

ATTACHMENT 1,
STATE OF COLORADO
INFORMATION TECHNOLOGY (IT) SERVICES
CONTRACT
(DRAFT)

**The Office of the Attorney General and the Office of the State Controller
have approved this contract form.**

DEPARTMENT OR AGENCY NAME
[1]
CONTRACT ROUTING NUMBER
[2]

INFORMATION TECHNOLOGY SERVICES CONTRACT

THIS CONTRACT, dated this [3] day of [4], 20 [5], by and between the State of Colorado, for the use and benefit of the Department of [6], located at [7], [8], Colorado, 80 [9] (the "State"), and [10], a(n) [11], located at [12], [13], ("Contractor").

FACTUAL RECITALS

- A. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this contract through the Colorado Financial Reporting Systems (COFRS).
- B. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
- C. Contractor's bid was selected in accordance with Colorado law and State Procurement Rules pursuant to the State's issuance of a(n) **(select type of procurement – Request for Proposal RFP; Request for Documented Quotes DQ; Invitation for Bids IFB; Competition Not required – exempt procurement; emergency procurement; other competitive procurement method – competitive reverse auction; other competitive procurement method – competitive negotiation, or sole source)** [14]

OR:

[Contractor's bid was selected in accordance with other law(s) or grant(s) [15] which specifically name(s) Contractor as the awarded supplier or specifies the supplier selection method.]

- D. Authority for the State entering into this contract arises from Colorado Revised Statutes (CRS) [16] or [17].
- E. The State requires [18]. Contractor is ready, willing and able to provide such services and products, if applicable.

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this contract, the State and Contractor agree as follows:

AGREEMENT

1. Definitions

The following terms as used in this contract shall be construed and interpreted as follows, unless the context otherwise expressly requires a different construction and interpretation:

- 1.1 “**Breach of Data Security**” means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of information used or maintained by Contractor in conjunction with this contract.
- 1.2 “**Compensation**” means the funds payable to Contractor by the State which are related to the Products and/or Services, described in the Statement of Work set forth on **Exhibit A** (Statement of Work), attached hereto and incorporated herein.
- 1.3 “**Contract**” means this contract for Services and/or Products, 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 that are incorporated into this contract pursuant to State Fiscal Rules and Policies.
- 1.4 “**Exhibit**” means a statement of work document, schedule, budget, or other identified exhibit which has been incorporated into and attached to this contract.
- 1.5 “**Intellectual Property**” means any and all know-how, inventions, patents, copyrights, models, designs, diagrams, specifications, service marks, trademarks, trade dress, trade secrets, test results, knowledge, research, techniques, discoveries, regulatory filings, data, source codes, object codes, production methods, technology, specification of materials, formulae, methods of formulation, processes or other information (in tangible or intangible form), other industrial or proprietary rights, and all present and future title, interest and rights pertaining thereto, any documentation relating thereto, and any and all applications for any of the foregoing, whether or not patented, patentable or registered as of the effective date of this contract or at any later date.
- 1.6 **Key Personnel** means those individuals identified in **Exhibit A** (Statement of Work) essential to the satisfactory performance of Contractor’s obligations under this contract.
- 1.7 “**Products**” means Software and copies thereof, licenses, user documentation, upgrade plans, support, hardware and other products, described on **Exhibit A** (Statement of Work).
- 1.8 “**Services**” means services performed or tangible material produced or delivered in the performance of services.
- 1.9 “**Software**” means the executable code version of software Product(s) set forth on **Exhibit _**, attached hereto and made a part hereof.
- 1.10 “**Work Product**” means the 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.

[OPTION #1 ADDITIONAL DEFINITIONS]

2. Statement of Work

- 2.1 Contractor shall perform the Services and provide the Products (if applicable) described in **Exhibit A** (Statement of Work).

[OPTION #2 MAINTENANCE/SUPPORT]

[OPTION #3 BILATERAL CHANGE ORDERS]

[OPTION #4 OPTIONS – QUANTITY]

3. Performance Standard

- 3.1 Contractor shall perform the Services and deliver the Products described in **Exhibit A** (Statement of Work) in accordance with the highest standard of care, skill and diligence provided by a professional person or company in performance of work similar to the Services, and all services, and all consumables, products, and materials used in performance of the Services and the delivery of Products shall be of good quality and free from faults and defects. Contractor shall re-perform any Services at no additional charge where it is demonstrated that erroneous results were created through some fault on the part of Contractor during the performance of the Services.
- 3.2 Time is of the essence for the performance of this contract. The failure of Contractor to complete the **[delivery of reports/milestones/performance/deliverables]** by the date specified in this contract shall be grounds for termination of Contractor for default by the State, subject to adjustment or extension in the time for performance, agreed to by the State, in its sole discretion.

[OPTION #5 SERVICE LEVEL AGREEMENTS]

4. Performance Term

- 4.1. This contract shall be effective upon approval by the Colorado State Controller, or authorized delegate, or on _____ **[19]** _____, whichever is later (the "Effective Date") and extend through _____ **[20]** _____. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the sequence and manner set forth in **Exhibit A** (Statement of Work).
- 4.2. In the event the State desires to continue the Services and/or Products and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to two (2) months. This contract shall be extended under the same terms and conditions as set forth herein, including, but not limited to prices, rates and delivery requirements. This extension shall terminate upon the first to occur of the end of the two (2) month period and the execution of the replacement contract by the Colorado State Controller, or an authorized delegate.

