.F, “Proposal Submission” below.	7/13/2015 12:00 PM
6. Offeror Live Demonstrations and Interviews	08/10/2015 (estimated)
7. Selection of Apparent Successful Offeror, posting on VSS of “ <i>Notice of Intent to Make Award</i> ”	08/20/2015 (estimated)
8. Contract Commencement Date.	09/28/2015 (estimated)

C. Offeror’s Intent to Respond to RFP

Any Offeror whose intent is to respond to this solicitation is requested to submit an email indicating your intent to respond to Reynolds_r@cde.state.co.us no later than **June 19, 2015, 5:00 PM (MDT)**.

Submitting an intent does not bind an Offeror to actually submitting a proposal.

D. Inquiries/Questions

Offerors may make written inquiries (via email) concerning this RFP to obtain clarification of requirements. **Inquiries are to be in a WORD attachment to the email.** No inquiries will be accepted after the deadline: **June 22, 2015 5:00 PM (MDT)**. Send all inquiries to the Purchasing Agent, Eva Reynolds, at:

Email: reynolds_e@cde.state.co.us

E-mail submissions must be clearly labeled in the subject line with “RFP-DAA-2015000238 Online School Level Financial Reporting (SLFR) Website inquiries” CDE reserves the right to refrain from responding to questions received after **June 22, 2015 (5:00 pm MDT)**.

It is our intent that responses to the Offeror's inquiries will be published no later than 5:00 pm Mountain Time, June 30, 2015, as a modification on **VSS**. Offerors shall not rely on any verbal statements that alter any specification or other term or condition of the RFP. Such changes are valid only if provided in writing by the Purchasing Agent.

E. Modifications or Withdrawal of Proposals

Proposals may be modified or withdrawn by an Offeror prior to the established due date and time.

F. Proposal Submission

Proposals must be received on or before the date and time indicated in the Schedule of Activities. **Late proposals will not be accepted.** It is the Offeror's responsibility to ensure that proposals **are received** by the Department on or before the submission deadline: **July 13, 2015, 12:00 PM (MDT)**. Offerors mailing their proposals shall allow sufficient mail delivery time to ensure receipt of their proposals by the time specified. Postmarks are not sufficient for timely submissions. The proposal package shall be delivered or sent by mail to:

Colorado Department of Education
Purchasing and Contracts Department
Attn: Eva Reynolds
201 E. Colfax Avenue, Room 409
Denver, CO 80203

G. Proposal Submission/Copies

Detailed instructions on proposal preparation and submission are in **Section 5**. It is the responsibility of the Offeror to ensure that CDE receives the **written proposal** on or before the proposal opening date and time, regardless of the delivery method used and per packaging instructions identified in Section 5.

Caution: Daily mail may not be received by the CDE prior to 12:00 pm (MDT). Offerors are responsible for ensuring timely receipt. Telegraphic or electronic proposals (fax, e-mail, etc.) will not be accepted.

The State of Colorado Request for Proposal Cover Sheet (page 1) **MUST** be signed in ink, ***preferably in blue ink***, by the Offeror or an officer of the Offeror legally authorized to bind the Offeror to the proposal. Proposals that are determined to be at a variance with this requirement may not be accepted.

H. Addendum or Supplement to Request for Proposal

In the event that it becomes necessary to revise any part of this RFP, a modification notice will be posted on VSS. It is very important that Offerors check VSS on a regular basis, as this is the sole means for communicating any clarifications or changes to RFP content and/or requirements. Responses to inquiries will be posted here as well.

I. RFP Cancellation

The State of Colorado (State) reserves the right to cancel this entire RFP or individual components at any time, without penalty.

J. Oral Presentations/Live Demonstrations/Interviews/Site Visits

Offerors may be invited to provide live an oral presentation, demonstrations, participate in in-person interviews, and/or to make their offices available for a site visit by the evaluation committee. Such presentations and/or site visits will be at the Offeror's expense.

K. Best and Final Offers

CDE may, at its sole discretion, either accept an Offeror's initial proposal by award of a contract or enter into discussions with Offerors whose proposals are deemed to be reasonably likely of being considered for award. In conducting discussions, there shall be no disclosure of any pricing information derived from proposals submitted by a competing Offeror. Offeror(s) may be invited to submit a "Best and Final Offer" to CDE for consideration. Best and Final Offers will be made at the Offeror's expense.

L. Acceptance of RFP Terms

A proposal submitted in response to this RFP shall constitute a binding offer. The autographic signature of the Offeror shall indicate acknowledgment of this condition. Signature shall be that of a person legally authorized to execute contractual obligations. A submission in response to this RFP acknowledges acceptance by the Offeror of all terms and conditions including compensation, as set forth herein. An Offeror shall identify clearly and thoroughly any variation between its proposal and the State's RFP requirements. Failure to do so shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP.

M. Protested Solicitations and Awards

Any actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a contract may protest to: [State Purchasing Director, State of Colorado, State Purchasing Office, 1525 Sherman Street, 3rd Floor, Denver, CO 80203, with a copy being forwarded to the Purchasing Agent at \[reynolds_e@cde.state.co.us\]\(mailto:reynolds_e@cde.state.co.us\)](#). The protest shall be submitted in writing within seven (7) working days after such aggrieved person knows of the facts giving rise to the protest. (Reference: Section 24-109-102, C.R.S.)

N. Proprietary/Confidential Information

Any restrictions of the use or inspection of material contained within the proposal shall be requested **prior to the submission of the proposal** via email to the Purchasing Agent at reynolds_e@cde.state.co.us. Written requests for confidentiality shall be submitted, by the Offeror prior to the proposal submission date. The Offeror must state specifically what elements of the proposal that would be considered confidential/proprietary.

The State will make a written determination as to the apparent validity of any written request for confidentiality. In the event that the State does not concur with the Offeror's request for confidentiality, the written determination will be sent to the Offeror. Ref. Section 24-72-201 *et seq.*, C.R.S., as amended, Public Open Records Act.

The Purchasing Agent will make a written determination as to the apparent validity of any written request for confidentiality, the written determination will be sent to the Offeror.

Any restrictions of the use or inspection of material contained within the proposal shall be clearly stated in the proposal as directed in Section V.

For requests granted, the Offeror must state specifically which elements of the proposal are to be considered confidential/proprietary and must state the statutory basis for the request under the Public (open) Records Act. (Section 24-72-201 *et seq.*, C.R.S.). **Confidential/Proprietary information must be readily identified, marked and separated/packaged from the rest of the proposal.** Co-mingling of confidential/proprietary and other information is not acceptable. Neither a proposal, in its entirety, nor proposal price information will be considered confidential and proprietary. Any information that will be included in any resulting contract cannot be considered confidential.

Each Offeror acknowledges that they may come into contact with confidential information contained in the records or files of the State in connection with any resulting contract or in connection with the performance of its obligations under any resulting contract. The Awarded Offeror will be required to keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the State. The Awarded Offeror will be required to notify its employees that they are subject to the confidentiality requirements and provide each employee with a written explanation of the confidentiality requirement before the employee is permitted access to confidential data. The Awarded Offeror shall provide and maintain a secure environment that ensures confidentiality. The confidentiality of all information will be respected and no confidential information shall be distributed or sold to any third party nor used by the Awarded Offeror or its respective assignees and/or subcontractors in any way except as authorized by the resulting contract. Confidential information shall not be retained in any files or otherwise by the Awarded Offeror. Disclosure of such information may be cause for legal action against the Awarded Offeror. Defense of any such action shall be the sole responsibility of the Awarded Offeror. Unless directed otherwise, the Awarded Offeror is required to keep all State information in a secure, confidential manner.

O. RFP Response Material Ownership

All materials submitted regarding this RFP become the property of the State. This RFP does not commit CDE to award a contract or to pay any costs incurred in the preparation of a proposal. All costs incurred by an Offeror in responding to this RFP shall be borne by the Offeror. 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.

P. Proposal Prices

Estimated proposal prices are not acceptable. Prices are expected to be **firm, fixed price, and fixed rates** in United States funds. Proposal prices will be considered your best and

final offer, unless CDE **initiates** discussion as described in Section 1.K above. Proposals submitted must include all related costs, examples surcharges, travel, etc. Any costs not included as part of the proposal will be disallowed. Offerors must **segregate** the portion of the proposal responding to the **Cost Proposal Component** so the technical proposals can be evaluated without consideration of the price or funding model. The proposal price will be considered in determining the apparent Successful Offeror.

Q. Selection of Proposal – Notice

An Evaluation Committee will review and evaluate offers submitted and make a recommendation for award. This selection will be for award to the responsible Offeror whose proposal is determined to be most advantageous to the State. The Department will post a "*Notice of Intent to Make an Award*" on VSS which will announce the apparent Successful Offeror.

R. Award of Contract

The award will be made to the responsible Offeror whose proposal, conforming to the RFP, will be the most advantageous to the State, price and other factors considered. A contract must be completed and signed by all parties concerned. In the event the parties are unable to enter into a contract, the State may elect to cancel the "*Notice of Intent to Make an Award*" letter and make the award to the responsible Offeror whose proposal would subsequently have received the award.

S. Standard Contract/Model Contract

The draft contract to be executed is included as an exhibit to this solicitation (see **Exhibit 1** labeled *State of Colorado, CDE, IT Model Contract for Personal Services*). This draft contract and **Exhibit 8**, CDE Exhibit IC – CDE, Independent Contractor Provisions included in this RFP shall govern this procurement and are hereby incorporated by reference. The State, in addition to the terms and conditions outlined in the attached draft contract will incorporate *Special Provisions* into the contract resulting from this RFP.

If an Offeror has any suggested modifications to the contract, the Offeror must include and clearly indicate such modifications in its RFP response. No changes to the legal provisions of the contract will be considered unless the Offeror proposes specific, alternative language to that included in the contract attached as Exhibit 8. If your firm normally seeks counsel on contract terms, please do so before submitting a response to this RFP. Failure to resolve exceptions to the contractual terms within 5 business days from CDE's first contact with the Offeror regarding the exceptions may preclude CDE's further consideration of the Offeror's proposal.

The Offeror's signature on the *Request for Proposal Cover Sheet* is confirmation that the Offeror understands and acknowledges that any award will require a contract between the State and the Offeror containing the terms and conditions in the attached contract.

T. Acceptance of Proposal Content

The contents of the proposal (including persons specified to implement the project) of the Successful Offeror will become contractual obligations if acquisition action ensues. Failure of the Successful Offeror to accept these obligations in a contract, purchase order, or similar authorized acquisition document may result in cancellation of the award and such Offeror may be removed from future solicitations.

U. State Ownership of Contract Products/Services

Proposals, upon established opening time, become the property of the State of Colorado. All products/services produced in response to the contract resulting from this RFP will be the sole property of the State of Colorado, unless otherwise noted in the RFP or contract. The contents of the Successful Offeror's proposal will become contractual obligations.

V. Incurring Costs

The State is not liable for any cost incurred by Offerors prior to issuance of a legally executed contract, purchase order, or other authorized acquisition document. No property interest, of any nature, shall occur until a contract is awarded and signed by all concerned parties.

W. Non-Discrimination

The Offeror shall comply with all applicable state and federal laws, rules and regulations involving non-discrimination on the basis of race, color, religion, national origin, age or sex.

X. Rejection of Proposals

The State reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received and to accept any portion of a proposal or all items proposed if deemed in the best interest of the State.

Y. Parent Company

If an Offeror is owned or controlled by a parent company, the name, main office address and parent company's tax identification number shall be provided in the proposal. The tax identification number provided must be that of the Offeror responding to this RFP.

Z. News Releases

News releases pertaining to this RFP shall NOT be made prior to execution of the contract without prior written approval by the State.

AA. Multiple Awards

The State reserves the right to award this RFP in part, to multiple Offerors, if so determined by the State to be in the best interests of the State.

BB. Debarment and Suspension

By submitting a proposal in response to this RFP the Offeror certifies to the best of its knowledge and belief that it, its principals, and proposed subcontractors (if any):

- Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal debarment or agency;
- Have not within a three-year period preceding the Due Date of this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- Are not presently under investigation for, indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in Paragraph IV.K.2., above; and
- Have not within a three-year period preceding the Due Date of this proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- If the Offeror is unable to certify to any of the statements in this certification, it shall provide an explanation as an attachment to the proposal. This explanation is exempt from page limitations on the proposal, if any. The inability of the Offeror to provide the certification will not necessarily result in disqualification of the Offeror. The explanation will be considered in connection with the department's determination whether to select an Offeror.

CC. Disclaimer

All statistical and fiscal information contained within this RFP, and any amendments and modifications thereto, reflect the best and most accurate information available to CDE at the time of RFP preparation. No inaccuracies in such data shall constitute a basis for legal recovery of damages or protests, either real or punitive, except to the extent that any such inaccuracy was a result of intentional misrepresentation by CDE.

DD. Doing Business in Colorado

An Offeror wanting to do business in Colorado must register with the Colorado Secretary of State in accordance with Section 7-90-801, C.R.S. An Offeror must be registered to do business in Colorado within 10 business days of the RFP award notification to the Apparent Successful Offeror. A copy of the business entity's Articles of Incorporation and/or Bylaws may be requested by the State.

This is the link for the Colorado Secretary of State's Website: <http://www.sos.state.co.us> (Recommend going to the "Business Center" section, then opening the "Business Home" page, under the "General Information" section review the FAQs.)

EE. Organizational/Contractor Non-conflict of Interest Statement – Requirements of this Solicitation and Subsequent Contract

Any business entity or person is prohibited from being awarded a contract if it/they has/have an “Organizational Conflict of Interest” with regard to this solicitation and resulting contract.

No person or business entity who was engaged by the State to prepare the original RFP or has access prior to the solicitation, to sensitive information related to this procurement process, including, but not limited to requirements, statements of work, or evaluation criteria, will be eligible to directly or indirectly submit or participate in the submission of a proposal for this solicitation. The State considers such engagement or access to be an Organizational Conflict of Interest, which would cause such business entity or person to have an unfair competitive advantage.

If the State determines that an Organizational Conflict of Interest exists, the State, at its discretion, may cancel the contract award. In the event that the Awarded Offeror was aware of an Organizational Conflict of Interest prior to the award of the contract and did not disclose the conflict to the procuring agency, the State may terminate the contract for default. **All Offerors are to submit the signed Contractor Non-Conflict of Interest Statement, Exhibit 2, with their response.**

FF. Offeror Disclosure Statements

In compliance with Section 24-102-206, C.R.S., Contractor Performance outside the United States or Colorado, the awarded Offeror is required to disclose information to the State on where services will be performed under the contract by completing and submitting the Disclosure Statement, [Exhibit 3](#). Only the awarded Offeror(s) is required to submit this document to the State upon request. This solicitation requires that all work associated with this effort be performed in the United States.

GG. Federal E-Verify and Colorado Department of Labor and Employment Program

Effective May 13, 2008, Contractors who enter into a public contract for services with Colorado state agencies must participate in either the federal E-Verify program, or the newly created Colorado Department of Labor and Employment Program (Department Program).

The option to enroll in the new Department Program instead of E-Verify was created by Colorado State Senate Bill 08-193, which amended the Public Contracts for Services and Illegal Alien Laws, Section 8-17.5-101, C.R.S. A copy of the Guide to Contractor Participation and copies of the Notice of Participation and Contractor Affirmation forms are attached to this RFP as [Exhibits 4, 5, and 6](#), respectively. For the purpose of this RFP, only the Awarded Offeror is required to submit these documents to the State upon request.

HH. Federal Employer Identification Number (FEIN)

For the purpose of verifying the Offeror’s registration to the Colorado VSS system, the Offeror is required to provide their FEIN in their proposal. Additionally, Offerors are required

to submit their FEIN prior to contract, or purchase order issuance, or payment from the State of Colorado. A W-9, Taxpayer Identification form provided by the State may be required as shown in Exhibit 7. Only the Awarded Offeror is required to submit a **W-9, Exhibit 7**, to the State upon request

II. Certification of Independent Price Determination

1. Submission of its proposal each Offeror, and in the case of a joint Offeror, as to itself certifies that in connection with this procurement:
 - a) The prices in the 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 Offeror or with any competitor;
 - b) Unless otherwise required by law, the prices which have been quoted in the proposal have not knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly to any other Offeror or to any competitor; and
 - c) No attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

2. Each person signing the Request for Proposal Cover Sheet & Signature Page of this proposal certifies that:
 - a) He/She is the person in the Offeror's organization responsible 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)(a)** through **(1)(c)** above; or
 - b) He/She is not the person in the Offeror's organization responsible for the decision as to the prices being offered in the proposal but that he/she has been authorized in writing to act as agent for the persons responsible for such decision for the purpose of certifying that such persons have not participated, and will not participate, in any action contrary to (1)(a) through (1)(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)(a) through (1)(c) above.

A proposal will not be considered for award where subsections **(1)(a),(1)(c),or (2)** above has been deleted or modified. Where subsection **(1)(b)** above has been deleted or modified, the proposal will not be considered for award unless the Offeror furnishes with the proposal a signed statement which sets forth in detail the circumstances of the price disclosure and the head of the procuring agency or his or her designee, determines that such disclosure was not made for the purpose of restricting competition.

