

STATE OF COLORADO
Colorado Department of Education
Contract with

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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 [redacted] 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, 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.

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

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, in 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

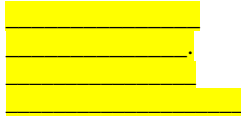
Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition 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:


Department of Education
201 East Colfax

Denver, Colorado 80203

Contractor:



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

John W. Suthers, 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: _____