[OPTION #6 OPTIONS – RENEWAL]

5. Compensation

- 5.1. Payment of compensation for the performance of the Services and delivery of Products required by this contract and **Exhibit A** (Statement of Work) shall be made as earned, in whole or in part, from available State funds encumbered for such purposes, in a maximum amount not to exceed \$ _____ **[21]** _____. Satisfactory performance and/or delivery under the terms of this contract shall be a condition precedent to the State's obligation to compensate Contractor.
- 5.2. The maximum compensation payable under this contract, and under any renewal hereof, shall include all Contractor fees, costs and expenses, including but not limited to, labor costs, rent or mortgage payment, travel expenses, overhead, parts, repairs and replacements, mileage, supplies, mailing, testing, communications, reporting, debugging, delivery charges or other operation or contract expenses.
- 5.3. The State shall not be liable to Contractor for payment of products or services or for costs or expenses incurred by Contractor prior to the Effective Date.

[REQUIRED FOR USE WITH MULTI-YEAR CONTRACTS]

- 5.4. The maximum amount available during each fiscal year of this contract for the purchase of Products and Services shall be:
 - (a) \$ _____ **[22]** _____ in fiscal year **[23]** _____;
 - (b) \$ _____ in fiscal year _____; and
 - (c) \$ _____ in fiscal year _____.

[OPTION #7 OPTIONS – CONTRACT PRICE]

6. Availability of Funds

- 6.1 This contract is contingent upon the continuing availability of State appropriations as provided in Section 2 of the Colorado Special Provisions, incorporated as a part of this contract. The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If Federal appropriations or grants fund this contract in whole or in part, the contract is subject to and contingent upon the continuing availability of appropriated Federal funds for this contract. If State of Colorado or Federal funds are not appropriated, or otherwise become unavailable to fund this contract, the State may immediately terminate the contract in whole or in part without further liability.

7. Billing/Payment Procedure

- 7.1. The State shall establish billing procedures and pay Contractor the contract price or rate for Services performed, reviewed, and accepted or Products delivered, inspected, and accepted pursuant to all the terms and conditions of this contract, including without limitation, performance, quality, milestones and completion requirements for payment set forth in **Exhibit A** (Statement of Work) and the State's inspection and acceptance rights in Section 9. Contractor shall submit invoices for payment on forms and provide requested documentation in a manner prescribed or approved by the State. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described Services and Products. Incorrect payments by the State to Contractor due to omission, error, fraud, or defalcation shall be recovered from Contractor by deduction from subsequent payments under this contract or other contracts between the State and Contractor or collected as a debt due to the State.
- 7.2. Invoices and payments shall be mailed using the US Postal Service or other delivery service with a properly addressed stamped envelop to the address specified by the Contractor on form W-9 or other similar form and by the State in its billing procedures.
- 7.3. The State shall make payment in full with respect to each invoice within forty-five (45) days of receipt thereof; provided that the amount invoiced represents Products and/or Services which have been accepted by the State and the form of the invoice is acceptable to the State. Uncontested amounts not paid by the State within forty-five (45) days shall bear interest on the unpaid balance beginning with the forty-sixth (46th) day, at a rate of one percent (1%) per month, until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which the State has delivered to Contractor notice of 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 applicable interest rate.

[OPTION #8 DISPUTE RESOLUTION]

8. Data and Document Deliverables

- 8.1 Contractor shall deliver, by the dates specified in **Exhibit A**, the data and documents required therein. Unless otherwise specified, Software documentation delivered pursuant to this contract shall meet the following standards:
- (a) 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 codes programmed in different programming languages.
 - (b) 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.
 - (c) Detailed "commenting" of source code may be used to partially satisfy the documentation requirements, although documentation shall also include a flow chart which identifies the program flow between files and functions. Comments may be used to document internal flow control in functions.

- (d) 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.
- (e) 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.

8.2 Documentation shall be written so persons reasonably proficient in the use of the program language utilized can efficiently use the documentation to understand the program structure, iterative and other control techniques, and decipher error messages should they occur. Contractor warrants that the delivered Software shall be sufficiently descriptive to enable maintenance and modification thereof 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,

9. Inspection and Acceptance

9.1 The State reserves the right to inspect Services and Products delivered under this contract at all reasonable times and places during the term of this contract, including any extensions. If any of the Services or Products does not conform to contract requirements, the State may require Contractor to promptly perform the Services or provide the Products again in conformity with contract requirements, at no additional cost to the State. When defects in the quality or quantity of Services and Products cannot be corrected by re-performance, the State may:

- (a) require Contractor to take necessary action to ensure that future performance conforms to the requirements of this contract; and
- (b) equitably reduce the payment due to Contractor to reflect the reduced value of the Services performed or Products delivered.

These remedies shall in no way limit the remedies available to the State in other provisions of this contract or otherwise available in equity or at law, all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment hereunder shall not constitute a breach of contract or default by the State.

9.1 Acceptance of any deliverable will occur at the Contractor's or the State's site, as applicable, using jointly prepared acceptance test procedures and test data. The State shall perform the acceptance test and may witness the acceptance test, or the State shall perform the acceptance test following problem determination, problem analysis and service request procedures provided by the Contractor.