JJ. Funding

The budget for this project is up to a maximum of **two million, eight hundred sixty-eight thousand eight hundred dollars, (\$2,868,800)** for all expenses of SLFR planning, construction and implementation, and the first year of the SLFR being available to the public through Fiscal Year 2017-2018. Maintenance and operation of the SLFR in subsequent years (beginning Fiscal Year 2018-2019) is estimated not to exceed **six hundred thousand (\$600,000)** per year.

KK. Contract Period

It is anticipated that this RFP will result in an initial three-year contract, covering SLFR planning, construction and implementation, and the first year of the SLFR being available to the public. The initial contract will be effective upon approval by the State Controller through the end of Fiscal Year 2017-18. The initial contract(s) may be renewed for the purposes of maintenance and operation of the system for two **(2) subsequent one-year periods not to exceed five (5) accumulative years** at the sole discretion of the State, contingent upon contractual requirements being satisfied and funds being appropriated, budgeted, and otherwise made available. The initial contract will be effective upon approval by the State Controller

Renewal and continuation will be at the sole discretion of the State, contingent upon contractual requirements being satisfied and funds being appropriated, budgeted, and otherwise made available.

LL. Legislative and Policy Changes.

The subject matter of this RFP may be subject to legislative changes either by the federal or state government. If any such changes occur prior to the submission deadline, then all Offerors will have the opportunity to modify their proposals to reflect such changes. If any such changes occur after the submission deadline, then (i) CDE reserves the right to negotiate modifications with the identified finalist ('s) and/or with the Successful Offeror's proposal reflecting such legislative changes; and (ii) CDE shall have no obligation to provide unsuccessful Offerors with the opportunity to modify their submissions to reflect such legislative changes.

MM. Order of Precedence

In the event of any conflict or inconsistency between terms of this RFP, the contract, and the proposal, such conflict or inconsistency shall be resolved first, by giving effect to the terms and conditions of the contract, second to this RFP, and third, to the Successful Offeror's proposal.

NN. Venue

All suits or actions related to this solicitation/contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

OO. Rights in Data, Documents, and Computer Software

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Successful Offeror in the performance of its obligations under the resulting contract (the Work Product) shall be the exclusive property of the State and the Successful Offeror shall deliver all such Work Product to the State upon completion, termination, or cancellation of the contract. The rights of the State with respect to such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such Work Product.

The parties acknowledge that any Work Product developed from federal funds may be the property of the federal government, in which case the State reserves a royalty-free, non-exclusive, irrevocable license to reproduce, publish and otherwise use, and authorize others to use, such Intellectual Property for the purposes of the State and the federal government.

The Awarded Offeror shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Awarded Offeror's obligations under the contract, without the prior written consent of the State. The rights of the State with respect to such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such property.

The State shall be the owner of all licenses to third party proprietary operating and Offeror software packages provided by Offeror.

PP. Information Technology (IT) Warranty

In the event that IT related equipment, software, and/or services are provided by the Offeror, the Contractor represents warrants and covenants that in providing products and deliverables and performing services pursuant to the terms of the RFP, Contract and any Order:

The Contractor shall strictly comply with the descriptions and representations as to the services (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) which appear in the RFP, Offeror's RFP response, Contract or any Order and the Contractor and its employees shall perform the services in a timely manner. In addition to any express and implied warranties provided to the State or any Ordering Entity under law or under other provisions of this RFP, Contract or any Order, the Contractor hereby expressly warrants that the services to be performed hereunder shall be performed in a workmanlike manner, subject to the supervision and instructions provided by the Ordering Entity, and that all work performed pursuant to a Contract shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time the services are provided;

The Contractor's products, if any, will conform to generally applicable standards in the industry and the Contractor shall use only new standard parts and materials or parts and materials equal in performance to new parts and materials, unless otherwise agreed to in writing by the Ordering Entity;

The services performed by the Contractor shall comply with all applicable laws, rules or regulations, and the Contractor shall obtain all permits and licenses required to comply with such laws and regulations;

The services shall not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights or any Intellectual Property rights;

The Contractor is the lawful owner or licensee of all software, hardware, methods, methodologies and any pre-existing Intellectual Property used in the performance of the services or delivery of the products contemplated hereunder and the Contractor has the right to grant the Ordering Entity access to or use of such software, hardware, methods, methodologies and intellectual property;

With respect to any Contractor personnel designated as "key personnel", the assignment of Contractor personnel to perform the services will be continuous throughout the term of completion of Contract, except where such personnel are unable to perform, including but not limited to illness or termination of employment. The Contractor shall ensure that equally qualified persons are proposed as replacements when workers leave. The Ordering Entity shall have the right to approve any proposed replacement personnel;

The Contractor shall assign to the Ordering Entity all manufacturers' warranties for hardware, software and other materials furnished to the Ordering Entity by the Contractor;

The Contractor shall screen all of Contractor's employees supplied to the Ordering Entity to ensure that all such employees are fully qualified to perform the services, and if required by law or ordinance, are validly licensed and/or have obtained all requisite permits to perform such services for the Ordering Entity. The Contractor shall be responsible for obtaining all permits and licensing required by the State at all locations where performing services. The Contractor shall maintain current status of such required permits and licenses throughout the term of each Order. The Contractor's personnel designated for a service category must have all current certifications required by such category.

All deliverables provided pursuant to this RFP, Offeror's Response, and/or Contract shall interface, integrate and be functionally compatible with and shall perform on any and all of the Ordering Entity's hardware and software configuration(s) as provided in the specifications of the RFP, Contract or Order document; and

All software and hardware deliverables and any update or revision to any of the software and hardware deliverables shall be free from defects and shall meet all specifications set forth in the RFP, Contract or any order document and any documents referenced therein.

The Contractor warrants that the deliverables, as defined in the RFP, Offeror's Response, Contract or any other ordering document, shall perform the functions substantially as described in these documents during the term of the contract after delivery and acceptance by the Ordering Entity.

All equipment and supplies furnished under this RFP, Contract, or any other ordering document be free from defects in materials or workmanship, shall be installed properly and in accordance with manufacturer's recommendations or other industry standards, and shall function in a failure-free manner during the Contract term from the date of installation by the Contractor and acceptance by the Ordering Entity.

The Contractor, without charge to the Ordering Entity, shall correct any and all defects and make any additions, modifications or adjustments to any of the deliverables or any update or revision to any software deliverables as may be necessary to keep the deliverables in operating order in accordance with specifications at all times during the applicable warranty period.

QQ. Intellectual Property Clauses

Intellectual Property Rights of Ordering Entity

In the event that IT related equipment, software, and/or services are provided by the Offeror, any Intellectual Property products delivered to an Ordering Entity under an Order shall be the exclusive property of the Ordering Entity. Any software, research, reports, studies, data, manuals, photograph, negatives or other documents, drawings or materials ("work") prepared by the Contractor in the performance of its obligations under an Order shall be the exclusive property of the Ordering Entity and all such materials shall be delivered to the Ordering Entity by the Contractor upon completion, termination or cancellation of the Contract. The Contractor hereby assigns to the Ordering Entity any and all rights title and interest it may have in and to the work performed pursuant to this RFP, Contract or any Order and agrees to cooperate with and assist the Ordering Entity in applying for and executing any applications and/or assignments reasonably necessary to obtain a patent or copyright thereon. The Contractor shall not use, willingly allow, or cause to have such work used for any purpose other than the performance of the Contractor's obligations under the Contract without the prior written consent of the Ordering Entity. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

RR. Data and Document Deliverables

Unless otherwise specified, the Contractor shall deliver, by the dates specified in the RFP and/or Contract scope of work, the data and documents required therein. Unless otherwise specified, software documentation delivered to and Ordering Entity shall meet the following standards:

- The documentation shall be in paper, human readable format, which clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages;
- The documentation shall contain source code in a paper, human readable format, which describes the program logic, relationship between any internal functions, and identifies the disk files that contain the various parts of the code;
- Detailed "commenting" of source code may be used to partially satisfy the documentation requirements, although documentation shall also include a flow chart that identifies the program flow between files and functions. Comments may be used to document internal flow control in functions;
- Files containing the source code shall be delivered, or may be left on the host

machine so long as the files and their location are identified, and their significance to the program described, in the documentation; and

- Documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated.
- Documentation shall be written so persons reasonably proficient in the use of the program language involved can efficiently use the documentation to understand the program structure, iterative and other control techniques, and decipher error messages should they occur. The Contractor warrants that the delivered software shall be sufficiently descriptive to enable maintenance and modification of the software to permit change to addresses and telephone numbers in computer generated documentation, addition of fields to the database, revisions of report formats, including breakpoints and summary computations.

SS. Intellectual Property Indemnification

In the event that IT related equipment, software, and/or services are provided by the Offeror, the Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State of Colorado or an Ordering Entity alleging that the use by the Ordering Entity of any product(s), or any part thereof, supplied by the Contractor under this RFP, Contract or any Order constitutes infringement of any patent, copyright, trademark, or other proprietary rights; provided, that the State of Colorado or Ordering Entity gives the Contractor written notice within twenty (20) days of receipt by the State of Colorado or such Ordering Entity of claim or suit, provides reasonable assistance and cooperation to the Contractor in connection with such action, and the Contractor has sole authority to defend or settle the claim for money damages only. A proposed settlement requiring the State of Colorado or an Ordering Entity to act or refrain from action shall require the prior written approval of the State of Colorado or Ordering Entity. The Contractor shall consult the State of Colorado or Ordering Entity regarding such defense and the State of Colorado or Ordering Entity may, at its discretion and expense, participate in any defense. Should the State of Colorado or Ordering Entity not choose to participate, the Contractor shall keep the State of Colorado or Ordering Entity advised of any settlement or defense. In the event the Contractor fails to vigorously pursue the defense and/or settlement of such claim, the State of Colorado or Ordering Entity may assume the defense and settlement thereof and the Contractor shall be liable for all costs and expenses incurred by the State of Colorado or Ordering Entity in the pursuit thereof.

The Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State of Colorado or Ordering Entity for all liability incurred by the State of Colorado or Ordering Entity as a result of such infringement. The Contractor shall pay all reasonable out-of-pocket costs and expenses, including attorneys' fees, court costs and other legal expenses, and damages finally awarded by a court of competent jurisdiction or agreed to by the Contractor regarding such claims or suits.

If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, the Contractor, after consultation with the Ordering Entity, shall do one of the following at the Contractor's expense: (i) produce for the Ordering Entity the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof: or (ii) replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and Ordering Entity specifications; or (iii) suitably modify the products, or part thereof. Except, as otherwise expressly provided herein, the Contractor shall not be liable for any costs or expenses incurred without its prior written authorization.

The Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon: (i) the use of an altered release if the Contractor had not consented to the alteration, or (ii) the combination, operation or use of the product(s) with programs or data which were not furnished by the Contractor, if such infringement would have been avoided if the programs or data furnished by persons or entities other than the Contractor had not been combined, operated or used with the product(s), or (iii) the use of product(s) on or in connection with equipment or software not permitted under this RFP, Contract or any Order, if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.

TT. Breach of Security, Privacy and Security

- 1. Confidentiality** Contractor shall keep all Confidential Information confidential at all times and comply with all laws and regulations concerning confidentiality of Confidential Information. Any request or demand by a third party for Confidential Information and/or State Data and Records in the possession of Contractor shall be immediately forwarded to the State's principal representative.

- 2. Notification** Contractor shall notify its agents, employees, Sub-contractors and assigns who may come into contact with Confidential Information that is subject to the confidentiality requirement set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such Confidential Information.

- 3. Use, Security, and Retention** Confidential Information and/or State Data and Records of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information and/or State Data and Records wherever located. Confidential Information and/or State Data and Records shall not be retained in any files or otherwise by Contractor or its agents, except as permitted by the Contract or approved in writing by the State. All Confidential Information and/or State Data and Records of any kind shall be stored, processed or transferred only in or to facilities located within the United States.

- 4. Protection** If the Contractor provides physical or logical storage, processing or transmission of Confidential Information and/or State Data Records, Contractor shall provide, and shall cause its Sub-contractors to provide, physical and logical protection for State hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in the Contract. Contractor shall provide the State with access, subject to the Contractor's reasonable access security requirements, seven (7) days a week, 24 hours a day, for the purpose of inspecting and monitoring access and use of Confidential Information, State Data and Records, maintaining State systems, and evaluating physical and logical security control effectiveness. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records, at all times shall maintain, and shall cause it Sub-contractors to maintain, network, system, and application security, which includes network firewalls, intrusion detection, and annual security testing. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records, shall comply and shall cause its Sub-contractors to comply, with State and federal regulations and guidelines related to security, confidentiality and auditing. Contractor if it retain, stores, or is given Confidential Information and/or State Data and Records shall ensure, and shall cause it Sub-contractors to ensure, that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments and shall promptly report all breaches or attempted breaches to a representative of the Office of Information Security ("OIS). Neither Contractor nor its Sub-contractors shall have any rights to use or access any Governor's Office of Information Technology ("OIT") or other State agency data or information, except with the prior approval of OIT or the State. Contractor shall review, on a semiannual basis, the Colorado Cyber Security Program (CCSP), posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>, and its related documents, including its policies and procedures to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Sub-contractors to cooperate, with the performance of security audit and penetration tests by OIS or its delegate. Contractor shall cause its Sub-contractors to follow, the State's Data Handling and Disposal policy, which can be found at www.colorado.gov/oit/security_policies. Contractor shall perform, and shall cause it Sub-contractors to perform, in a form reasonably acceptable to the State, current background checks on all of its respective employees and agents performing services or having access to State Confidential Information and/or State Data and Records provided under the Contract. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access shall be deemed to be current.
- 5. Security-Notice** Contractor is responsible for the security of all Confidential Information and/or State Data and Records provided to it by the State. If Confidential Information and/or State Data and Records is provided to Contractor or any Sub-contractor by the State, Contractor shall comply with and shall cause its Sub-contractors to comply with the State's Cyber Security Policies, which the OIS has promulgated pursuant to CRS 24-37.5-401 through 406 and 8 CCR 1501-5. The Policies are posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISCO/1207820732279>.
- 6. Breach of Security Remediation** If the Contractor becomes aware of a data security breach involving any Confidential Information and/or State Data and Records that Contractor has

received from the State (“Security Breach”), it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Contractor can establish that Contractor or any of its Sub-contractors is not the cause or source of the Security Breach, Contractor shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised by the Security Breach. Notice shall be made as soon as possible within the legitimate needs of law enforcement according to the requirements of the State. Contractor shall be responsible for performing an analysis to determine the cause of the Security Breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present such analysis and remediation plan to the State within ten (10) days of notifying the State of the Security Breach. The State reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce the required analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis, produce a remediation plan, and Contractor shall reimburse the State for the reasonable costs thereof.

- 7. Disclosure Liability** Disclosure of Confidential Information and/or State Data and Records by Contractor or any Sub-contractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor or its employees, agents, Sub-contractors, or assignees pursuant to this Section. Notwithstanding any other provision of the Contract, Contractor shall be liable to the State for all consequential and incidental damages arising from a Security Breach. The Work under this Contract may require the State to supply data to the Contractor that contains Personal Identifiable Information (PII). The State, in its sole discretion may securely deliver data that contains PII, Confidential Information and/or State Data and Records directly to the facility where such data is used to perform the Work. PII, Confidential Information and/or State Data and Records is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes. The Contractor shall ensure that PII, Confidential Information and/or State Data and Records is not retained beyond timeframes established by the State.
- 8. End of Agreement Data Handling** Upon request by the State made before or within sixty (60) days after the effective date of termination of the Contract, Contractor will make available to the State a complete and secure (i.e. encrypted and appropriately authenticated), download file of all system data in XML format, or other format as agreed to by the Parties in writing, including all schema and transformation definitions, and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Parties agree that on the termination of the provision of data processing services, the Contractor shall, at the choice of the State, return all data, records, PII, Confidential Information and/or State Data Records transferred, and the copies thereof to the State, or shall destroy all the data, records, PII, Confidential Information and/or State Data and Records and certify to the State that it has done so, unless legislation imposed upon the Contractor prevents it from returning or destroying all or part of the data, records,

PII, Confidential Information and/or State Data and Records transferred. In that case, the Contractor warrants that it will guarantee the confidentiality of PII, Confidential Information and/or State Data and Records transferred and will not actively process the data transferred anymore.

9. Disposition of Data The State retains the right to use the established operational services to access and retrieve Confidential Information and/or State Data and Records stored on Contractor's infrastructure at its sole discretion. The Contractor and Sub-contractor warrant that upon request of the State and/or of the supervisory authority, the Contractor will submit its data processing facility for an audit. The State reserves all rights, title and interest, including all intellectual property and proprietary rights, in and to system data, Confidential Information, State Data and Records and content.

10. Safeguarding Personal Identifiable Information (PII) If the Contractor or any of its Sub-contractors will or may receive PII under the Contract, Contractor shall provide for security of such PII, in a form acceptable to the State, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data responsibility for the security of all data in its possession or in the possession of its Sub-contractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure of loss thereof.