10. Reporting

10.1 Unless otherwise provided in this contract or the exhibits hereto, Contractor shall submit, on a quarterly basis and upon termination or completion of work, a written progress report analyzing the performance under this contract and specifying progress made for each activity identified in Contractor's duties and obligations. Such written analysis shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of Contractor and failure to comply may result in the delay of payment of funds and/or termination of this contract. Required reports shall be submitted to the State not later than the end of each calendar quarter, or at such time as otherwise specified by the State. Notwithstanding anything herein to the contrary, including without limitation the priority provisions set forth in Section 35, specific reporting requirements set forth in Exhibit A (Statement of Work) or in other exhibits to this contract, shall precedence over this general reporting provision.

10.2 Contractor shall provide the State with such documentation and other information as may be reasonably requested by the State from time to time to verify that Contractor's performance of Services is in compliance with the terms and conditions of this contract. Contractor shall provide the State with project status reports and monthly reports on the progress of the work and system operations. The content and format of these reports shall determined by the State.

10.3 Project status reports shall include, without limitation, the following: (i) activities performed in the prior period; (ii) milestones achieved; (iii) progress relative to project plan; (iv) key issues and factors impacting the support effort; (v) corrective actions, if needed; and (vi) planned activities for the upcoming period.

10.5 Monthly system operations reports will include, without limitation, the following: (i) usage by Service in the prior period; (ii) changes implemented in prior period; (iii) Service Level Agreement attainment in prior period, if applicable; (iv) key issues surfaced through problem management reporting; (v) corrective actions, if needed; (vi) planned activities for the upcoming period; and (vii) resource deployment for prior, current and upcoming periods.

11. Rights in Data, Documents, and Computer Software

- 11.1 Work Product shall be the exclusive property of the State and Contractor shall deliver all such Work Product to the State upon completion, termination, or cancellation of this 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.
- 11.2 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 under this 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.
- 11.3 The State shall be the owner of all licenses to third party proprietary operating and vendor software packages provided by Contractor.

OPTION #9 TITLE IN CONTRACTOR – IRREVOCABLE LICENSE

OPTION #10 INTELLECTUAL PROPERTY ESCROW

12. Maintenance, Inspection and Monitoring of Records

- 12.1 Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of programs or the delivery of Services or Products under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the Federal and/or Colorado State government has begun but is not completed or audit findings have not been resolved after a three (3) year period, such materials shall be retained until completion of the audit or resolution of the audit findings.
- 12.2 Contractor shall permit the State, the Federal Government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Contractor's performance hereunder.
- 12.3 Contractor also shall permit these same described entities to monitor all activities conducted by Contractor pursuant to the terms of this contract. As the monitoring agency, in its sole discretion, may deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract performance.

13. Confidentiality of State Records and Information

- 13.1 Contractor acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited, to personal records and information of individuals. It shall be the responsibility of Contractor to keep all State records and information confidential at all times and to comply with all Colorado State and

Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of Contractor made by a third party who is not an authorized party to this contract shall be immediately forwarded to the State's principal representative for resolution.

- 13.2 Contractor shall notify all of its agents, employees, subcontractors and assigns who will come into contact with State information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and information wherever located. No State information of any kind shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the contract and as approved by the State. State information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in this contract and approved by the State. Disclosure of State records or information may be cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.
- 13.3 If Contractor provides physical or logical storage, processing or transmission of confidential or sensitive State data, Contractor shall provide physical and logical protection for State hardware, Software, applications and data that meet or exceed industry standards and requirements as set forth in this Contract and exhibits attached hereto. Contractor shall provide the State with access, subject to 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 State data, maintaining State systems, and evaluating physical and logical security control effectiveness.
- 13.4 Contractor shall be responsible for the security of all information provided to it by the State. If Contractor becomes aware of a Breach of Data Security, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Contractor shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised. 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 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 Breach of Data Security. The State reserves the right to adjust this plan, in its sole discretion. In the event that Contractor cannot produce the required analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, at the Contractor's cost.
- 13.5 Notwithstanding any other provision of this contract or its exhibits or attachments, Contractor shall be liable to the State for all consequential and incidental damages arising from a Breach of Data Security.

[OPTION #11 HIPAA]

14. Litigation Reporting

Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services or Products provided or Contractor's performance under this contract, which has been filed in any Federal or state court or administrative agency, shall deliver copies of such document to the State's principal representative, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the State.

15. Conflict of Interest.

- 15.1 During the term of this contract, 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 under this contract.
- 15.2 Additionally, Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of

Contractor's obligations to the State in accordance with the terms and conditions of this contract, without the prior written approval of the State.

- 15.3. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.
- 15.4. Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of Contractor or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - (a) an employee, officer or agent;
 - (b) any member of the employee's immediate family;
 - (c) an employee's partner; or
 - (d) an organization, which employs, or is about to employ, any of the above,has a financial or other interest in the firm selected for award. Contractor's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements.