11. Safeguarding Federal Tax Information (FTI) If Contractor or any of its Sub-contractors will or may receive FTI under the Contract shall provide for the security of the FTI, in a form acceptable to the State and in accordance with State and federal law. For the purposes of the Contract, "FTI" shall mean federal or state tax returns, return information, and such other tax-related information as may be protected by State and federal law. Security safeguards shall include, without limitation, supervision by responsible employees, approval of Sub-contractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of Contractor's or its Sub-contractor's obligations under the Contract, non-disclosure protections proper accounting and storage of information, civil and criminal penalties for non-compliance as proved by law certification and inspections.

12. Safeguarding Payment Card Industry (PCI) Data If Contractor or any its Sub-contractors will or may receive PCI under the Contract, Contractor shall provide for security of the PCI, in accordance with PCI Data Security Standard (DSS)1.1. For the purposes of the Contract, "PCI" shall mean any data related to card holders' names, credit card numbers, or other credit card information as may be protected by State and federal law. Security safeguards shall include, without limitation, supervision by responsible employees, approval of Sub-contractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of Contractor's or its Sub-contractor's obligations under the Contract, non-disclosure protections proper account and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications and inspections.

13. Data Security Assurances

- a. Strong access control must be in place. All data must be at a minimum protected with a complex password, workstations and other data processing devices must automatically lock when not in use, and must be manually locked when left unattended. Passwords must be confidential and sharing of passwords is prohibited, must not be written down or stored in an insecure location, and periodically changed and not reused or a reasonable time period.
- b. Unused and terminated user accounts must be disabled and/or deleted immediately: account inactivity must be periodically assessed for potential stale accounts.
- c. Care must be exercised in inadvertently sharing data on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.
- d. Systems must be in place for logging and monitoring access and use of data.
- e. At a minimum, annual intrusion penetration/vulnerability testing will be implemented.
- f. Laptop/mobile device password locks and full disk/storage encryption are required.
- g. Data rest on central computing systems must be encrypted; any backup, backup media, removable media, tape or other copies must also be encrypted, and not used to transport data.
- h. Mandatory annual Security awareness training on how to handle PII is required.
- i. Appropriate endpoint security anti-virus and anti-malware software must be installed and maintained on computers accessing or processing PII.
- j. Transmitting data must occur via a secure method such as Secure File Transfer Protocol (SFTP) or comparable and never sent via email or transported on removable media.
- k. Physical security in buildings housing PII, along with controlled physical access to buildings and/or data centers.
- l. Ability to suppress small N-sizes for aggregated student data reports is required.
- m. After prescribed use is concluded, data disposal policies must apply for cleaning up all data. This includes secure scrubbing and securely overwriting data from storage, or physically destroying the storage media.
- n. Devices used to copy or scan hard copies of data must have encrypted storage and have storage devices appropriately scrubbed when equipment is retired. Hardcopy containing PPI is discouraged and must be physically secured not left unattended, and physically destroyed.
- o. All data processing systems, servers, laptops, PCs, and mobile devices must be regularly scanned and have all security patches applied in a timely manner.
- p. Data stored in cloud based systems must be protected in the same manner as local data, as described throughout this document. Use of free cloud based services is prohibited, and secondary encryption must be used as appropriate to protect data in cloud storage.
- q. Cloud environments, when employed, must be fully documented and open to State inspection and verification.
- r. Access to cloud based computing environments is only permitted via restricted access, by VPN or least privileged access lists, and never accessible directly via the Internet.

UU. Liquidated Damages

Liquidated Damages are monetary Damages contractually provided for specifying a certain sum or method for calculating Damages in the event of a breach. Due to the statutory timelines for the services being requested, liquidated damages will be assessed if these

agreed upon timelines are not met by the Contractor. Contractually the right to assess Liquidated Damages ends upon Substantial completion (the moment when the Deliverable is capable of being used for its intended purpose.

VV. Family Educational Rights and Privacy Act (FERPA)

All Offeror personnel on this project shall adhere to existing privacy/security standards established by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; 34 CFR Part 99. The Offeror and their personnel shall protect the confidentiality of all students and their associated educational records. Except for officially approved purposes, no information about or obtained from, any student or educator shall be disclosed to any party other than CDE, without prior written consent. The Awarded Offeror will be required to sign the [FERPA Confidentiality Agreement, Exhibit 9](#).

WW. Binding Offer

A proposal submitted in response to this RFP shall constitute a binding offer. Acknowledgment of this condition shall be indicated by the signature on the RFP Signature Page (cover page) of the Offeror or an officer of the Offeror legally authorized to execute contractual obligations.

By submitting a proposal the Offeror affirms its acceptance of the terms and requirements of this RFP, including its attachments and exhibits, without exception, deletion, or qualification, and without making its offer contingent. The Offeror further agrees to cooperate with CDE and expedite the contracting process upon notice of award.

XX. Taxes

Colorado Department of Education (CDE), as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code (Federal Tax ID No. 84-0644739) and from all state and local government sales and use taxes (C.R.S. §39-26-704). The State and Local Sales Tax Exemption Number for [CDE is 98-02565](#). Such exemptions apply when materials are purchased for the benefit of the State, except that in certain political subdivisions (for example - City of Denver) the Offeror may be required to pay sales or use taxes even though the ultimate product or service is provided to the State of Colorado. These sales or use taxes will not be reimbursed by the State.

YY. Public Opening of Proposals

On the date and time shown in the **“Public Opening of the Proposals”** above, the Purchasing Agent will conduct the public opening at the delivery location identified on page 1 of this RFP’s **“Submit all Sealed Bids/Proposals to”** section.

The Public Opening will disclose only the names of all Offerors who have submitted a proposal in response to the RFP by the closing deadline. Information regarding contents of proposals will be available from the Purchasing Agent following issuance of a “Notice of Intent to Make an Award” letter. **Please make a note: Participants shall not be admitted earlier than 15 minutes prior to the start of the Public Opening.**

ZZ. Contract Performance for Services Outside the State of Colorado and/or the United States

(Not applicable if Contract Funds include any federal funds) Following the issuance of a Purchase Order or State Contract, Contractor shall provide written notice to the State if Contractor intends to perform or subcontract for the performance of Services outside the State of Colorado and/or the United States. Such notice shall specify the type of services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this provision shall constitute a material breach of any contract/purchase order awarded pursuant to this solicitation.

AAA. Service Disabled Veteran Owned Small Businesses (SDVOSBs)

- a. **C.R.S. Section 24-103-211** sets a *Service-Disabled Veteran Owned Small Business (SDVOSB) goal of at least 3%* of all contracts by *dollar value* be awarded to SDVOSBs who must be incorporated or organized in Colorado or they must maintain a place of business or have an office in Colorado and must be officially registered and verified as a SDVOSB by the [Center for Veteran Enterprise within the U.S. Department of Veterans Affairs](#). See www.vip.vetbiz.gov.
- b. By responding to this solicitation, the Offeror certifies that it shall comply with the provisions of C.R.S. Section 24-103-211
- c. **Request for Proposals (RFP)** may give a 5% preference. CDE intends to give a 5% preference to SDVOSBs. See **Section 6** below regarding how the preference will be applied in evaluating offeror responses. Only SDVOSBs that meet minimum specifications can be considered for the percentage preference.

SDVOSBs must submit documentation of SDVOSB certification issued through the U.S. Department of Veterans Affairs in their response to this solicitation

End of Section 1

SECTION 2 – DEFINITIONS AND PROJECT PURPOSE

2.1 Definitions

Awarded Offeror: “Awarded Offeror” means the Offeror whose proposal the State determines to be most advantageous considering the factors set forth in [Section 6](#) and whose proposal(s) is approved and accepted by the State which enables the State to undertake a contract with the Offeror for the purchase of the services and/or goods.

Bid: Technically, an offer in response to a traditional price-based solicitation. "Bid" is often used more generally to mean any type of procurement or contracting offer, sometimes having the same meaning as "proposal" (which is an offer in response to a Request for Proposals, RFP).

Bidder: Technically, any organization or individual submitting a bid/proposal in response to a traditional price-based solicitation. "Bidder" is often used more generally to mean any organization or individual submitting an offer in response to any type of procurement solicitation. In the case of an RFP, the term "Offeror" is more properly used.

BOCES: Boards of Cooperative Education Services

CCSP: Colorado Cyber Security Program

CDE: Colorado Department of Education

Contractor: The Company or individual that is awarded a contract as a result of this RFP. Same as "Offeror", "selected Offeror", "successful Offeror", or “awarded Offeror”.

COTS: Commercial Off The Shelf software including a Modified Off The Shelf (MOTS) software

C.R.S.: Colorado Revised Statutes

CSI: Charter School Institute

FPP: Financial Policies and Procedures Advisory Committee

I.R.A.: Inter-Rater Agreement

LEP: Local Education Provider. Pursuant to Section 22-44-304, C.R.S., this includes school districts, boards of cooperative services, the Charter School Institute, and charter schools, except that school districts which are rural and enroll fewer than 1,000 students in kindergarten through twelfth grade are not required to report expenditures at the school-site level except for district charter schools.

MOTS: Modified Commercial Off The Shelf Software

N Size for Reporting: The minimum number of students necessary in a group for assessment results to be publically reported for that group. Each state is required to define the minimum number of students necessary in a group for assessment results to be publically reported for that group. This is intended to protect the privacy of individual students, as required under the Family Educational Rights and Privacy Act (FERPA). Colorado uses $N < 16$.

OIS: Office of Information Security

OIT: Office of Information Technology

Offeror: Any organization or individual submitting a proposal in response to an RFP, sometimes used interchangeably with the terms "Bidder", "Respondent", or "Vendor". Often synonymous with Offeror, selected, successful, or awarded Offeror.

OSPB: Office of State Planning and Budgeting

Professional Practice: Definitions and examples that clarify the meaning of each domain.

Proposal: An offer in response to a Request for Proposals (RFP). Sometimes used interchangeably with the terms "bid," "offer," or "response."

Qualified Independent Contractor: A qualified independent Contractor is one whom is deemed qualified by the primary funding agency, in this case the Department of Education.

RFP -- Request for Proposals: A procurement solicitation that seeks offers from organizations or individuals to perform the scope of work defined in the RFP, in accordance with the terms listed in the RFP. An RFP is issued with the intent of selecting the most advantageous proposal, making an award to that Offeror, and entering into a contract.

SEA: State Education Agency

SLFR: School Level Financial Reporting (SLFR) website

Solicitation: A document issued by a prospective buyer that requests competitive offers from organizations or individuals to sell the goods or services that are specified in the document. A solicitation typically results in an award of a contract or purchase order for the goods or services, based on an award methodology defined in the solicitation. Types of solicitations issued by State of Colorado agencies include: Requests for Proposals (RFPs), Invitations for Bids (IFBs), and Requests for Documented Quotes (DQs).

SPO -- State Purchasing Office: The Colorado purchasing department that directs the procurement policies and procedures for state agencies. When an agency does not have a purchasing director, the SPO assumes the responsibility for RFP level solicitations.

State: The State of Colorado, in the case of this RFP represented by the State Purchasing Office on behalf of the Colorado Department of Education.

Successful Offeror: Same as "selected Offeror."

Timeline: A document that details dates and targets for achieving program goals or requirements.

VSS: The State of Colorado's Vendor Self Service (VSS) procurement Web site, located at: <https://codpa-vss.hostams.com/webapp/>. All solicitations published by state agencies and institutions are published on VSS. All bidders or Offerors wishing to respond to a solicitation (including this RFP) must be registered with VSS.

2.2 Project Purpose:

The department in consultation with a sub-committee of the Financial Policies and Procedures (FPP) Advisory Committee is seeking to purchase an Offeror hosted website pursuant to the requirements of House Bill 14-1292. This bill requires the development of a meaningful website view which allows for the comparison of school to school, district to district, and BOCES to BOCES financial information including but not limited to expenditures tied to individual school sites. This website view will be referenced as the School Level Financial Reporting website (SLFR) in this document.

End of Section 2

SECTION 3– STATEMENT OF WORK

3.1 Scope of Work

The Respondent shall provide all services and deliverables as required, described, and detailed herein and shall meet all services and delivery timelines as specified by this solicitation. The Respondent may subcontract portions of the services to meet the deliverables of this solicitation. Any services that Respondent intends to subcontract must be identified in your response with what services will be subcontracted and who the subcontractor will be.

Colorado Department of Education (CDE) is requesting a COTS or MOTS web-based application, and will not accept an application that is built from a scratch data base.

The contractor shall provide an acceptance protocol for deliverables so that the deliverables function satisfactorily.

3.2 The Respondent shall work with the State to develop an hosted website pursuant to the requirements of House Bill 14-1292. This bill requires the development of a meaningful website view which allows for the comparison of school to school, district to district, and BOCES to BOCES financial information including but not limited to expenditures tied to individual school sites. The website view must provide understandable and comparable data for a layperson.

The Local Education Providers' financial information will be obtained from a file posted on the website maintained by each Local Education Provider annually. Demographic data will be provided on the CDE website. The financial data included in this file will utilize the standard chart of accounts as found on the CDE Website (<http://www.cde.state.co.us/cdefinance/sfcoa>) at the bolded code level.

3.3 Annual Work Plan

The Respondent shall prepare, for State approval, a detailed Work Plan for each deliverable (3.4 - 3.9) that incorporates the development of schedules for the activities of this solicitation. The Work Plan shall include the steps for all project work tasks and deliverables including initiation and completion dates, task responsibilities to avoid any disruption of services, requirements or deliverables to the State.

The Annual Work Plan will outline by task and due date each activity to be performed under. The Annual Work Plan must describe all activities related to the development and implementation of each item listed in this Scope, including each stage of production. It shall provide due dates for each activity and indicate areas of responsibility for the Respondent and the State. The Annual Work Plan will serve as a monitoring document to be used by the State to assure timely completion of tasks as scheduled.

The initial Annual Work Plan shall be due to the State within thirty (30) days of the execution of this contract. Subsequent Annual Work Plans will be due no later than June 1 prior to the effective fiscal year.

3.4 Financial Transparency Reporting System

The School Level Financial Reporting (SLFR) website will be the location and system for all financial transparency information on school level data. All support needs to be addressed by a tiered help desk system that includes the LEPs to address questions or issues with the actual data.

3.4.1. Requirements: See Section 4, System Requirements

3.4.2. Administrative Activities: The Respondent shall provide all services from customization of the COTS/MOTS product to implementation to carry out the scope of the contract.

3.4.3. The Respondent shall develop, produce, and deliver materials to facilitate the schedule for implementation of the system. All administrative materials shall be provided to the State in Microsoft Word and/or Excel.

3.4.4. Security Procedures: The Respondent shall provide detailed, standardized security procedures for review and approval by the State. Approved security procedures shall be included in the Work Plan. The procedures must:

- A. Define a secure architecture to protect processing, storing, and reporting environments from network-based attacks.
- B. Provide security procedures and safeguards to ensure that electronic files and data are developed, used, and maintained in a secure manner to protect the confidentiality of all personally identifiable information.
- C. Utilize encryption to ensure security of all director/supervisor/school/system information entered through all online programs.
- D. The Respondent is held responsible for the actions of its employees and subcontractor(s), and must guard against a breach of security.

3.4.5. Quality Control: The Respondent shall provide detailed, standardized, quality control procedures for review and approval by the State. Approved quality control procedures shall be included in the work plan. The Respondent shall provide quality control measures including the following:

- A. Errors in work products arising from activities that are the responsibility of the Respondent including print errors and program functions. Such corrections may involve activities that include the following:
 - Conduct analyses to identify the cause and extent of errors.
 - Edit, revise, and/or reprogram online applications.
 - Reprint and/or reproduce products or other materials.
 - Replace and/or correct data files.
 - Reproduce reports.
- B. The State will conduct a rigorous acceptance test of the system prior to initial installation. The Respondent shall support this testing effort as required by the State.

3.5 Operations Management Activities

3.5.1. Project Team: The Respondent shall assign a single point of contact for this program to manage all inquiries related to the system. Subcontractors used to perform services for the Respondent under this contract must provide the State information pertaining to personnel and agree to the terms of this section.

3.5.2 Offeror Qualifications

Below are the required mandatory minimum qualifications along with the desired qualifications for this project. It is imperative that the Offeror meet the mandatory minimum qualifications. **If these qualifications are not met in the initial evaluation the Offeror will not proceed in the evaluation process.**

3.5.2.1 MANDATORY Minimum Qualifications:

All members of the Respondents project team must have at a minimum technical experience, knowledge, and operational experience in the following areas:

Skills and Experience:

- Demonstrated experience in development, implementation and maintenance of a Commercial off the shelf (COTS/MOTS) application with both a public and private user interfaces. .

3.5.2.2 Desired Preferred Qualifications:

- Currently responsible for maintaining at least two (2) other similar applications using a Hosted Services model for a period of two (2) years.
- Currently responsible for supporting a help or service desk five (5) business days, eight (8) hours a day, 52 weeks a year for at least two (2) similar applications.
- Successfully developed and implemented similar financial reporting systems for at least two (2) other entities.
- Demonstrated experience with education finance data and financial transparency work.
- Offeror and assigned workers with demonstrated experience with project management principals and methodologies.
- Knowledge of business systems and processes within the education industry; recent (within last 3 years) working knowledge of multiple tools, systems, applications, services to -support education industry; experience with business systems and processes.

3.5.3 Project Management and Personnel Qualifications:

The Respondent will be responsible for project management responsibilities including timetables, schedules, invoicing, and communication and coordination with CDE. The Offeror will propose a plan for managing the project, including:

1. A list of proposed personnel for all aspects of the contract with their qualifications and resumes;
2. Effective communication including project management phone conferences accessible by a toll-free dial-in number, effective ongoing and continual communication via e-mails and phone conversations with CDE and monthly reports of contract activity and events;

3. Detailed and user-friendly timetables, including project schedules, for all required activities and deliverables of the contract. Schedules will be reviewed and approved by CDE. All changes on the timelines or project schedules must be communicated to and approved by the appropriate personnel at CDE; and
4. The executive team member directly in charge of overseeing the Colorado project shall be identified. This executive team member shall be available both during and outside of normal business hours to assist with any urgent situations. Contact information for this individual shall be provided at the time of contract award. Changes to the assigned executive team member, except for those resulting from separation of services, require prior written consent by CDE. The replacement shall have qualifications which meet or exceed the original staff member proposed or the staff member holding the position previously and shall be approved by CDE.
5. Qualifications of key executive personnel shall be presented in the Offeror's proposal. A supporting resume outlining education/training, employment history, and experience in conducting work similar to what is expected under this contract shall be included as an appendix.
6. Qualifications of all key personnel shall be presented in the Offeror's proposal. Supporting resumes outlining education/training, employment history, and experience in conducting work similar to what is expected under this contract shall be included as appendices.

3.5.4 The Respondent shall not remove or reassign key personnel (including: Executive Team member Project Manager, Project Coordinator, Software Project Manager, Lead Software Developer, and other personnel in Lead or Director level positions) without prior written approval of the State.

3.5.5 The Respondent shall provide qualified replacements in the event that key personnel become unavailable to provide services due to resignation, illness, or other factors outside of the Respondent's control. The Respondent shall provide the State with written notice immediately upon determination of the need for replacement personnel. The Respondent shall provide the State with written notification and the resume of all personnel proposed for the project team for review and written approval.

3.5.6 Continuity of Contracts: The Respondent shall maintain the established project team, especially the Project Coordinator and other key lead personnel through the end of the contract, including completion and delivery of all services and deliverables, to work with the State to ensure a smooth and seamless transition.

3.5.7 Management Meetings: The Respondent shall:

A. Provide for a minimum of one monthly management meeting between the Respondent and State staff. These management meetings shall include review of the Work Plan and provide an opportunity to discuss task implementation and status.

B. Produce quarterly progress reports with relevant tasks and activities from the schedule and progress noted for each. Progress reports shall include a report of activities completed during the prior quarter. The reports shall provide a list of significant operational problems needing corrective action and shall address the following elements for each problem:

- identify the problem,
- assign responsibility for taking corrective action,
- evaluate the importance of the problem,
- investigate possible causes of the problem,
- analyze the problem,
- recommend actions to prevent recurrence of this or similar problems,
- implement new process controls as necessary,
- determine what to do with the failed items, and record permanent changes in process documentation. Each quarterly progress report shall also contain:
 - a section that summarizes questions or complaints,
 - a section that addresses issues or problems raised by the State,
 - a section that addresses ongoing problems,
 - a section that details the invoices submitted and paid, and
 - an executive summary that provides an informative and substantive description of the major problems and recommendations.

3.5.8 Unanticipated issues or problems shall be reported and addressed as they occur. All progress reports should be submitted in a format and layout approved by the State in Microsoft Word or Microsoft Excel via email.

3.5.9 Records and Minutes: The Respondent shall take minutes and record lists of participants, for all meetings. All minutes, records and lists of participants shall be provided by the Respondent to the State for review and approval after each meeting. All records and minutes should be provided in a State approved style and format in Microsoft Word via email or other electronic media. The Respondent shall review contact information for each meeting and update contact information if changed.

3.5.10 Subcontracting

CDE is allowing subcontracting for any performance component of this RFP. CDE will allow subcontracting only under the following circumstances:

- All subcontractors must have primary offices and complete the work within the continental United States.
- The CDE reserves the right to NOT accept any subcontractor identified in the submitted proposal if it so chooses.

Offeror to confirm its agreement to this requirement.

Offeror's response is to state intent to use subcontractor(s), identify subcontractor(s) and service(s) to be provided by subcontractor(s).

3.6 New Software Releases – New software versions will not be released until tested and approved by the State. The Respondent shall provide the proposed software release to the State for acceptance/ regression testing. The Respondent shall support such testing as required by the State. The Respondent shall release the tested software version only when authorized in writing by the State. The Department shall benefit from system upgrades and new version while using the system(s) created by this contract.

3.7 Ownership of Developed Programs - The Colorado Department of Education shall have exclusive ownership of all works developed for exclusive use of CDE for this project with, perpetual access.

3.8. Project Modules.

Respondents may subcontract one or more of the modules in this section. In the event that there are multiple subcontractors, the Respondent shall work collaboratively with them. The Respondent awarded shall for each module provide the project manager, business analysts, database administrator and other resources to work with the State to design, develop, and implement the project modules.

3.8.1 Planning Phase

- A. Review Department and FPP sub-committee analysis of system requirements to identify gaps, and gather additional data to ensure a strong understanding of the desired system requirements for the web based financial transparency reporting system.
- B. Gather detailed requirements for financial transparency data and demographic data from FPP sub-committee. Gather and validate requirements for how the data will be displayed reported and compared across LEPs from FPP sub-committee.
- C. Mock-ups on how the COTS/MOTS online product will be customized to meet the established requirements.
- D. Process flows for how the LEPs, CDE and public will interact with the system based on their respective roles.

3.8.2 Construction Phase

- A. Create functional specifications to meet requirements defined in Section 4 and the list of requirements in 4.5.
- B. Develop the program code based on the functional needs of the users.
- C. Create test data and test scenarios.
- D. Deploy new code to test environment.
- E. Provide unit testing and system testing of the developed program.
- F. Obtain user acceptance testing signoff.

3.8.3 Implementation Phase

- A. Create or update installation and configuration documentation.
- B. Schedule and deploy the new code to the production environment.
- C. Assist with troubleshooting any response time or performance related issues resulting from newly released code.
- D. Provide technical support.

3.9. Reporting

Reporting is the primary purpose for the system and thus must be functional for both the LEP users and the general public that will be using the system. The website view must provide understandable and comparable data for a layperson.

3.9.1 Planning Phase

- A. Review Department and FPP sub-committee analysis of system requirements to identify gaps, and gather additional data to ensure a strong understanding of the desired system requirements for the web based financial transparency reporting system.
- B. Design online web-based screens that provide the users the ability to view and compare the financial transparency data across a minimum of four (4) schools, districts, and/or BOCES at any one time.
- C. All reporting systems should provide the ability for users to download / access data at a granular level and develop customizable reports either online or offline.
- D. Ability to allow batch printing of reports, and/or pdf mail merge.

3.9.2 Construction Phase

- A. Create functional specifications to meet requirements defined in Section 4.
- B. Develop the program code based on the functional
- C. Create test data and test scenarios.
- D. Deploy new code to test environment.
- E. Provide unit testing and system testing of the developed program.
- F. Obtain user acceptance testing signoff.

3.9.3 Implementation Phase

- A. Create or update installation and configuration documentation.
- B. Schedule and deploy the new code to the production environment.
- C. Assist with troubleshooting any response time or performance related issues resulting from newly released code.
- D. Provide technical support.

3.10. Training

The Respondent shall provide the product manuals and system training documentation necessary for effective use of the system by LEPs and the public.

Including but not limited to,

1. Application access information
2. Financial data file formatting
3. Submission of narrative explanations
4. Comparison of data
5. Printing of data
6. Exporting of data

3.11. End User Technical Support

The Respondent shall provide a summary of the software support process and user guide for the proposed system, describing the telephone support, online support and if the support is available during, or beyond, normal business hours upon implementation of the system.

3.12 Additional Work for Modifications and Enhancements After Phase 2 Implementation

3.12.1. The Department may, at its sole discretion and with written notice to the Respondent, request additional work involving modifications and enhancements to the web-based application software implemented under the Statement of Work. Respondent shall not receive additional funds when the modifications are requested during design and construction phases.

3.12.2 The Respondent shall respond with a written proposal for completing the service in no more than ten (10) business days after receipt of the written notice of additional work from the Department/State. Said proposal must specify:

- A. The Offeror shall describe its approach to producing high-level functional designs for the requested enhancements or modifications for review and approval.
- B. The Offeror shall describe its approach to making enhancements or modifications to the web-based application in a manner that facilitates an easy, low-cost and low risk migration to new releases of the baseline product. Offeror shall describe its approach to coding and documenting modifications in such a way as to ensure that they can be easily re-applied when the State upgrades to new releases of the proposed software.
- C. The Offeror shall develop a work estimate and delivery schedule for the requested enhancements or modifications that include:
 - the maximum number and service category of person hours required for the work; and
 - the maximum cost for the work PROVIDED THAT such maximum cost shall not exceed the product of person hours required multiplied by the appropriate payment rate proposed.
- D. The Respondent shall not perform any service until the State has approved the proposal.
- E. If approved, the State will sign the Respondent's proposal, and it shall constitute an understanding between the contract parties pertaining to the specified work and shall be incorporated, hereby, as a part of the contract.

3.13 Approval

The State will be the sole judge of the acceptable completion of the work and, upon such determination, shall provide the Respondent written approval of the work.

3.14 Remuneration

The State will remunerate the Respondent only for acceptable work. All acceptable work performed pursuant to an approved Respondent's proposal, without a formal amendment of this contract, shall be remunerated in accordance with and further limited by contract; provided that the State shall be liable to the Respondent only for the cost of the actual person hours worked to complete the proposal, not to exceed the maximum cost for the work detailed in the proposal. In no instance shall the State be liable to the Respondent for the cost of any person hours worked in excess of the maximum person hours indicated in or any amount exceeding the maximum cost specified by the approved proposal authorizing the service. Upon State approval, the Respondent shall invoice the State in accordance with the relevant provisions of this Contract.

3.15 Offeror Responsibilities

- It will be the responsibility of the offeror to meet the scope of the project as stated in section 3, by providing appropriate information as well as adequate resources to ensure the successful implementation of project.
- Required security procedures:
All Offeror personnel on this project shall adhere to existing privacy/security standards established by the Family Educational Rights and Privacy Act (FERPA). The Offeror and their personnel shall protect the confidentiality of all students and their associated educational records. Except for officially approved purposes, no information about or obtained from, any student or educator shall be disclosed to any party other than CDE, without prior written consent.

3.16 Terms and Funding

The anticipated term of the contract resulting from this solicitation is **a three (3) year initial contract**, covering all expenses of the SLFR planning, construction and implementation and first year SLFR is available to the public, **with the option of two (2) additional one year contracts for continued maintenance and operation of the system not to exceed a total of five (5) years.**

The resulting Contract is subject to and contingent upon the continuing availability of state and/or federal funds for the purpose thereof. The Offeror recognizes that it is to be paid, reimbursed or otherwise compensated with funds provided to the Department for the purpose of contracting for the services provided herein. The Offeror expressly understands and agrees that all its rights, demands and claims to compensation arising under the resulting Contract are contingent upon receipt of such funds by the Department. In the event that the Department does not receive such funds, or any part thereof, the Department may immediately terminate the resulting Contract without liability, including liability for termination cost.

3.17 Travel

Offeror will be required to attend Financial Policies & Procedures (FPP) Sub-Committee meetings to complete the planning, construction and implementation phases of the project.

Offeror will be required to attend Financial Policies & Procedures (FPP) Committee meetings to present the pilot and final systems.

Any interfacing with the FPP Sub-Committee or FPP Committee for the purposes of requirements validation, user acceptance testing, presentations and or training will be conducted in the Denver Metro area.

All travel and per diem costs for the Awarded Offeror's travel relative to the performance of these services **are to be included in Offeror's cost component response.** Therefore, the total price quoted for this project should include any travel, lodging or per diem costs to be incurred by Offeror's personnel to provide services requested. **NO ADDITIONAL COSTS WILL BE REIMBURSED.**

3.18 Scope of Work Modifications

The CDE reserves the right to make minor changes in scope through a Contract Amendment by mutual agreement with Awarded Offeror.

3.19 Budget/Cost Expectations

The budget for this project is up to a maximum of **two million, eight hundred sixty-eight thousand eight hundred dollars, (\$2,868,800)** for all expenses of SLFR planning, construction and implementation, and the first year of the SLFR being available to the public through Fiscal Year 2017-2018. Maintenance and operation of the SLFR in subsequent years (beginning Fiscal Year 2018-2019) is estimated not to exceed **six hundred thousand (\$600,000)** per year.

3.20 Acceptance Criteria

The department will conduct a review to ensure all deliverables have been met. Once CDE is satisfied with a deliverables, the Project Sponsor will sign off upon final review and acceptance.

3.21 Sign-off Procedures at Completion

A designated Offeror representative shall coordinate with CDE for the sign-off of completion of major tasks and milestones. Payment may be delayed and/or equitably reduced if completion of tasks and milestones is delayed or if expectations are not met.

3.22 Payment Schedule

Requests for Payments will be based on completion of tasks and task phases and/or the Awarded Offeror(s) services rates. Upon completion of the performed services and acceptance of the work by CDE’s Project Sponsor or a designee; the Offeror shall submit an invoice and supporting documentation to the address and CDE Program Manager as identified in the State contract for payment by submitting a company invoice and supporting documentation for eligible and detailed costs. The invoice cost breakout shall be for each task showing cost of the task (deliverable) and any other breakout necessary as explanation of the total cost reimbursement requested.

The table below outlines the deliverables that are required when responding. The offeror may suggest additional granularity in the milestone payment schedule. The department will review and decide if the changes can be accepted. The offeror may suggest a change to the percentages for the milestone deliverables. The department will review and decide if the changes can be accepted. The project management and oversight by the Offeror is assumed to be inside the specific deliverables.

No.	Tasks / Deliverable	Milestone Date	Maximum Cost Percentage	Cost
Project Initiation				
1.	COTS/MOTS Core product Installation	10/1/2015	10.0%	
2.	Develop implementation schedule and project planning documents	10/1/2015	3.0%	
Year One Pilot Release				
3.	Discovery / Requirements / Design Sign-off	12/1/2015	5.0%	
4.	Custom Component Development	3/1/2016	8.0%	

No.	Tasks / Deliverable	Milestone Date	Maximum Cost Percentage	Cost
5.	Data Gathering / Migration	4/1/2016	2.0%	
6.	Help Desk Support	4/1/2016	10.0%	
7.	User Acceptance Testing	6/1/2016	5.0%	
8.	User Training / Documentation	7/1/2016	3.0%	
9.	Implementation of Pilot (Beta) Release	7/1/2016	10.0%	
Year Two Public Release				
10.	Pilot Support / Application Improvement Capturing	1/1/2017	2.0%	
11.	Custom Component Development as required	3/1/2017	4.0%	
12.	Data Gathering / Migration	4/1/2017	5.0%	
13.	Help Desk Support	4/1/2017	2.0%	
14.	User Acceptance Testing	6/1/2017	9.0%	
15.	Updates to Training / Documentation as needed	7/1/2017	2.0%	
16.	Implementation of Public Production Release	7/1/2017	10.0%	
17.	Successful Public Application Rollout Holdback / Contingency	7/1/2017	10.0%	
			100%	

END OF SECTION 3

SECTION 4 - TECHNICAL REQUIREMENTS

4.1 Technical Requirements

CDE **requires** a COTS/MOTS web-based application for this proposal, and will not accept an application that will be built from scratch. CDE will not consider solutions that are hosted at the Department. Significant consideration will be given to the ease with which a solution can be supported and maintained if components are distributed across the state. **Enterprise level integration is an absolute must.** System flexibility, including the ability to evolve and meet changing requirements, is another critical factor. Respondents that do not offer a hosted solution need to provide a response as to how the proposed solution fits within each technical category; provide specific recommendations on hardware and architecture required to meet capacity requirements; and include system diagrams if available.

4.2 Security

The Colorado Department of Education (CDE) strives to protect information assets, data and reputation while providing a secure software development life cycle for the lifetime of CDE applications. These applications include any application that are to be deployed for production use. These applications include:

- commercial off the Shelf (COTS/MOTS) products,
- internally built applications, and
- respondent built applications

CDE requires that all responses to this RFP address the implementation of technical controls, based on industry best practices in accordance with the State of Colorado Cyber Security Policies. Those policies can be found at <http://www.colorado.gov/cs/Satellite/OIT-Cyber/CBON/1251575408771>.

The Successful Offeror shall follow FERPA, state and industry standard security policies, including the provision of confidentiality agreements for all Successful Offeror staff, subcontractor, and educators participating in any aspect of this project. The Offeror may include sample confidentiality agreements as an attachment. The Offeror shall provide a plan detailing the implementation of security procedures.