16. Warranties

Contractor warrants that in providing deliverables and performing Services pursuant to the terms of this contract:

- 16.1 Contractor warrants that (a) Services and/or Products provided under this contract shall meet the description in **Exhibit A** (Statement of Work), (b) there are no pending or threatened suits, claims, or actions of any type with respect to the Services or Products to be provided under this contract and (c) the Services and Products shall be free and clear of any liens, encumbrances, or claims arising by or through Contractor or any party related to Contractor.
- 16.2 Contractor shall strictly comply with the descriptions of and representations as to the Services (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) set forth in this contract and **Exhibit A** (Statement of Work). All Services under this contract shall be performed in a timely manner, in accordance with the specifications, and in a manner acceptable to the State. Contractor shall re-perform any Services that fail to satisfy this warranty.
- 16.3 In addition to any express and implied warranties provided to the State under law or made under other provisions of this contract, 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 State, and that all work performed pursuant to this 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.
- 16.4 The Services performed by Contractor shall not be in violation of any applicable law, rule or regulation, and Contractor shall obtain all permits and licenses required to comply with such laws and regulations.
- 16.5 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.
- 16.6 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 and has the right to grant to the State access to or use of such Software, hardware, methods, methodologies and Intellectual Property.
- 16.7 All deliverables delivered under this contract by Contractor shall meet the specifications set forth in this contract and **Exhibit A** (Statement of Work) and shall interface, integrate and be functionally compatible

with and perform on any and all of the State's hardware and Software configuration(s) as provided in the specifications. Contractor shall correct or replace any deliverables which fail to satisfy this warranty.

- 16.8 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 this contract and any documents referenced therein. The deliverables, as defined in this contract, shall perform the functions substantially as described in this contract, for a period of [REDACTED] after delivery to and acceptance by the State.
- 16.9 All Products furnished under this contract shall (i) conform to generally applicable standards in the industry, (ii) be new and in good working order, free from defects in materials or workmanship, (iii) installed properly and in accordance with manufacturers' recommendations or other industry standards and (iv) function in a failure-free manner. Contractor shall repair or replace, at the option of the State, any Products that fail to satisfy this warranty.
- 16.10 All equipment and supplies furnished under this contract shall be free from defects in materials or workmanship, be installed properly and in accordance with manufacturer's recommendations or other industry standards and function in a failure-free manner for a period of [REDACTED] from the date of installation by the Contractor and acceptance by the State.
- 16.11 Contractor 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.
- 16.12 Contractor shall assign and deliver to the State all written manufacturer's warranties relating to the hardware.
- 16.13 The assignment of the Key Personnel to perform the Services shall be continuous throughout the term of this contract, except where such personnel are unable to perform, including but not limited to illness or termination of employment; [APPOINTMENT OF REPLACEMENTS.]
- 16.14 Contractor shall [screen/perform criminal background checks on] all Contractor employees supplied to the State 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 State;

The foregoing warranties and such other warranties as may be set forth in this contract or in **Exhibit A** (Statement of Work) are a part of the minimum work requirements of this contract and all re-performance or other actions or deliverables required by such warranties shall be performed or delivered at no additional cost to the State.

17. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it currently has in effect all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Services and/or deliver the Products covered by this contract. 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 price. Additionally, all employees of Contractor performing Services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies 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 this contract, shall be deemed to be a default by Contractor and grounds for termination of this contract by the State.

18. Tax Exempt Status

Contractor acknowledges that the State of Colorado is not liable for any sales, use, excise, property or other taxes imposed by any Federal, state or local government tax authority. The State also is not liable for any Contractor

franchise or income related tax. No taxes of any kind shall be charged to the State.

19. Legal Authority

Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind Contractor to its terms. Contractor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado. The person(s) executing this contract on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this contract.

20. Compliance with Applicable Law and State Policies

- 20.1 Contractor shall at all times during the performance of its obligations under this contract strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract.
- 20.1 Contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract.
- 20.2 Contractor shall comply, and shall require its employees to comply, with all applicable State policies and standards in effect during the performance of this contract, including but not limited to State policies and standards relating to personnel conduct, security, safety, confidentiality and ethics. Contractor also shall require compliance with such policies and standards by subcontractors under subcontracts permitted under this contract.
- 20.3 Software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the United States of America ("USA") or other country. Contractor shall be responsible for complying with all export and re-export laws and regulations, including without limitation, (i) local license or permit requirements, (ii) export, import and customs laws and regulations (such as the export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the USA or any other country) which may apply to certain equipment, Software and technical data provided hereunder, and (iii) all applicable foreign corrupt practices acts.
- 20.4 The Contractor shall obtain and maintain, and shall cause its subcontractors to obtain and maintain all approvals, permissions, permits, licenses, and other forms of documentation required in order to comply with all applicable foreign or domestic laws, rules or regulations.
- 20.5 Contractor shall require compliance with the provisions of this Section 20 by all of Contractor's subcontractors performing work under subcontracts permitted under this contract.
- 20.6 The Contractor agrees that any failure by Contractor, Contractor's employees or Contractor's subcontractors to comply with any of the obligations of this Section may be treated by the State as a material breach of this contract by the Contractor.