The Offeror may choose to provide additional details under relevant requirements and specifications.

The Offeror must also indicate the base services (ex. accounting of all secure materials, sealing, forensic analysis, etc.) related to proposed system security which it requires for state accountability.

If the Offeror offers a variety of services, but does not have its own base requirements regarding security that must be indicated in the proposal.

Any breach of security that occurs through the negligence or inaction of a Successful Offeror, such as, but not limited to, failure to adhere to any security protocol or allowing raters to remove secure materials from Item Writing Meetings, Item Review Meetings, Data Review Meetings, Anchor Paper Selection, Validation Meetings, or the Scoring Center, will be considered a default on the terms of this contract. Breach of Security, Privacy, and Security conditions are to be adhered to as stated in Section 1, Item TT.

Awarded Respondent will be required to sign the FERPA Confidentiality Agreement, [EXHIBIT 9](#).

4.4.1. A Web Application Security - Commercial Off-The-Shelf (COTS/MOTS) Development Requirements

- Web site must incorporate FPP approved Financial Transparency logo.
- Solution must demonstrate its utilization of application Roles and/or Groups. (e.g. stored in custom tables, usage).
- Solution must audit user actions.
- Solution must implement Password management such as password complexity rules, password history, password reset.
- Authentication tickets (cookies) are not transmitted over non-encrypted connections.
- Mechanisms have been identified to secure credentials, authentication tickets, and other sensitive information over network and in persistent stores.
- The design adopts a policy of using least-privileged accounts.
- The system must accommodate multiple roles with difference levels of access to the system in addition to the general public user. They include LEP level and CDE read-only statewide level. Additional levels as required.
- The design identifies the mechanisms to protect the credentials over the wire (SSL, IPSec, encryption and so on).
- The design identifies the identities that are used to access resources across the trust boundaries. These boundaries utilize encryption and least privilege.
- Database connections, passwords, keys, or other secrets are not stored in plain text.
- Access to system level resources is restricted.
- The application's login does not have permissions to access tables directly.
- The role design offers sufficient separation of privileges (the design considers authorization granularity).
- The application's login is restricted in the database to access-specific stored procedures.
- SSL is used to protect authentication cookies.
- The contents of authentication cookies are encrypted.
- Session lifetime is limited.
- Session state is protected from unauthorized access.

4.4.1. B Web Application Security - Design Requirements

- Security decisions should not rely on client-side validations; they are made on the server side.
- The Web site is partitioned into public access areas and restricted areas that require authentication access. Navigation between these areas should not expose sensitive credentials information.
- Mechanisms have been identified to secure credentials, authentication tickets, and other sensitive information over network and in persistent stores.
- Role Based access control using least privileged is defined using a LDAP or Active Directory Mechanism.
- An incident handling response mechanism is included in the contract to include emergency patch management for any security incidents.
- A maintenance patch management plan is set in place for discovered vulnerabilities by both parties.

- The Respondent must define the hardware, software, operating system, web server and browsers.

4.4.1. C Web Application Security - Input Validation Requirements

- User input is validated for type, length, format, and range. Input is checked for known valid and safe data and then for malicious, dangerous data.
- Free form input is sanitized to clean malicious data.
- The design addresses potential SQL injection issues.
- The design addresses potential cross-site scripting issues.
- The design applies defense in depth to the input validation strategy by providing input validation across tiers.

4.4.1. D Web Application Security - Authentication Requirements

- User input is validated for type, length, format, and range. Input is checked for known valid and safe data and then for malicious, dangerous data.
- Free form input is sanitized to clean malicious data.
- The design addresses potential SQL injection issues.
- The design addresses potential cross-site scripting issues.
- The design applies defense in depth to the input validation strategy by providing input validation across tiers.

4.4.1. E Web Application Security - Auditing and Logging Requirements

- Application errors are logged to the error log.
- Private data (for example, passwords, SSN) is not logged.
- The design identifies the storage, security, and analysis of the application log files. A system log or centralized logging mechanism must be used.
- Unauthorized access must be logged.

4.4.1. F Web Application Security - Data Storage Requirements

- Common encryption algorithms are used that are part of the programming language, for example AES, 3DES, etc.
- Sensitive data is not stored in persistent cookies.
- Sensitive data is not transmitted with the GET protocol.

4.5 Functional Requirements

Enterprise Data Strategy: CDE seeks a system that will address all of the LEP Financial Transparency reporting requirements and be flexible enough to handle changing requirements as the product matures.

Mandatory Minimum Requirements:

- System must be a commercially off the shelf product (COTS/MOTS)
- System must be hosted in a location other than at the CDE.
- Provide a list of current projects that will be on-going during the same timeframe.

General Requirements:

- System must be licensed using a SaaS or a hosted / yearly maintenance model.
- System must have an established configuration management process for updating the software release and hardware configuration changes.
- System must use the CDE's Standard Chart of Accounts (See Section 3.2 for CDE website with location of Standard Chart of Accounts).
- Standard Excel financial data file posted on the financial transparency website of every LEP
- Offeror is responsible for annually gathering the following information to be used in the public website view
 - All current unique school codes with corresponding names – posted on CDE website – taking into consideration: new schools, closure of schools, school name changes, district name changes etc.
 - Annual list of all districts defined as “Small/Rural”, with and without charter schools, for purposes of knowing which LEPs are only required to post district-level financial data, as opposed to which includes unique school level data
 - Annual changes to the standard Chart of Accounts – posted on the CDE website – ensuring any changes made to the Chart of Accounts are incorporated into the public website view
 - Annual demographic data – posted on the CDE website
- System must handle the reporting of expenditures and revenues based on the data obtained from the LEPs.
- System must handle reporting of salaries and benefits at the school site level.
- System must be designed to minimize the costs and work load for the Colorado LEPs.
- System must be scalable and customizable through the life of the contract to accommodate changes in stakeholder's needs and the maturity of the users.
- System must support a public and a controlled LEP / CDE view.
- Offeror must provide at least two environments. One for production and one for non-production activities associated with testing and or training that is not accessible to the public.
- System must not allow any updates to the data by the public.
- System must provide an audit trail for all activities related to the back-office or privileged users that are required to log into the system.
- System shall support a workflow / process system for acquiring and publishing data.
- Offeror shall provide data migration support to move the financial transparency data out of their system via an agreed upon format in the event the contract is not renewed.
- System must enforce N size business rules when displaying data
- Offeror must assure that no student specific data is released or exposed in the web site, consistent with FERPA and the established N size.
- Offeror will implement the SLFR system by July 1, 2016 in a pilot mode. The pilot mode will be designed by the offeror to ensure LEPs and CDE can effectively evaluate the system. The pilot mode will not be available to the general public.
- Offeror must provide a plan for how the six months pilot period will be supported, including data gathering from LEPs to identify the modifications required for the public release by FPP Sub-Committee. Offeror must implement modifications approved by FPP Sub-Committee.
- Offeror will update and implement the production public release of the SLFR system by July 1, 2017 with the enhancements captured during the pilot period.

Data Capture:

- The SLFR needs to prepare to present up to three (3) years of data:
 - a. July 2017: SLFR data for FY 15-16 data only
 - b. July 2018: SLFR will show data for FY 15-16, and FY 16-17
 - c. July 2019: SLFR will show data for FY 15-16, FY 16-17, and FY 17-18
 - d. July 2020: SLFR will show data for FY 16-17, FY 17-18, and FY 18-19,
 - e. Etc.
- Offeror shall assume that a standard Excel financial data file will be posted on the financial transparency website of every LEP.
- The Local Education Providers' financial information will be obtained from a file posted on the website maintained by each Local Education Provider annually.
- Demographic data will be picked up at the CDE's public website on or before April 1st.
- LEPs will need to approve their data before they are made available for public consumption on the web-based system via an established work flow process.
- System must accommodate data archiving at the end of each school year cycle.

Web Application:

- Application must be accessible, readable, and usable by a layperson with little or no financial system background.
- Application response time must not exceed three seconds (3) for typical queries or displays.
- Must be compatible with all browsers with more than 3% of the market as published and maintained by http://www.w3schools.com/browsers/browsers_stats.asp.
- Must allow printing of all displays via an icon consistently located on the screen.
- The system must have the ability to interface with IOS and Android apps that enable users to review, and view data using mobile devices and tablets.
- System must capture web statistics on how the public is using the application. The statistics must be compiled and made available to the CDE / LEPs on a monthly basis.
- Offeror may suggest demographic data elements that should be used to organize the data.

Data Reporting:

- System must allow users to filter on key fields in order to obtain the view requested.
- System must allow sorting of data for any column displayed.
- System must allow the user to present data in a graphical form i.e. pie charts, bar charts, or other visual pleasing representations.
- System must display per pupil data expenditures
- System must have the ability to compare districts / schools based on demographics.
- System must include up to five (5) standard reports as defined by the FPP sub-committee during the discovery period of the implementation project.
 - Report number 1 of the 5 will be a LEP file metrics report with the following columns:
 - LEP Organization Code
 - LEP Name
 - Date of file on LEP website
 - Number of records in the file
 - Date when file was picked up at LEP site and processed by offeror

- Date file approved for public consumption by the LEP
- Web-based application must support the comparison of up to but not exceeding four (4) schools, districts or BOCES on the same display.
- System must provide the ability to drill up and down on the financial data based on the Chart of Accounts structure and LEP organization structure.
- System must allow LEPs to add narrative explanation to any expenditure or revenue element within the system.
- System must allow the downloading of information in PDF, XLS, CSV, XML and JSON formats.
- System must integrate with other office productivity software including MS Office and Adobe.
- System must be able to handle up to three years (current year and previous two) comparisons of data.
- System must be able to handle the changing of school codes, chart of accounts or other data elements that could potentially change across years.

Database:

- System must be built on a relational database technology.
- The database must be accessible by the LEP / CDE privileged users for verification and testing purposes.
- Offeror must provide and maintain a data dictionary for all elements in the database for the life of the contract.
- Database structure must be aligned with the Common Educational Data Standards (CEDS) where possible.

User Support:

- CDE will not provide SLFR website help desk support or training for LEPs during either the pilot or public production periods.
- Offeror will provide tier 1 level system support for the system users five (5) days a week from 8:00 am to 5:00 pm MDT.
- Offeror will refer all issues related to the data to the appropriate LEP (tier-2) contact if the issue cannot be resolved through the help desk knowledge base.
- Offeror will provide a comprehensive user documentation that addresses the LEP's needs.
- Offeror will produce a comprehensive data dictionary including but not limited to the COA elements used in the SLFR.
- Offeror will provide LEPs training on the non-public facing portion of the system as needed.
- Offeror will provide public facing FAQ's, web based trainings and other documentation as needed.
- LEPs will be responsible for specific questions about their data and or narrative explanation added to the data.

Hardware / Software:

- Offeror will maintain a disaster recovery facility to assure that the system is not down longer than two (2) business days.
- Offeror will provide a list of proprietary software tools that are used in their solution.
- Offeror must provide a complete system architecture document that includes both software and hardware components for their proposed solution.

- Software Escrow of all the application code (Core / Custom) shall be maintained with an approved escrow Offeror for the life of the contract.

4.6 Authentication

Any solution provided by the offeror shall support multiple unique identifiers based on role.

END OF SECTION 4

SECTION 5 – FORMAT FOR RESPONSES

The purpose of this section is to specify a format for responses, provide a guide to assure all required information is provided, and to facilitate review of proposals.

The Offeror must be registered on VSS in order to be considered responsive at the time of proposal submission.

A. Page Limit.

Response to this solicitation **should not exceed 50 pages (25 pages front and back)** excluding cover page, attachments, resumes and samples and identified as such. **Proposal components exceeding the 50 pages may be disqualified.**

Unnecessarily elaborate proposals are not desired. Font size for basic narrative descriptions must be **no smaller than 11 characters per inch**. Indexes, tables of contents, lists of figures/tables, and glossary of terms will not be counted toward the overall page count. Allowance will be made for tabular or graphical presentations and screen prints, whether incorporated in the text of the technical description or attached as separate exhibits.

CDE discourages lengthy and costly proposals. Proposals should provide a straightforward, concise description of the bidder's capabilities to satisfy the requirements and specifications of this RFP. Emphasis should be on completeness and clarity of content.

B. Proposal.

The evaluation process is designed to award this procurement to the Offeror whose proposal best meets the requirements of this RFP, and is most advantageous to the State, not necessarily to the Offeror with the lowest cost. However, Offerors are encouraged to submit proposals that are consistent with state government efforts to conserve state resources.

Proposals shall consist of the following:

1. Offeror's Executive Summary.

The Executive Summary must be factual, brief, and cover the core aspects of the proposed project and shall **not exceed two (2) pages**; condense and highlight the contents of the proposal. The summary should provide the reader with an overall understanding of the proposal and Offeror's approach.

2. Technical Response

The technical response shall consist of the requested items addressed in Section 3, Section 4 and Company Experience and Demonstrate Capability Fact Sheets (Attachment 1).

3. Cost Proposal Content.

Offerors must specifically identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. Pricing must be inclusive of all Offeror staff costs, administrative support costs, supplies, office supplies, pagers, cell phones, parking fees, meals, lodging, rents, mileage, travel

expenses, training, after hours or weekend time, insurance, overhead, profit, and costs for all other items consumed, utilized, and/or required by Offeror's staff or subcontractor's staff. Unless otherwise specified, all hardware and software deemed necessary by the Offeror shall be included in the proposed costs. Items or costs required to provide the services and deliverables as proposed not identified in the Offeror's pricing proposal will be the sole responsibility of the Offeror.

The budget should be sufficiently detailed to clearly delineate how costs are reasonable for each required activity and deliverable, and the budget should reflect cost efficiency.

Offerors are required to complete the following table (expansion or redesign of the table may be necessary to include all aspects) and include in their cost proposal.

(Note: Offerors must segregate the portion of the proposal responding to the Cost Proposal Modules so the technical proposal can be evaluated without consideration of the price or funding model.)

Complete Attachment 2 and return with your Cost Response Table.

No.	Tasks / Deliverable	Milestone Date	Maximum Cost Percentage	Cost
Project Initiation				
1.	COTS/MOTS Core product Installation	10/1/2015	10.0%	
2.	Develop implementation schedule and project planning documents	10/1/2015	3.0%	
Year One Pilot Release				
3.	Discovery / Requirements / Design Sign-off	12/1/2015	5.0%	
4.	Custom Component Development	3/1/2016	8.0%	
5.	Data Gathering / Migration	4/1/2016	2.0%	
6.	Help Desk Support	4/1/2016	10.0%	
7.	User Acceptance Testing	6/1/2016	5.0%	
8.	User Training / Documentation	7/1/2016	3.0%	
9.	Implementation of Pilot (Beta) Release	7/1/2016	10.0%	
Year Two Public Release				
10.	Pilot Support / Application Improvement Capturing	1/1/2017	2.0%	
11.	Custom Component Development as required	3/1/2017	4.0%	
12.	Data Gathering / Migration	4/1/2017	5.0%	
13.	Help Desk Support	4/1/2017	2.0%	
14.	User Acceptance Testing	6/1/2017	9.0%	
15.	Updates to Training / Documentation as needed	7/1/2017	2.0%	
16.	Implementation of Public Production Release	7/1/2017	10.0%	

No.	Tasks / Deliverable	Milestone Date	Maximum Cost Percentage	Cost
17.	Successful Public Application Rollout Holdback / Contingency	7/1/2017	10.0%	
			100%	

4. Additional Response requirements

- A. **Submit the RFP Cover Sheet (first page of RFP), signed in ink by the Offeror or an Officer of the Offeror who is legally authorized to bind the Offeror to the proposal.**

In your response, identify any and all questions, comments, or concerns with regard to the contract terms and conditions. Absent any such attachment, the State will assume Offeror’s full acceptance of the contract terms and conditions. If your company normally seeks legal review of contract terms, this process should occur prior to submission of your offer and your offer must identify any term or condition you are questioning and how you would suggest it be resolved. **If you have exceptions you must provide alternative language that has been approved by your legal counsel. The willingness and/or ability of the State to accept such alternatives will be considered on a case-by-case basis. Following award of this solicitation, contract discussions will begin with the schedule for completion within 30 days. If finalization within this time period cannot be accomplished, CDE may seek to withdraw the “Notice to Make an Award” and award to the Respondent of the next most advantageous proposal.**

- B. Provide a positive statement that your organization is willing to, and able to provide CDE with the services described in this RFP.
- C. Financial Resources. Provide a statement that your organization has the financial strength to maintain the contract if awarded. The CDE may request true copies of your most recent audited annual financial statements. **DO NOT submit financial statements with your proposal.**

If requested, this information may be used to assist CDE in making its determination of Offeror’s responsibility in accordance with Section 24-103-401, C.R.S. The statements must have been prepared by a Certified Public Accountant and meet the Generally Accepted Accounting Principle (GAAP) standards.

*Note: the Offeror may request the financial information provided be granted confidential status in accordance with **Section 1.N, Proprietary/Confidential Information.***

- D. Complete and submit **EXHIBIT 2, Respondent Non-Conflict of Interest Statement and EXHIBIT 3, Offeror Disclosure Statement.**

5. Packaging Requirements.

Please note: if there are any discrepancies between the original paper proposal versus the electronic version; the original paper proposal will take precedence.