OPTION # 12 FEDERAL FUNDING

21. Intellectual Property Indemnification

- 21.1 Contractor shall indemnify, hold harmless and defend, at Contractor's sole expense, the State, its employees and agents, against any and all loss, cost, expense or liability, including but not limited to attorney fees, court costs and other legal expenses and damages arising out of a claim that a Product, Service or any Work Product provided by Contractor under this contract, or its use, infringes a patent, copyright, trademark, trade secret or other intellectual property right. Contractor's obligation shall not extend to any combination of the Product with any other Product, system or method, unless the Product or system is:
- (a) provided by Contractor or Contractor's subsidiaries or affiliates;
 - (b) specified by the Contractor for work with the Product;
 - (c) reasonably required 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) reasonably expected to be used in combination with such other product, system or method.
- 21.2 The State shall notify Contractor within a reasonable time after receiving notice of a claim of infringement and Contractor shall have the sole authority to defend or settle such claim; provided that any settlement shall be for money damages only. The State shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for the defense of such claim. Contractor, at its sole expense, shall (a) obtain the right for the State to continue using the Product, (b) replace the Product with a non-infringing Product with equivalent functionality, (c) modify the product so that it retains equivalent functionality, but is non-infringing or (d) reimburse the State for the removal and replacement of the Product.
- 21.3 Contractor shall consult the State regarding the defense of such claim and the State, at its discretion and expense, may participate in such defense. Should the State choose not to participate, Contractor shall keep the State advised of any settlement or defense. In the event Contractor shall fail to vigorously and timely pursue the defense or settlement of such claim, the State may assume such defense and settlement and Contractor shall be liable for all costs and expenses incurred by the State with respect thereto.

22. Remedies

In addition to any other remedies provided for in this contract, and without limiting the remedies otherwise available at law or in equity, the State may undertake the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in this contract. "Substantial failure" to satisfy duties and obligations shall be defined to mean material, insufficient, incorrect or improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

- (a) Suspend Contractor's performance pending necessary corrective action as specified by the State, without Contractor's entitlement to adjustment in price/cost or schedule. Furthermore, at the State's option, a directive to suspend may include suspension of this entire contract or any particular part of this contract which the State determines in good faith would not be beneficial or in the State's best interests due to Contractor's substantial non-performance. Accordingly, the State shall not be liable to Contractor for costs incurred after the State has duly notified Contractor of the suspension of performance under this provision, and Contractor shall promptly cease performing and incurring costs in accordance with the State's directive;
- (b) Withhold payment to Contractor until the necessary Services or Products or corrections in performance, development or manufacture are satisfactorily completed;
- (c) Request the removal from work on this contract of employees or agents of Contractor identified by the State, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this contract the State deems to be contrary to the public interest or not in the best interests of the State;
- (d) Deny payment for those Services or obligations which have not been performed and/or Products which have not been provided and which, due to circumstances caused by Contractor, cannot be

performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or

- (e) Terminate this contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

OPTION #13 LIQUIDATED DAMAGES

23. Termination for Public Interests

- 23.1 When the public interests of the State so require, the State may terminate this contract in whole or in part. The State shall give written notice of termination to Contractor specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the State of this termination for public interests provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Contractor shall stop work to the extent specified. Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this contract shall, at the option of the State, be delivered by Contractor to the State and shall become the State's property. The State may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor shall complete and deliver to the State the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the contract terms.
- 23.2 If this contract is terminated by the State as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the Products or deliverables satisfactorily delivered or installed bear to the total Services, Products or deliverables covered by this contract, less payments of compensation previously made. In addition, for contracts that are less than 60% completed, the State may reimburse the contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by Contractor during the contract period which are directly attributable to the uncompleted portion of Contractor's obligations covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

24. Termination for Default/Cause

If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this contract, the State may notify Contractor in writing of such non-performance. If Contractor fails to promptly correct such delay or non-performance within the time specified, the State, at its option, may terminate this entire contract or such part of this contract as to which there has been delay or a failure to properly perform. If terminated for cause, the State shall reimburse Contractor only for accepted work or deliverables received up to the date of termination and final payments may be withheld. In the event of termination, all finished or unfinished Work Product, documents, data, studies, research surveys, reports, other materials prepared by Contractor, or materials owned by the State in the possession of Contractor, at the option of the State, shall be returned immediately to the State or retained by the State as its property. At the State's option, Contractor shall continue performance of this contract to the extent not terminated, if any, and shall be liable for excess costs incurred by the State in procuring from third parties replacement services or substitute products as cover. Notwithstanding any remedial action by the State, Contractor also shall remain liable to the State for any damages sustained by the State by virtue of any breach 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. Upon termination by the State, 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. Further, the State may withhold amounts due to Contractor as the State deems necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar products or services. Any action taken by the State hereunder or pursuant to Section 21 shall

not be cause for Contractor to terminate this Contract for default or material breach. If, after termination by the State, it is determined for any reason that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for public interests and the rights and obligations of the parties shall be the same as if this contract had been terminated for public interests, as described herein.

[OPTION #14 TRANSITION]

25. Insurance

25.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

- (a) Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.
- (b). 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:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.

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

- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

25.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

25.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

25.4 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

25.5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

25.6 The contractor shall provide certificates showing insurance coverage required by this contract to the State within seven (7) business days of the effective date of the contract, but in no event later than the commencement of the Services or delivery of the Products under this contract. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and Contractor shall thereupon, within ten (10) days, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

25.7 Notwithstanding subsection (a) of this Section, if Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, sections 24-10-101, *et seq.*, C.R.S., as amended (the "Act"), Contractor shall at all times during the term of this contract maintain only such liability insurance, by

commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, Contractor shall show proof of such insurance satisfactory to the State.