- A. The Offeror shall include a **Table of Contents** in the proposal. In each set, a tab that corresponds to the Table of Contents should separate each major section of the proposal.
- B. One (1) original hardcopy labeled NARRATIVE ORIGINAL and (1) hardcopy of Offeror's proposal. Ten (10) electronic copies (flash drives) of the narrative non-confidential proposal labeled NARRATIVE 1 of 10, 2 of 10, etc.
- C. One copy of the State of Colorado *Request for Proposal – Cover Sheet* form MUST be completed and signed in blue ink by a person who is legally authorized to bind the Offeror to the proposal. The signed form is to be included with the proposal that is marked as ORIGINAL.
- D. If approved, confidential materials are to be included, one (1) original labeled CONFIDENTIAL ORIGINAL and ten (10) electronic copies (flash drives) labeled CONFIDENTIAL 1 of 10, etc. separately bound. **Please keep in mind that it is CDE's preference for there to be no confidential materials submitted as part of responses to this RFP.** Refer to Section 1.N for more information related to confidential materials
- E. One (1) original hardcopy labeled COST ORIGINAL, one (1) hardcopy and ten (10) electronic copies (flash drives) of the cost proposal labeled COST 1 of 10, 2 of 10, etc. separately bound.
- F. One (1) original of Exhibit 2 (Respondent Non-Conflict of Interest Statement) and Exhibit 3 (Offeror Disclosure Statement) and acknowledgements labeled CERTIFICATIONS
- G. One (1) flash drive with the narrative proposal in Microsoft Word format labeled WORD – NARRATIVE
- H. One (1) flash drive with the cost proposal in Microsoft Excel and Word format labeled Excel or Word – COSTS

Prices and terms of the proposal(s) as stated must be valid for the length of any resulting contract(s) and subsequent extensions and or amendments.

All costs incurred in responding to this RFP shall be borne by the Offeror.

Proposals that are determined to vary from these requirements may not be accepted.

All participating Offerors, by their signature, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Should the State omit anything from this document which is necessary to a clear understanding of the work, or should it

appear that various instructions are in conflict; the Offeror shall inquire and secure written instructions from the Purchasing Agent by the written inquiry deadline set forth in this RFP.

The State respects the environment and desires to do business with Offerors who share this concern. The Department desires and encourages that proposals be submitted on recycled paper, printed on both sides. While the appearance of proposals and professional presentation is important, the use of non-recyclable or non-recycled glossy paper is discouraged.

Telegraphic or electronic bids (Fax, Western Union, Telex, e-mail, etc.) cannot be accepted as a sealed bid for the original proposal. **Proposals must be submitted and sealed in a package per packaging requirements** with an appropriate label affixed. **The label must show the following information clearly on the outside of the sealed package:**

1. [Offeror's Name]
2. [RFP-DAA-2015000238 School Level Financial Reporting Website](#)
3. Proposal Due: (July 13, 2015, 12:00 pm MDT)
4. [Offeror's Email Address]:

Send or delivery submissions to: **Colorado Department of Education**
Attn: Eva Reynolds
201 E. Colfax Ave., Room 409
Denver, CO 80203

End of Section 5

SECTION 6 – PROPOSAL EVALUATION

A comprehensive, fair and impartial evaluation of each proposal received will be conducted, in accordance with the State Procurement Code (Section 24-103-203, C.R.S.) and the related State Procurement Rules.

All responsive proposals received by the deadline will be evaluated on best value (as defined by CDE) by representatives of CDE and its qualified designees.

The evaluation committee will evaluate qualifying proposals against the criteria as stated Sections 3, 4, and 5.

Offeror's performances on prior and existing contracts are subject to review and discussion and may be utilized in the decision making processes inherent in RFP response review.

The final decision will be a business decision and may not be based on a score. A Decision Memorandum will document the basis for the Offeror(s) selection.

Failure of the Offeror to provide any information requested in this RFP may result in disqualification of the proposal. The Offeror must be registered on VSS in order to be considered responsive at the time of proposal submission. Offerors not meeting the requirements identified in this RFP shall be ineligible for further consideration. The State may conduct discussions with Offerors in the acceptable range for the purpose of promoting understanding of the State's requirements and the Offeror's proposal, to clarify requirements, and make adjustments in services to be performed, and in prices. Changes to proposals, if permitted, will be requested by the State in writing from Offerors.

If proposal revisions are permitted after oral presentations and discussions, a date will be established in writing by the State for submission of best and final offers. Offerors will not be provided an opportunity for comprehensive proposal revisions.

During the evaluation process, the evaluation committee may, at its discretion, request any one or all Offerors to provide demonstrations or make oral presentations or answer questions about their proposals. Not all Offerors may be asked to make such oral presentations. Offerors should not assume that they will have an opportunity for oral presentations, so they should submit their most favorable proposals in their initial written proposal. The competitive range determination will be based on the written proposals, so Offerors are cautioned to ensure that their proposals adequately convey the soundness of their approach and understanding of the requirements and specifications. Any presentations that are held may consist of an Offeror demonstration or briefing concerning its approach, as well as the Offeror should address any clarifications and deficiency items that may have been identified in advance by the State. The participating Offeror's team must include the proposed project manager and the executive team contact person identified in the proposal. Based on demonstrations requested and questions asked, additional Offeror personnel intended to be active, on-going participants in the project may be requested to attend.

The following are the minimum evaluation factors to be used when evaluating responses. It is the intent to use these factors, along with the general requirements.

Mandatory Requirements

1. Preferred Requirements
2. Demonstrated Ability to Complete Entire Scope of Work, including a track record of success
3. Knowledge and understanding of Colorado's School Finance Information including the standard chart of accounts.
4. Technical Requirements, Software, and Security
5. Training and Technical Support
6. Functional Requirements
7. Project Management
8. Cost

AWARD METHODOLOGY

As stated in **Sections 5 and 6**, the Evaluation Committee will evaluate the proposals and oral interviews/presentations (if requested), then identify the proposal(s) most advantageous to the State. The evaluation will result in a recommendation for an award(s) of a contract under this RFP. The Evaluation Committee will submit their recommendation to the State Purchasing Office (SPO) for review and final acceptance. *The intent to award notification is contingent upon the availability of funds to CDE for the initial contract period.* The SPO will issue "Notice of Intent to Make an Award" letter(s) to all selected Offeror(s) and an intent-to-award notice will be posted on the VSS system.

The Offeror further agrees to cooperate with CDE and expedite the contracting process upon notice of award.

Should a contract not be completed and executed by the parties, through no fault of CDE, on or before the estimated "Contract Finalized" date, CDE at its sole discretion may elect to cancel the "Notice of Intent to Make an Award" and make the award to the Offeror of next most advantageous proposal.

The resulting contract is subject to and contingent upon the continuing availability of funds for the purpose hereof. The Offeror recognizes that it is to be paid, reimbursed or otherwise compensated with funds provided to CDE for the purpose of contracting for the services provided herein. The Offeror expressly understands and agrees that all its rights, demands and payment to compensation arising under the resulting contract are contingent upon receipt of such funds by CDE. In the event that CDE does not receive such funds or any part thereof, CDE may immediately terminate this contract without liability, including liability for termination cost.

End of Section 6

ATTACHMENTS

**ATTACHMENT 1: COMPANY EXPERIENCE AND DEMONSTRATED CAPABILITY
FACT SHEET**

(RFP-DAA-2015000238 School Level Financial Reporting Website)

SUBMIT Minimum of Three (3) UP TO Five (5) FACT SHEETS

- A. Primary governing Contract or Agreement Number:
- B. Name of Contracting Agency or Customer:
- C. Type of Contract or agreement:
- D. Brief Description of effort and complexity:
- E. Period of Past Performance: From _____ to _____. Explain below:
- Original Time Schedule(s) met?
 - Scope of Delays or Changes?
 - What was the budget and was the work completed within original budget?
 - Were payments withheld waiting for work completion?
- F. Customer Primary Points of Contact: Client Name(s), phone number(s) and email address(es):
- G. Respondent's Key Personnel (names and responsibility):
- H. Identify Contract issues (If Any) or problems encountered and explain how they were addressed and resolved:
- I. Circumstances Surrounding Termination of the Contract and the Closing Relationship with the Customer:
- J. Identify and explain any litigation involved (by the prime Respondent, by any Sub-Respondents, or by the other parties to the contract):

RETURN THIS PAGE WITH YOUR PROPOSAL RESPONSE

ATTACHMENT 2

COST RESPONSE Table RFP-DAA-2015000238

Respondent's Name: _____

Offerors are required to complete the following table and include in their cost proposal.

No.	Tasks / Deliverable	Milestone Date	Maximum Cost Percentage	Cost
Project Initiation				
1.	COTS Core product Installation	10/1/2015	10.0%	
2.	Develop implementation schedule and project planning documents	10/1/2015	3.0%	
Year One Pilot Release				
3.	Discovery / Requirements / Design Sign-off	12/1/2015	5.0%	
4.	Custom Component Development	3/1/2016	8.0%	
5.	Data Gathering / Migration	4/1/2016	2.0%	
6.	Help Desk Support	4/1/2016	10.0%	
7.	User Acceptance Testing	6/1/2016	5.0%	
8.	User Training / Documentation	7/1/2016	3.0%	
9.	Implementation of Pilot (Beta) Release	7/1/2016	10.0%	
Year Two Public Release				
10.	Pilot Support / Application Improvement Capturing	1/1/2017	2.0%	
11.	Custom Component Development as required	3/1/2017	4.0%	
12.	Data Gathering / Migration	4/1/2017	5.0%	
13.	Help Desk Support	4/1/2017	2.0%	
14.	User Acceptance Testing	6/1/2017	9.0%	
15.	Updates to Training / Documentation as needed	7/1/2017	2.0%	
16.	Implementation of Public Production Release	7/1/2017	10.0%	
17.	Successful Public Application Rollout Holdback / Contingency	7/1/2017	10.0%	
			100%	

GRAND TOTAL \$ _____

This page is to be completed and included/returned with your cost component response to this solicitation.

EXHIBITS

**EXHIBIT 1: STATE OF COLORADO, CDE, MODEL IT CONTRACT FOR
PERSONAL SERVICES**

Contract Routing # [redacted]
PO CORE 2016- [redacted]

**STATE OF COLORADO
Colorado Department of Education
Contract with
[redacted]**

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I. PARTIES

This contract, is entered into by and between the State of Colorado, for the use and benefit of the Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203, hereinafter referred to as CDE, and **CONTRACTOR NAME AND ADDRESS** hereinafter referred to as the Contractor.

II. EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

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

III. RECITALS

A. Authority, Appropriation, and Approval

Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract.

C. Purpose

Briefly describe the Contract's purpose

D. References

All references in this Contract to sections, 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.

IV. DEFINITIONS

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

“Budget” means the budget for the Work described in **Exhibit Insert letter of applicable Exhibit (A, B, C, etc).**

“Confidential Information” means information, data, records, and documentary materials belonging to the State regardless of physical form or characteristics, including but not limited to any non-public State records, sensitive State data, protected State data, State personnel records, personally identifiable information (“PII”), and other information or data concerning individuals, which has been communicated, furnished or disclosed by the State to Contractor. Notwithstanding the foregoing, Confidential Information shall not include State Data and Records.

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

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

“Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in Section VI and Exhibit Insert letter of applicable Exhibit (A, B, C, etc).

“Exhibits and other Attachments” means: Exhibit A (Statement of Work), Exhibit B (Prices and Rates) , and Exhibit C (Option Letter).

“Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the “Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in Section VI below.

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

“Personally Identifiable Information (PII)” means information about an individual collected by the State or any other governmental entity that could reasonably be used to identify such individual, including, but not limited to any combination of (i) first and last name, (ii) first name or first initial and last name, (iii) residence or other physical address, (iv) electronic mail address, (v) telephone number, (vi) birth date, (vii) credit card information, (viii) social security number, (ix) driver’s license number, (x) identification card number, or (xi) any other information that identifies an individual personally.

“Review” means examining Contractor’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in Section VI below.

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

“State Data and Records” means information, data, records, and documentary materials belonging to the State regardless of physical form or characteristics, including but not limited to any public State records, non-sensitive State data, and other 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 the Colorado Open Records Act, C.R.S. Sections 24-72-200.1, *et seq.*; (ii) is already known to Contractor without restrictions at the time of its disclosure by 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 Confidential Information.

“Subcontractor” means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

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

“Work Product” means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

V. TERM AND EARLY TERMINATION

A. Initial Term-Work Commencement

The Parties’ respective performances under this Contract shall commence on the later of either the Effective Date or **July 1, 2009**. This Contract shall terminate on **June 30, 2010**, unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

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

C. State’s Option to Extend

The State may require continued performance for a period of **Insert number of years** at the same rates and same terms specified in the Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed **Insert number of years**.

VI. STATEMENT OF WORK

- A. Responsibilities of the State
- B. Responsibilities of the Contractor

Include performance measures and standards, accountability section (requires the vendor to report regularly on achievement), monitoring requirements that specify how the agency and the vendor will evaluate each others' performance, including progress reports, site visits, inspections, and reviews of performance data, mechanisms for resolving non-compliance,

- C. Employees

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

VII. PAYMENTS TO CONTRACTOR

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

Include payment details (i.e., monthly, by task, etc.)

- A. Maximum Amount

The maximum amount payable under this Contract to Contractor by the State is as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract. The maximum amount payable by the State to Contractor during each State fiscal year of this Contract shall be:

in FY
in FY
in FY
in FY
in FY
in FY

- B. Payment

- 1. Advance, Interim and Final Payments

Any advance payment allowed under this Contract shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. Contractor shall initiate any payment requests by submitting invoices to

the State in the form and manner set forth in approved by the State.

2. Interest

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

3. Available Funds-Contingency-Termination

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

4. Erroneous Payments

At the State's sole discretion, payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

5. Use of Funds

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

VIII. REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this Section VIII. shall be in accordance with

the procedures of and in such form as prescribed by the State.

A. Performance, Progress, Personnel, and Funds

State shall submit a report to the Contractor upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder.

B. Litigation Reporting

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

C. Performance Outside the State of Colorado and/or the United States

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

D. Noncompliance

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

E. Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

IX. CONTRACTOR RECORDS

A. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of three years after the date this Contract expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the Record Retention Period).

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

C. Monitoring

Contractor shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

D. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein. Contractor shall ensure the provisions of this paragraph apply to any subcontract related to performance under the Contract. Contractor shall, at Contractor's sole expense, reconstruct any

records not preserved or retained as required by this paragraph.

X. CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with and shall cause each of its Subcontractors and any other party performing Work under this Contract to comply with the provisions of this Section if it becomes privy to Confidential Information and/or State Data and Records in connection with its performance hereunder.

A. Confidentiality

Contractor shall keep all Confidential Information confidential at all times and comply with all laws and regulations concerning confidentiality of Confidential Information. Any request or demand by a third party for Confidential Information and/or State Data and Records in the possession of Contractor shall be immediately forwarded to the State's principal representative.

B. Notification

Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with Confidential Information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such Confidential Information.

C. Use, Security, and Retention

Confidential Information and/or State Data and Records of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information and/or State Data and Records wherever located. Confidential Information and/or State Data and Records shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State. All Confidential Information and/or State Data and Records of any kind shall be stored, processed, or transferred only in or to facilities located within the United States.

D. Protection

If Contractor provides physical or logical storage, processing or transmission of Confidential Information and/or State Data and Records, Contractor shall provide, and shall cause its Subcontractors to provide, physical and logical protection for State hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in the Contract. Contractor shall provide the State with access, subject to Contractor's reasonable access security requirements, seven (7) days a week, twenty-four (24) hours a day, for the purpose of inspecting and monitoring access and use of Confidential Information, State Data and Records, maintaining State systems, and evaluating physical and logical security control effectiveness. Contractor, if it retains,

stores, or is given Confidential Information and/or State Data and Records, at all times shall maintain, and shall cause its Subcontractor's to maintain, network, system, and application security, which includes network firewalls, intrusion detection, and annual security testing. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records, shall comply and shall cause its Subcontractors to comply, with State and federal regulations and guidelines related to security, confidentiality and auditing. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records shall ensure, and shall cause its Subcontractors to ensure, that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments and shall promptly report all breaches or attempted breaches to a representative of the Office of Information Security ("OIS"). Neither Contractor nor its Subcontractors shall have any rights to use or access any Governor's Office of Information Technology ("OIT") or other State agency data or information, except with the prior approval of OIT or the State. Contractor shall review, on a semi-annual basis, the Colorado Cyber Security Program (CCSP), posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>, and its related documents, including its policies and procedures to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its delegate. Contractor shall follow, and shall cause its Subcontractors to follow, the State's Data Handling and Disposal policy, which can be found at www.colorado.gov/oit/security_policies. Contractor shall perform, and shall cause its Subcontractor's to perform, in a form reasonably acceptable to the State, current background checks on all of its respective employees and agents performing services or having access to State Confidential Information and/or State Data and Records provided under this Contract. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access shall be deemed to be current.

E. Security-Notice

Contractor is responsible for the security of all Confidential Information and/or State Data and Records provided to it by the State. If Confidential Information and/or State Data and Records is provided to Contractor or any Subcontractor by the State, Contractor shall comply with and shall cause its Subcontractors to comply with the State's Cyber Security Policies, which the OIS has promulgated pursuant to CRS §§24-37.5-401 through 406 and 8 CCR §1501-5. The Policies are posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>.

F. Security Breach Remediation

If Contractor becomes aware of a data security breach involving any Confidential Information and/or State Data and Records that Contractor has received from the State ("Security Breach"), it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Security Breach, Contractor shall be responsible for the cost of

notifying each Colorado resident and residents of other states whose personal information may have been compromised by the Security Breach. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State. Contractor shall be responsible for performing an analysis to determine the cause of the Security Breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present such analysis and remediation plan to the State within ten (10) days of notifying the State of the Security Breach. The State reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce the required analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis, produce a remediation plan, and Contractor shall reimburse the State for the reasonable costs thereof.

G. Disclosure-Liability

Disclosure of Confidential Information and/or State Data and Records by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Section. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all consequential and incidental damages arising from a Security Breach. The Work under this Contract may require the State to supply data to the Contractor that contains PII. The State, in its sole discretion may securely deliver data that contains PII, Confidential Information and/or State Data and Records directly to the facility where such data is used to perform the Work. PII, Confidential Information and/or State Data and Records is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes. The Contractor shall ensure that PII, Confidential Information and/or State Data and Records is not retained beyond timeframes established by the State.

H. End of Agreement Data Handling

Upon request by the State made before or within sixty (60) days after the effective date of termination of the Contract, Contractor will make available to the State a complete and secure (i.e. encrypted and appropriately authenticated), download file of all system data in XML format, or other format as agreed to by the Parties in writing, including all schema and transformation definitions, and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Parties agree that on the termination of the provision of data processing services, the Contractor shall, at the choice of the State, return all data, records, PII, Confidential Information and/or State Data and Records transferred, and the copies thereof to the State, or shall destroy all the data, records, PII, Confidential Information and/or State Data and Records and certify to the State that it has done so, unless legislation imposed upon the Contractor prevents it from returning or destroying all or part of the data, records, PII, Confidential Information and/or State Data and Records transferred. In that case, the Contractor

warrants that it will guarantee the confidentiality of PII, Confidential Information and/or State Data and Records transferred and will not actively process the data transferred anymore.

I. Disposition of Data

The State retains the right to use the established operational services to access and retrieve Confidential Information and/or State Data and Records stored on Contractor's infrastructure at its sole discretion. The Contractor and Subcontractor warrant that upon request of the State and/or of the supervisory authority, the Contractor will submit its data processing facilities for an audit of the measures referred to in §IX.D. The State reserves all right, title and interest, including all intellectual property and proprietary rights, in and to system data, Confidential Information, State Data and Records and content.

J. Safeguarding Personal Identifiable Information (PII)

If Contractor or any of its Subcontractors will or may receive PII under the Contract, Contractor shall provide for the security of such PII, in a form acceptable to the State, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Contractor shall take full responsibility for the security of all data in its possession or in the possession of its Subcontractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure of loss thereof.

K. Safeguarding Federal Tax Information (FTI)

If Contractor or any of its Subcontractors will or may receive FTI under the Contract, shall provide for the security of the FTI, in a form acceptable to the State and in accordance with State and federal law. For the purposes of the Contract, "FTI" shall mean federal or state tax returns, return information, and such other tax-related information as may be protected by State and federal law. Security safeguards shall include, without limitation, supervision by responsible employees, approval of Subcontractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of Contractor's or its Subcontractor's obligations under the Contract, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications and inspections. Contractor shall comply with the requirements of IRS Exhibit 7, attached hereto and incorporated herein.

Comment [BT1]: Can be removed if no tax information or data will be made available to Contractor or its Subcontractors.

L. Safeguarding Payment Card Industry (PCI) Data

If Contractor or any of its Subcontractors will or may receive PCI under the Contract, Contractor shall provide for the security of the PCI, in accordance with PCI Data Security Standard (DSS) 1.1. For the purposes of the Contract, "PCI" shall mean any data related to card holders' names, credit card numbers, or other credit card information as may be protected by State and federal law. Security safeguards shall include, without limitation,

Comment [BT2]: Can be removed if no PCI data will be made available to Contractor or its Subcontractors.

supervision by responsible employees, approval of Subcontractors as required by State or federal law, non-disclosure of information other than as necessary in the performance of Contractor's or its Subcontractor's obligations under the Contract, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications and inspections.

M. Data Security Assurances

1. Strong access control must be in place. All data must be at a minimum protected with a complex password, workstations and other data processing devices must automatically lock when not in use, and must be manually locked when left unattended. Passwords must be confidential and sharing of passwords is prohibited, must not be written down or stored in an insecure location, and periodically changed and not reused or a reasonable time period.
2. Unused and terminated user accounts must be disabled and/or deleted immediately; account inactivity must be periodically assessed for potential stale accounts.
3. Care must be exercised in inadvertently sharing data on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.
4. Systems must be in place for logging and monitoring access and use of data.
5. At a minimum, annual intrusion penetration/vulnerability testing will be implemented.
6. Laptop/mobile device password locks and full disk/storage encryption are required.
7. Data at rest on central computing systems must be encrypted; any backup, backup media, removable media, tape or other copies must also be encrypted, and not used to transport data.
8. Mandatory annual Security awareness training on how to handle PII is required.
9. Appropriate endpoint security anti-virus and anti-malware software must be installed and maintained on computers accessing or processing PII.
10. Transmitting data must occur via a secure method such as Secure File Transfer Protocol (SFTP) or comparable and never sent via email or transported on removable media.
11. Physical security in buildings housing PII, along with controlled physical access to buildings and/or data centers.
12. Ability to suppress small N-sizes for aggregated student data reports is required.

13. After prescribed use is concluded, data disposal policies must apply for cleaning up all data. This includes secure scrubbing and securely overwriting data from storage, or physically destroying the storage media.
14. Devices used to copy or scan hard copies of data must have encrypted storage and have storage devices appropriately scrubbed when equipment is retired. Hard copy containing PPI is discouraged and must be physically secured, not left unattended, and physically destroyed.
15. All data processing systems, servers, laptops, PCs, and mobile devices must be regularly scanned and have all security patches applied in a timely manner.
16. Data stored in cloud based systems must be protected in the same manner as local data, as described throughout this document. Use of free cloud based services is prohibited, and secondary encryption must be used as appropriate to protect data in cloud storage.
17. Cloud environments, when employed, must be fully documented and open to CDE inspection and verification.
18. Access to cloud based computing environments is only permitted via restricted access, by VPN or least privileged access lists, and never accessible directly via the Internet.

XI. CONFLICTS OF INTEREST

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, 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 apparent conflict constitutes a breach of this Contract.

XII. REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

A. Standard and Manner of Performance

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

the sequence and manner set forth in this Contract.

B. Legal Authority – Contractor Signatory

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

C. Licenses, Permits, Etc.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

XIII. INSURANCE

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

A. Contractor

1. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, as amended (the GIA), then Contractor shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each

contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

2. Non-Public Entities

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the same requirements set forth in Section XIII.B with respect to subcontractors that are not "public entities".

B. Contractors – Subcontractors

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

1. Worker's Compensation

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

2. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

3. 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.

4. Privacy Insurance

Such insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks (such as data breaches, release of confidential information, unauthorized access/use of information, identity theft, invasion of

privacy, damage/loss/theft of data, degradation, downtime, etc.) Minimum limit of coverage of \$1,000,000.00 per occurrence and \$2,000,000 aggregate.

5. Technology Errors & Omissions

Such insurance shall cover any and all acts, errors, omissions or negligence in the delivery, performance or non-performance of products and/or services under this Contract. Such Technology Errors & Omissions insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks and intellectual property infringement, such as copyrights, trademarks, services marks and trade dress. Minimum coverage shall be \$1,000,000.00.

6. Additional Insured

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

7. Primacy of Coverage

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

8. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with Section XVII (Notices and Representatives) within seven days of Contractor's receipt of such notice.

9. Subrogation Waiver

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

10. Certificates

Contractor and all subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, Contractor and each subcontractors shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this

Contract or any sub-contract, Contractor and each subcontractors shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this Section.

XIV. BREACH

In addition to any breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in Section XVI. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

XV. REMEDIES

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

A. Termination for Cause and/or Breach

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

1. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an

interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State's property.

2. Payments

The State shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

3. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by Section XV.A or as otherwise specifically provided for herein.

1. Method and Content

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

2. Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply

with the same obligations and rights set forth in Section XV.A.1.

3. Payments

If this Contract is terminated by the State pursuant to this Section XV.B, Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the State may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

C. Remedies Not Involving Termination

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

1. Suspend Performance

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

2. Withhold Payment

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

3. Deny Payment

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

4. Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be

contrary to the public interest or the State's best interest.

5. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the State's option (a) obtain for the State or Contractor the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

XVI. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State:

[Redacted]
Department of Education
201 East Colfax
Denver, Colorado 80203

Contractor:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

XVII. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Except to the extent specifically provided elsewhere in this Contract, any Confidential Information, State Data and Records, software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work

Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State. Contractor shall retain the exclusive rights and ownership of the licensed products, including all associated source code, machine code, text images, audio and/or video. Contractor shall not extend such rights to any secondary or tertiary parties. Contractor retains all right and title to any licensed software, pre-existing Contractor materials, third-party materials, open source software, and derivatives thereof, delivered by Contractor under the Contract, whether incorporated in a deliverable or necessary to use a deliverable ("Contractor Property"). Contractor Property will be licensed to the State as set forth in a license agreement: (i) entered into as exhibits to this Contract, or (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.

XVIII. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act Section 24-10-101, *et seq.* and the risk management statutes, C.R.S. Section 24-30-1501, *et seq.*, as amended.

XIX. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S. Section 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDE, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on

future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (C.R.S. Section 24-105-102(6)), or (b) under C.R.S. Section-105-102(6), exercising the debarment protest and appeal rights provided in C.R.S. Sections 24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

XX. GENERAL PROVISIONS

A. Assignment and Subcontracts

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in Section XXI.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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.

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification

1. General

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act

or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, as applicable, as now or hereafter amended.

2. Intellectual Property

Contractor shall indemnify, hold harmless and defend, at Contractor's sole expense, the State and its employees and agents against any and all loss, cost, expenses or liability, including but not limited to attorney's fees, court costs and other legal expenses and damages arising out of a claim that any goods or services, software or Work Product provided by Contractor under this Contract, or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor's obligation hereunder shall not extend to the combination of the Product 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, or (b) specified by Contractor to work with the Product, or (c) reasonably required in order to use the Product 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 Product.

G. Jurisdiction and Venue

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

1. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules.

2. By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

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

1. Colorado Special Provisions.
2. The provisions of the main body of this Contract.
3. Exhibit A,
4. Exhibit B,

J. Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

K. Survival of Certain Contract Terms

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

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. Sections 39-26-101 and 201 *et seq.* Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

M. Third Party Beneficiaries

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards under C.R.S. Section 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. Sections 24-72-101, *et seq.*

P. Debarred or Suspended Entities.

Contractor shall not enter into any contract or subcontract in connection with this Contract with a party that has been debarred or suspended from contracting with the Federal Government or the State of Colorado. See Excluded Parties List System at <https://www.epls.gov>

Q. Certification Regarding Lobbying

The Contractor certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of the certification is a requisite for making or entering into transaction imposed by Section 1352, Title 31, U.S.

Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

R. Liquidated Damages

When the Contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the Contractor shall be liable for \$_____ per calendar day from date set for cure until either the Department reasonably obtains similar supplies or services if the Contractor is terminated for default, or until the Contractor provides the supplies or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or nonperformance is excused under the Force Majeure paragraph or the Termination for Default Clause of this contract, liquidated damages shall not be due the Department. The parties agree that the damages from breach of this contract are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the Department from late performance, including costs of additional inspection and oversight, and lost opportunity for additional efficiencies that would have attended on-time completion of performance. Assessment of liquidated damages shall not be exclusive of or in any way limit remedies available to the Department at law or equity for Contractor breach.

COLORADO SPECIAL PROVISIONS

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

1. CONTROLLER'S APPROVAL. C.R.S. Section 24-30-202 (1).

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

2. FUND AVAILABILITY. C.R.S. Section 24-30-202(5.5).

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

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. Section Section 1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

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

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

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

9. EMPLOYEE FINANCIAL INTEREST. C.R.S. Sections 24-18-201 and 24-50-507.

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

10. VENDOR OFFSET. C.R.S. Sections 24-30-202 (1) and 24-30-202.4.

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

11. PUBLIC CONTRACTS FOR SERVICES. C.R.S. Section 8-17.5-101.

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

subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. Section 24-76.5-101.

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

SPs Effective 1/1/09

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR:

By: _____

Title: _____

*Signature

Date: _____

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR

Department of Education
Robert Hammond, Commissioner

Robert Hammond, Commissioner

Date: _____

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR
Governor's Office of Information Technology
Suma Nallapati, Secretary of Technology and State
Chief Information Officer

By: _____

Brenda Berlin, Deputy Chief Information Officer
and Chief Financial Officer

Steven Sizemore, OIT Contracts Director

Date: _____

LEGAL REVIEW

Cynthia H. Coffman, Attorney General

By: _____

Signature - Assistant Attorney General

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

Exhibit 2 RFP-DAA-2015000238
Conflicts of Interest and Non-Conflict Certification

The State of Colorado prohibits any business entity or person to be awarded a contract if they have an “Organizational Conflict of Interest” with regard to this solicitation and the resulting contract.

An Organizational Conflict of Interest exists when a person or business entity has an unfair competitive advantage because of other activities or relationships with other persons. No person or business entity who was engaged by the State of Colorado in preparing the original Request for Proposal solicitation or who had access prior to the solicitation to procurement sensitive information related to this procurement including but not limited to Requirements, Statements of Work, or Evaluation Criteria will be eligible to directly submit or participate in the submittal of a proposal for this solicitation. The State of Colorado considers this to be an Organizational Conflict of Interest. For purposes of this solicitation, organizational conflict of interest means that because of other activities or relationships with other persons, a person or business entity has an unfair competitive advantage. All Offerors who wish to participate in this solicitation must certify that no organizational conflict of interest exists by completing and signing this certification.

Organizational Conflicts of Interest Prohibition and Non-Conflict Certification

The Offeror warrants that, to the best of his/her/its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State of Colorado, which must include a description of the action, which the successful Offeror has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State of Colorado may, at its discretion, cancel the Contract award. In the event the successful responder was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the contracting officer, the State of Colorado may terminate the Contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime Contractor, and the terms “contract,” “Contractor,” and “contracting officer” modified appropriately to preserve the State of Colorado’s rights.

Organizational Conflict of Interest - Offeror’s Signature and Certification

The undersigned on behalf of the Offeror hereby certifies that the information contained in this certification is accurate, complete, and current.

Signature and date

Typed or Printed Name

Title

Company Name and Address

Exhibit 3: VENDOR DISCLOSURE STATEMENT
Contract Performance Outside the United States or Colorado
Colorado Revised Statute 24-102-206

Company Name: _____ **Contract/Purchase Order #:** _____
(Contract or PO #to be entered after award)

To the extent the Vendor has not disclosed the following information in the Statement of Work; this form shall be completed and returned to the contracting Agency. This applies to all State contracts and solicitation of services executed after August 3, 2007.

1. Are any services under the contract or any subcontracts anticipated to be performed outside the United State or Colorado?

Yes _____ No _____

If "No", please sign the form.

If "Yes", please complete the following three questions:

2. Where will the services be performed under the contract including any subcontracts?
(List country(ies) or state(s).
3. Explain why it is necessary or advantageous to go outside of the United States or the State of Colorado to perform the contract or any subcontracts?

Not required for contracts to which the State is a party under:

- Medicare
- The "Colorado Medical Assistance Act", Articles 4 to 6 of Title 25.5 CRS
- The "Children/s Basic Health Plan Act", Article 8 of Title 25.5 CRS
- The "Colorado Indigent Care Program", Part I of Article 4 of Title 25.5 CRS

Signature: _____ Printed Name: _____

Title: _____ Date: _____

RETURN THIS COMPLETED FORM WITH RFP RESPONSE

EXHIBIT 4: GUIDE FOR E-VERIFY AND CDLE PROGRAM

Public Contracts for Services Guide for Contractor Participation in the E-Verify Program OR the Department Program 8-17.5-101 & 102, C.R.S.

I. Statutory Authority and Background

Effective May 13, 2008, contractors who enter into or renew a public contract for services with Colorado state agencies or political subdivisions must participate in *either* the federal E-Verify program, OR the newly created Colorado Department of Labor and Employment Program ("Department Program"). The option to enroll in the new Department Program instead of E-Verify was created by Colorado State Senate Bill 08-193, which amended the Public Contracts for Services and Illegal Aliens Law, 8-17.5-101 and 102, C.R.S.