[OPTION #15 BACKUP AND DISASTER RECOVERY]

26. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, 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 Governmental Immunity Act. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of sections 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and the risk management statutes, sections 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended.

27. Force Majeure

Neither Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; acts of terrorism; public health/safety emergency acts of the State or any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

28. Representatives

Each individual identified below is the principal representative of the designating party. All notices required to be given to a party pursuant to this contract shall be hand delivered, with receipt required, or sent by certified or registered mail to such party's principal representative at the address for such party set forth below. Either party may from time to time designate by written notice to the other party substitute addresses or persons to whom such notices shall be sent.

For the **State:** [25]
Name:
Title:
Address:
Telephone: () _____ - _____

For **Contractor:** [26]
Name:
Title:
Address:
Telephone: () _____ - _____

29. Assignment and Successors

Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State, which shall not be unreasonably withheld. Any attempt at assignment, transfer or subcontracting without such consent shall be void, except that Contractor may assign the right to receive payments from the State pursuant to section 4-9-318, C.R.S. All subcontracts and subcontractors consented to by the State shall be made subject to the requirements, terms and conditions of this contract. Contractor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted Work Product or Products, and performance of any subcontracted Services. Contractor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the State as is required under Section 3 of the Colorado Special Provisions, incorporated as a part of this contract.

30. Third Party Beneficiaries

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the State and Contractor. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and Contractor that any such person or entity, other than the State or Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

31. Severability

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

32. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

33. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the Colorado State Fiscal Rules.

[OPTION #16 CLICK THROUGH AGREEMENTS]

34. Survival of Certain Contract Terms

Notwithstanding anything contained herein to the contrary, all terms and conditions of this contract, including but not limited to its exhibits and attachments, which may require continued performance, compliance, or effect beyond the termination date of this contract, shall survive such termination date and shall be enforceable by the State in the event of Contractor's failure to perform or comply as required.

35. Modification and Amendment

- 35.1 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.
- 35.2 Except as specifically provided in this contract, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

36. Venue

Venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

37. 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 or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) Colorado Special Provisions, pages _____ to _____.

- (b) Remaining pages of the contract, pages 1 to _____.
- (c) **Exhibit A** (Statement of Work)
- (d) [*List other exhibits, if any, in order of priority*] [27]

[ADD STATE SPECIAL PROVISIONS AND SIGNATURE PAGE]

CONTRACT OPTIONS

1. **Option #1.** Additional definitions may be added as appropriate.
 - 1._ **Change Control Board** means the [] individuals selected by [] to service on the Change Control Board for the purpose of approving change control requests initiated in accordance with **Exhibit _** (Change Order Requests), attached hereto and incorporated herein.
 - 1.- **Equipment** means the equipment set forth on **Exhibit B** (Equipment), attached hereto and incorporated herein.
 - 1._ **Project** means the project described in this contract and **Exhibit A** (Statement of Work).
 - 1._ **Service Level Agreement (SLA)** means an element of performance for which an acceptable service level has been explicitly defined in **Exhibit _** (), attached hereto and incorporated herein.

2. **Option #2.** If maintenance, support and/or operations are a part of this contract, add the following provision:
 - 2._ After acceptance of the [**Services and/or Products/Project**] by the State, Contractor shall perform the maintenance support and operation functions as required herein. The duties of Contractor in such regard shall include support for on-going application software, host environment hardware/software, training, and help desk support, as described in **Exhibit A** (Statement of Work).

3. **Option #3.** If bilateral changes orders are a part of this contract, add the following provisions:
 - 2._ Bilateral changes within the general scope of this contract and **Exhibit A** (Statement of Work) may be executed using the change order letter process described in this Section, substantially in the form of the change order letter attached as **Exhibit _** and incorporated herein, for any of the following reasons:
 - (a) Where the agreed changes to the specifications result in an adjustment to the price, delivery schedule, or time of performance;
 - (b) Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance;
 - (c) Where the changes to this contract are priced based on the unit prices or rates to be paid for the Products and/or Services established in this contract or **Exhibit A** (Statement of Work); or
 - (d) Where the changes to this contract are priced equal to or less than established catalog prices generally extended to the public or on prices or rates set by law or regulation.

Other bilateral modifications not within the terms of this Section must be executed by formal amendment to this contract, approved in accordance with Colorado State law and State Fiscal Rules.
 - 2._ Should any subsequent change in law, regulation or procedure result in a State-directed change in workload for Contractor, such change may be the subject of a negotiated agreement, change order, or contract amendment, in accordance with the provisions of this contract.
 - 2._ During the term of this contract, system enhancements within the general scope of this contract may be required. System enhancements support legislative changes to programs or meet requirements that are not identified in the contract documents. System enhancements within the general scope of this contract will follow the change control process set forth in **Exhibit _** () and must be approved by the Change Control Board.

4. **Option #4.** If an option to increase the quantities of Products and Services is a part of this contract, add the following provision:
2. The State may increase the quantity of Products and /or Services described in **Exhibit A** (Statement of Work) at the unit prices and/or rates established in **Exhibit A** (Statement of Work). The State may exercise this option by written notice to Contractor within ____ () days before the increase begins, in a form substantially equivalent to **Exhibit** [] (), attached hereto and incorporated herein. Delivery and/or performance of Products and/or Services shall continue at the same rates and under the same terms and conditions as established in this contract and in **Exhibit A** (Statement of Work).
5. **Option #5.** If Service Level Agreements are a part of this contract, add the following provision.
- 3.3 Contractor shall perform Services in compliance with the Service Level Agreements set forth in **Exhibit** [] (), attached here to and incorporated herein. Contractor shall implement all necessary measurements and monitoring tools and procedures required to measure and report Contractor's performance of the Services against the applicable Service Level Agreements. Such measurements and monitoring shall permit reporting at a level of detail sufficient to verify compliance with the Service Level Agreements, and shall be subject to audit by the State. All such reporting shall be prepared and delivered to the State on a [] basis. Contractor shall provide the State with information and access to all such tools and procedures upon request for purposes of verification.
6. **Option #6.** If a renewal option is a part of this contract, add the following provision:
- 4.3 The State unilaterally may require continued performance of Contractor's obligations under this contract for one (1) additional year at the rates specified in **Exhibit A** (Statement of Work). The State may exercise this option by the delivery of written notice to Contractor, in accordance with Section [26] of this contract, substantially in the form of the Option Letter, attached hereto as **Exhibit** ____ (Option Letter), and incorporated herein, within thirty (30) days of the end of the contract term or any renewal term. Upon exercise of this option by the State, the extended contract shall include this option provision for future use; provided, however, that the total duration of this contract, including the exercise of all options under this provision, shall not exceed a total contract period of five (5) years. Financial obligations of the State of Colorado payable after any current fiscal year are contingent upon the availability of funds for that purpose as set forth in Section 6 of this contract.
7. **Option #7.** If an option to increase or decrease the total contract price, based upon a change in **Exhibit A**, Statement of Work, is part of this contract, add the following provision:
- 5.5 The State unilaterally may increase or decrease the maximum amount payable under this contract, based upon the unit prices/rates established in this contract and in **Exhibit A** (Statement of Work). The State may exercise the option by providing a fully executed option to Contractor, substantially in the form of **Exhibit** _ (), attached hereto and incorporated herein, immediately upon signature of the Colorado State Controller, or authorized delegate. Performance of Services and delivery of Products under this contract shall continue at the same rate and under the same terms and conditions as established in this contract.
8. **Option #8.** If a method for dispute resolution is a part of this contract, add one of the following provisions:
- 7.4 In the event the parties are unable to resolve a dispute with respect to the performance of this contract, such dispute shall be submitted in writing to the State's [] and Contractor's [] for resolution under the dispute resolution process provided for in CRS 24-109-101 et. seq. Under this dispute resolution process, if the State's [] and Contractor's [] are unable to resolve the dispute to the satisfaction of both parties within [] () days, the dispute shall be submitted in writing to the [**Executive Director/Director/State Controller**] of the State and the [] of the Contractor for resolution. In the event the State's [**Executive Director/Director/State Controller**] and Contractor's [] are unable to resolve the dispute within [] () days, either party may pursue any remedy available to it at law or in equity.

9. **Option #9.** If Contractor will grant to the State an irrevocable license to intellectual property owned by Contractor, add the following provision:

11.3 Title to Intellectual Property developed by Contractor prior to or outside of this contract shall remain in Contractor. To the extent such Intellectual Property is incorporated into or required to operate the Work Product or Products, Contractor hereby grants and the State hereby accepts, a royalty-free, non-exclusive, irrevocable license to use such Intellectual Property, including without limitation, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such Intellectual Property. At the request of the State, Contractor shall provide to the State, on a quarterly basis, a written list of all such Intellectual Property supplied and/or intended to be supplied by Contractor under this contract. Upon completion or earlier termination of the term of this contract, Contractor shall provide to the State a written list of all such Intellectual Property, which Contractor has incorporated into or is necessary to operate the Work Product.

10. **Option #10.** If source code or other confidential information will be placed in an Intellectual Property Escrow, add the following provisions:

___ **Intellectual Property Escrow.**

_.1 Contractor agrees to deposit the Software, Work Product, documentation, and/or other related material(s) with a software escrow agent for the term of the contract. "Software" as used in this Section includes the source code accompanied by a running object code version submitted on a virus-free magnetic or optical media, compiled and ready to be read by a computer. "Documentation" as used in this Section includes all materials sufficient for a trained computer programmer of general proficiency to maintain and support the Software without further assistance from Contractor. Contractor also shall have a continuing obligation to deposit any maintenance modifications, updates, upgrades, new releases, or documentation related to the deposited materials.

_.2 Contractor agrees to enter into an agreement with the escrow agent, substantially in the form of **Exhibit ___ (___)**, attached hereto and incorporated herein, which will instruct the escrow agent to independently verify the operation of the running object code and cause delivery of the Software, Work Product, documentation, and all other related materials in the possession of the escrow agent to the State if any one of the following events occur:

- (a) Contractor agrees in writing to the delivery; or
- (b) Contractor ceases to do business and no successor shall have agreed to assume the Contractor's obligations to the State; or
- (c) Contractor fails to support the Software or has otherwise defaulted under this contract; or
- (d) Contractor files for liquidation under the U.S. Bankruptcy Code, or files for reorganization under the U.S. Bankruptcy Code and does not remain debtor in possession.