II. Public Contracts for Services Program Choices

Contractors covered by the law shall participate in either:

1. **The Federal E-Verify Program.** (If you select this option, you do not need to perform the steps listed in Section III below.) For more information on E-Verify, see: www.uscis.gov and www.uscis.gov/files/nativedocuments/E4_english.pdf

OR

2. **The Department Program** (described below).

III. Department Program Requirements

Contractors who chose to participate in the Department Program (instead of using E-Verify) shall take the following steps:

1. **Notice Form.** The Contractor shall complete the "Notice of Participation in the Department Program for Public Contracts for Services" ("Notice Form") located at either of these websites:

State Controller's Office:

http://www.colorado.gov/dpa/dfp/sco/contracts/Unauthorized_Immigrants.htm

Division of Labor: www.coworkforce.com/lab/pcs/

2. **Distribution of Notice Form.** Retain the original Notice Form. You must distribute copies as follows:

- a. One copy sent to the Division of Labor by mail or in-person:

Colorado Division of Labor
633 17th Street, Suite 200
Denver, Colorado 80202-3660

- b. One copy sent with the contract to the contracting state agency(s) or political subdivision(s).

3. **Contractor Affirmation.** Complete a Contractor Affirmation within 20 days after hiring each employee who is newly hired to perform work under the public contract for services. The individual signing the Contractor Affirmation shall have signature authority for the Contractor. An example of an acceptable Contractor Affirmation is located at either of these two websites:

State Controller's Office:

http://www.colorado.gov/dpa/dfp/sco/contracts/Unauthorized_Immigrants.htm

Division of Labor: www.coworkforce.com/lab/pcs/

Retain the original notarized affirmation and send a copy to the State agency(s) or political subdivision(s) listed in the contract. The Contractor shall retain the affirmation for the term of employment of the new employee.

4. **Copies of Identity Documents.** The Contractor shall retain copies of the identity documents for each employee who is newly hired to perform work under the public contract for services. These are the documents required by 8 U.S.C. Sec 1324a to complete the federal I-9 Form:

Federal I-9 Form with instructions: www.uscis.gov/files/form/I-9.pdf

Retain these copies of the identity documents for the term of employment of the new employee.

5. **Audits.** A contractor shall consent to Department audits to assess compliance with the law. The Department may conduct random audits of contracting State agencies or political subdivisions to review materials required for submission by the contractor, and of contractors to review their documents.

6. **Retention Requirements.**

The Contractor and state agency(s) or political subdivision(s) shall retain the Notice Form for the term of the contract. The Contractor shall retain the affirmation and copies of the I-9 identity documents for the term of employment of each new employee.

EXHIBIT 5: NOTICE OF PARTICIPATION (E-VERIFY)



**NOTICE OF PARTICIPATION
IN THE
DEPARTMENT PROGRAM
FOR PUBLIC CONTRACTS FOR SERVICES**

Colorado Division of Labor
633 17th Street, Suite 200
Denver, Colorado 80202-3660
Telephone: (303) 318-8441
Toll-Free: 1-888-390-7936
www.coworkforce.com/lab

Effective May 13, 2008, contractors who enter into or renew a public contract for services with Colorado state agencies or political subdivisions must participate in either the federal E-Verify program, OR the newly created Colorado Department of Labor and Employment Program. The option to enroll in the new Department Program was created by Colorado State Senate Bill 08-193, which amended 8-17.5-101 and 102, C.R.S.

If a contractor wishes to participate in the Colorado Department of Labor and Employment Program in lieu of utilizing the federal E-Verify program, the contractor or contractor's representative must (among other requirements):

- 1) Sign and complete this form in its entirety and submit this form to the Colorado Division of Labor via mail or in-person to the address noted above, AND
- 2) Include this form with the contract to the contracting State agency or political subdivision.

Notice is hereby given of participation in the Colorado Department of Labor and Employment Program established pursuant to 8-17.5-102(5)(c)(I), C.R.S. The undersigned agrees to abide by all applicable provisions of this law, including consent to undergo random audits by the Department pursuant to 8-17.5-102(5)(c)(III), C.R.S.

Contractor Contact Information

CONTRACTOR / BUSINESS NAME		
ADDRESS		CITY, STATE, ZIP
PHONE ()	FAX ()	E-MAIL ADDRESS

Contracting State Agency or Political Subdivision Contact Information

STATE AGENCY OR POLITICAL SUBDIVISION NAME		
CONTACT NAME AT AGENCY OR SUBDIVISION		TITLE
ADDRESS		CITY, STATE, ZIP
PHONE ()	FAX ()	E-MAIL ADDRESS

Contract Information

CONTRACT NUMBER	APPROXIMATE CONTRACT DOLLAR AMOUNT (\$)
CONTRACT <u>EFFECTIVE</u> DATE	CONTRACT <u>END</u> DATE

Contractor OR Contractor Representative Information (Individual Signing this Notification)

NAME		TITLE
PHONE ()	FAX ()	E-MAIL ADDRESS

CONTRACTOR / REPRESENTATIVE SIGNATURE

DATE SIGNED

For official use only:
Claim # _____ Assigned to _____

For more information on this law, visit www.coworkforce.com/lab/pcs

EXHIBIT 6: CONTRACTOR AFFIRMATION FORM (E-VERIFY)



Contractor Affirmation for the Department Program

Required for use by contractors participating in the Department Program for public contracts for services
8-17.5-101 & 102, C.R.S.

The contractor shall provide a written, notarized copy of this affirmation to the contracting state agency or political subdivision.

DO NOT submit this affirmation to the Colorado Division of Labor unless specifically requested to do so.

Employee Name: _____ Date of Birth : _____ Date of Hire: _____
Last First M.I.

In accordance with 8-17.5-102, C.R.S., I have:

Contract Number: _____

(Initial after each)

Contractor / Business Name: _____

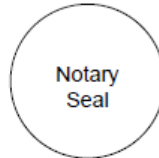
- Examined the legal work status of the above named employee: _____
- Retained file copies of documents required by 8 U.S.C. sec. 1324a.: _____
- Not altered or falsified the employee's identification documents: _____

Phone: _____

Contractor or Contractor Representative Name: _____

Contractor OR Contractor Representative Signature and Title: _____ Date Signed: _____

Subscribed and affirmed before me in the county of _____, State of Colorado, this _____ day of _____, 20____.



(Notary's official signature)

(Commission expiration date)

8-17.5-102(5)(c)(II), C.R.S. A participating contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. sec. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

This affirmation and the documents required by 8 U.S.C. sec. 1324a will be retained by the contractor for the duration of the above named individual's employment.

This affirmation is provided as a courtesy by the Colorado Division of Labor.
Another substantially similar affirmation may be used, provided that it contains the necessary elements and information as required by law.

EXHIBIT 7: W-9 FOR INDEPENDENT CONTRACTORS- STATE OF COLORADO FORM

Form W-9 Substitute Form State of Colorado 12/2009	Request for Taxpayer Identification Number and Certification	CDE/DAA Give form to requester. DO NOT send to IRS.
---	--	---

PRINT OR TYPE See Specific Instructions on page 3	Name	
	Business name, if different from above	
	Check ONE <input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other: _____	<input type="checkbox"/> Legal Entity <input type="checkbox"/> LLC filing as Sole Proprietor <input type="checkbox"/> LLC filing as Corporation <input type="checkbox"/> LLC filing as Partnership <input type="checkbox"/> Exempt from backup withholding
	Address (number, street and apartment or suite no.)	Provider of medical Services? <input type="checkbox"/> Yes <input type="checkbox"/> No
	City, state and ZIP code	Provider of Legal Services? <input type="checkbox"/> Yes <input type="checkbox"/> No
	List Account number(s) here (optional)	Phone Number

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your Social Security Number (SSN). However, for a resident alien, sole proprietor or disregarded entity, see the **Part I** instructions on page 4. For other entities, it is your Employer Identification Number (EIN). If you do not have a number, see **How to get a TIN** on page 4.

Note: If the account is in more than one name, see the chart on page 5 for guidelines on whose number to enter.

Social Security Number								
Employer Identification Number								

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me); **and**
2. I am not subject to backup withholding because: **(a)** I am exempt from backup withholding, or **(b)** I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or **(c)** the IRS has notified me that I am no longer subject to backup withholding; **and**
3. I am a U.S. person as defined below.

Certification Instructions: You must cross out item **2** above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item **2** does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an Individual Retirement Arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See instructions on page 4.)

Sign Here	Signature of U.S. person ►	Date ►
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Small, Minority- and Women-Owned Business Enterprise (SBE/MBE/WBE) Self-Certification (please check all boxes that apply)			
In an effort to track levels of participation by small, minority and women businesses with the State of Colorado, the following information is requested. Please indicate the appropriate category of ownership for your company. "Owned" in this context means a business that is at least 51 percent owned by an individual(s) who also control(s) and operate(s) it. "Control" in this context means exercising the power to make policy decisions. "Operate" means actively involved in the day-to-day management. If your business is jointly owned by both men and women or is a large publicly held corporation, please check the box labeled "Not Applicable".			
Gender Information:			
<input type="checkbox"/> Female-Owned	<input type="checkbox"/> Male-Owned	<input type="checkbox"/> Not Applicable	
Owner Ethnicity Information:			
<input type="checkbox"/> African American	<input type="checkbox"/> Asian/Pacific American	<input type="checkbox"/> White (Non-Hispanic)	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Native American	<input type="checkbox"/> Other: _____	

Small Business Information:

A Small Business is a business that is organized for profit, is independently owned and operated, and has 25 or fewer full-time equivalent employees.

Yes

No

General instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct Taxpayer Identification Number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued);
2. Certify that you are not subject to backup withholding; or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Definition of a U.S. person

For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien.
- A partnership, corporation, company or association created or organized in the United States or under the laws of the United States.
- An estate (other than a foreign estate).
- A domestic trust (as defined in Regulations section 301-7701-7).

Special rules for partnerships

Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity;
- The U.S. grantor or other owner of a grantor trust and not the trust; and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person

If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example: Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding?

Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester;
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details);
3. The IRS tells the requester that you furnished an incorrect TIN;
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only); or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see **Special rules for partnerships** on page 3.

Penalties

Failure to furnish TIN

If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding

If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information

Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs

If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social

Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole Proprietor

Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited Liability Company (LLC)

Check the "Limited Liability Company" box appropriate for the tax classification in the space provided. For a Single-Member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities

Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note: You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note: If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities; or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation;
7. A foreign central bank of issue;
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States;
9. A futures commission merchant registered with the Commodity Futures Trading Commission;
10. A real estate investment trust;
11. An entity registered at all times during the tax year under the Investment Company Act of 1940;
12. A common trust fund operated by a bank under section 584(a);
13. A financial institution;
14. A middleman known in the investment community as a nominee or custodian; or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for...	THEN the payment is exempt for...
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter Exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: Medical and health care payments, attorneys' fees and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box

If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS Individual Taxpayer Identification Number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a Single-Member LLC that is disregarded as an entity separate from its owner (see **Limited Liability Company (LLC)** on page 4), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See the chart on page 5 for further clarification of name and TIN combinations.

How to get a TIN

If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see **Exempt Payee** on page 4.

Signature requirements

Complete the certification as indicated in 1 through 5 below.

1. **Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.
2. **Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
3. **Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.
4. **Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).
5. **Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

What Name and Number to Give the Requester	
For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A Valid trust, estate or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on form 8832	The corporation
9. Association, club, religious, charitable, education, or other tax-exempt organization	The organization
10. Partnership or Multi-Member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate or pension trust. Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title. Also see Special rules for partnerships on page 3.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure your tax records from identity theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN;
- Ensure your employer is protecting your SSN; and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords or similar secret access information for their credit card, bank or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

**EXHIBIT 8: CDE EXHIBIT IC OF CONTRACT FOR PERSONAL SERVICES,
INDEPENDENT CONTRACTOR PROVISION**

Part of PO or Contract # _____

1. VENDOR ENGAGEMENT IN INDEPENDENT TRADE, OCCUPATION, PROFESSION OR BUSINESS; FREE FROM, DIRECTION AND CONTROL BY THE STATE PURSUANT TO CRS §8-70-115

The parties intend to create an independent contractor relationship between the State and the Vendor and for the State to obtain a rebuttable presumption of an independent contractor relationship pursuant to §8-70-115 by meeting the nine points below (A through I). Vendor (the term "Vendor" includes Contractors and Grantees) shall perform all of its services and other obligations under the Purchase Order (PO) or Contract (the term "Contract" includes Agreements and Grants) to which this Exhibit is attached, free from the direction and control of the State. Vendor represents that it is customarily engaged in an independent trade, occupation, profession, or business related to the services performed. These are material representations made by Vendor to the State, upon which the State relied in issuing this PO or Contract, and without which, this PO or Contract would not have been issued. In accordance with the foregoing, the State does not and shall not:

- A. Require Vendor to work exclusively for the State; Vendor is free to perform work for other entities, and represents that it does hold itself out to perform work for other entities on a regular, ongoing basis. Vendor may schedule and perform similar work for others any time it wishes, including on the same day it does so for the State;
- B. Establish a quality standard for Vendor; except that the State can provide plans and specifications regarding the work but cannot oversee the actual work or instruct Vendor as to how the work will be performed;
- C. Pay a salary or hourly rate but rather a fixed or contract rate that has been negotiated by the parties;
- D. Terminate the work during the PO or Contract period unless Vendor violates the terms of the PO or fails to produce a result that meets the specifications of the PO or Contract;
- E. Provide training, instruction, briefings, and orientations to Vendor regarding performance of the work, except as specifically stipulated within this PO or Contract's scope of work. The State shall notify Vendor when Vendor may begin performing the work and its other obligations;
- F. Supply Vendor with State-owned or leased real property, tools, benefits, equipment, supplies, or other property to perform the work, except as specifically stipulated within this PO or Contract's scope of work. Vendor shall perform and maintain its own real

property, tools, or rent or lease tools, equipment, supplies, or other personal property, and/or other items needed for the performance of the work under this PO or Contract and its other obligations hereunder and when applicable;

- G. Dictate the time of performance; except that a completion schedule and a range of mutually agreeable work hours may be established;
- H. Pay Vendor personally but rather makes checks payable to the trade or business name of Vendor; and
- I. Combine the State's business operations in any way with Vendor's business, but instead maintain the State's and Vendor's operations as separate and distinct.

2. BENEFITS DISCLOSURE

Vendor 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 Vendor or any of its agents or employees. Unemployment insurance benefits shall be available to Vendor and its employees and agents only if such coverage is made available by Vendor or a third party. Vendor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

3. ENTIRE AGREEMENT

These Provisions together with the attached Purchase Order or Contract, constitute the entire agreement between the parties, and supersedes all prior proposals, agreements or other communications between the parties.

OFFEROR	STATE OF COLORADO John W. Hickenlooper, GOVERNOR
By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual	Department of Education Robert Hammond, Commissioner
*Signature Date: _____	By: INSERT-Name & Title of Person Signing for CDE Date: _____

*Persons signing for Offeror hereby swear and affirm that they are authorized to act on Offeror's behalf and acknowledge that the State is relying on their representations to that effect.

EXHIBIT 9: FERPA Confidentiality Agreement

FERPA CONFIDENTIALITY AGREEMENT

The federal Family Educational Rights and Privacy Act (FERPA) and the federal Individuals with Disabilities Education Act (IDEA) mandate that education records and personally identifiable information contained in education records relating to students and their family be maintained as confidential. Generally, education records are records that are directly related to the student and maintained by an educational agency or institution or by a party acting for the agency or institution. "Personally identifiable information" includes the student's name; the name of the student's parents or other family members; the address of the student or family; a personal identifier, such as the student's social security number or student number; other information that is linked or linkable to a specific student that would allow a reasonable person to identify the student with reasonable certainty. Generally, education records or personally identifiable information contained in education records may be disclosed to a third party *only* with the prior written consent from the student's parent. Unless such consent is obtained, the discussion, use, or access of education records or personally identifiable information contained in education records is limited to job-related, legitimate educational interests.

Per the IDEA and FERPA, the Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with the contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, or guardian. The Contractor shall have compliant FERPA and IDEA written policies governing access to, duplication and dissemination of, all such information. The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements and also require each employee, agent or subcontractor to sign a written non-disclosure agreement. The Contractor shall provide its employees, agents and subcontractors, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.

The security required for processing and maintenance of education records extends to the use of computer records as well as paper and microfilmed records. Information entered into any computer database must not be disclosed, altered or falsified in any manner. Even a minor disclosure of information may be a violation of FERPA and IDEA.

During your employment or contract or agency relationship with Contractor, you will have access to education records or personally identifiable information contained in education records. You acknowledge that you have read and agree to abide by the written confidentiality policy of Contractor regarding education records. You agree that you will not, under any circumstances, release any information about a student or family, unless your job duties specifically require you to do so and such information release has been approved in writing prior to such release by Contractor and CDE.

Any unauthorized use or misuse of any education records is grounds for termination of employment or contractual work and subjects you to legal remedies under federal and state law.

I have read, understand and accept my responsibilities under this Non-Disclosure Agreement.

Name: _____

Signature: _____ Date: _____