_.3 Contractor shall grant the appropriate licensee rights to the escrow agent to allow the escrow agent to exercise the escrow agent's rights under the intellectual property escrow agreement.

_.4 Contractor agrees that if the escrow agent delivers the Software, Work Product, documentation, and other related materials in the possession of the escrow agent to the State, the State shall have the same license and rights to use such Software, Work Product, documentation, and other related materials as the State has under this contract, including the right to utilize the source code and create updates and derivative works consistent with the purposes of this contract.

_.5 All costs and fees associated with escrow agreement and this Section shall be the responsibility of Contractor.

11. **Option #11.** If the Health Insurance Portability & Accountability Act of 1996 ("HIPAA") applies to this contract, add the following provision:

13.3 Health Insurance Portability & Accountability Act of 1996 ("HIPAA"). Federal law and regulations governing the privacy of certain health information requires a "Business Associate Contract" between the State and Contractor. 45 C.F.R. Section 164.504(e). Attached and incorporated herein by reference and agreed to by the parties is a HIPAA Business Associate Addendum for HIPAA compliance. Terms of the Addendum shall be considered binding upon execution of this contract and shall remain in effect during the term of this contract including any extensions.

12. **Option #12**. If Federal funding is utilized in this contract, add the following provisions:

21.6 Federal laws and regulations incorporated into this contract include, without limitation:

- (a) Age Discrimination Act of 1975 42 U.S.C. Sections 6101, *et seq.*
- (b) Age Discrimination in Employment Act of 1967 29 U.S.C. 621-634
- (c) Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. 12101, *et seq.*
- (d) Equal Pay Act of 1963 29 U.S.C. 206(d)
- (e) Immigration Reform and Control Act of 1986 8 U.S.C. 1324b
- (f) Section 504 of the Rehabilitation Act of 1973 29 U.S.C. 794
- (g) Title VI of the Civil Rights Act of 1964 42 U.S.C. 2000d
- (h) Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e
- (i) Title IX of the Education Amendment of 1972 20 U.S.C. 1681, *et seq.*
- (j) Section 24-34-302, *et seq.*, Colorado Revised Statutes 1997, as amended

21.7 Contractor also shall comply with any and all laws and regulations prohibiting discrimination in the performance of Contractor's obligations under this contract. In consideration of and for the purpose of obtaining any and all Federal and/or Colorado State financial assistance, Contractor makes the following covenants and assurances, upon which the State relies:

- (a) Contractor shall not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of work under this contract.
- (b) At all times during the performance of this contract, no qualified individual with a disability shall be excluded from participation in, or denied benefits of the service, programs, or activities performed by Contractor, or subjected to any discrimination by Contractor by reason of such disability.

21.8 Contractor shall take all necessary affirmative steps, as required by 45 CFR 92.36(e), Colorado Executive Order, and Colorado Procurement Rules to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies, Products, equipment, construction, and Services purchased under this contract.

13. **Option #13**. If liquidated damages may be assessed under this contract, add the following provision.

23.2 **Liquidated Damages**. If Contractor is given notice of delay or nonperformance and fails to cure such non-performance or delay in the time specified, in addition to any other damages that are applicable hereunder or at law or in equity, Contractor, at the option of the State, shall be liable for liquidated damages in the amount of \$ [redacted] per calendar day from date set for cure until either the State reasonably obtains similar products or services, if the Contractor is terminated for default, or until Contractor provides the Products or Services, if Contractor is not terminated for default. To the extent that Contractor's delay or nonperformance is excused under Section [redacted] of this contract or Section [redacted] (**Termination for Default Section**) of this contract, liquidated damages shall not be due to the

State. 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 State 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 or in any way limit remedies available to the State at law or equity for contractor breach.

14. **Option #14.** If a transition plan for contract termination or expiration will be a part of this contract, add the following provisions:
15. **Option #15.** If backup, recovery and disaster recovery support form a part of this contract, add the following provisions:

___, **Backup, Recovery and Disaster Recovery Support**

- _.1 Contractor shall establish and maintain safeguards, including file backups stored off-site, against the theft, destruction, loss or alteration of the State's data which are no less rigorous than those maintained by the State. **[identify security requirements]**
- _.2 Contractor shall support the State's efforts at disaster preparedness, as set forth in a Disaster Recovery Support Plan to be submitted by Contractor within ___ (__) days of the Effective Date of this contract and approved by the State. The Disaster Recovery Support Plan shall support a complete and efficient transition of **[P]**roject operations from the host location to an alternative site designated by the State. In the event of a disaster, Contractor shall execute the Disaster Recovery Support Plan in a manner that facilitates the commencement of operations at the alternate site within the timeline set forth in the Plan or such other timeline as may be agreed to by the State. The Disaster Recovery Support Plan shall contain, and Contractor shall execute, elements that facilitate a complete and efficient transition of **[P]**roject operations back to the original location at the conclusion of the disaster, or at the State's request.

16. **Option #16.** If the Contractor provides "click through" agreements, add this provision:

The parties acknowledge that software provided to the State may contain a "click though" agreement which is integral to that product and which will require the State to click "I agree" or some similar action in order to proceed to use the software. However, the parties hereby expressly agree that all such click through, "shrink wrap" and any other such agreement mechanisms executed by the State in using the software are void and of no effect, do not create a binding assent by the State, do not modify this Agreement, and do not in themselves create a separate contract of any kind.