




STATE OF COLORADO PRICE AGREEMENT

With
eSkill Corporation
SIGNATURE AND COVER PAGE

State Agency Department of Personnel and Administration, State Purchasing and Contracts Office	Contract Number 94483
Contractor eSkill Corporation	Contract Performance Beginning Date The later of the Effective Date or October 1, 2016
Contract Description Establishes a Price Agreement for Online Skills Assessments and Related Services	Initial Contract Expiration Date September 30, 2017

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

CONTRACTOR eSkill Corporation  By: _____ Date: 10/4/16	STATE OF COLORADO John W. Hickenlooper, Governor Department of Personnel and Administration, State Purchasing and Contracts Office June Taylor, Executive Director  By: Cindy Lombardi, State Purchasing and Contracts Director Date: 10/5/16
State of Colorado, Governor's Office of Information Technology Suma Nallapati, Secretary of Technology and Chief Information Officer  By: Brenda Berlin, Deputy Chief Information Officer and Chief Financial Officer Date: 10/6/16	

In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.


STATE CONTROLLER
Robert Jaros, CPA, MBA, JD
By: 
Effective Date: 10/11/16

TABLE OF CONTENTS

	SIGNATURE AND COVER PAGE.....	1
1.	PARTIES.....	2
2.	TERM AND EFFECTIVE DATE.....	2
3.	AUTHORITY.....	4
4.	PURPOSE.....	4
5.	DEFINITIONS.....	4
6.	STATEMENT OF WORK.....	7
7.	PAYMENTS TO CONTRACTOR.....	7
8.	REPORTING - NOTIFICATION.....	8
9.	CONTRACTOR RECORDS.....	8
10.	CONFIDENTIAL INFORMATION-STATE RECORDS.....	9
11.	CONFLICTS OF INTEREST.....	14
12.	INSURANCE.....	14
13.	BREACH.....	16
14.	REMEDIES.....	16
15.	DISPUTE RESOLUTION.....	18
16.	NOTICES AND REPRESENTATIVES.....	18
17.	RIGHTS IN WORK PRODUCT AND OTHER INFORMATION.....	19
18.	GOVERNMENTAL IMMUNITY.....	19
19.	STATEWIDE CONTRACT MANAGEMENT SYSTEM.....	19
20.	GENERAL PROVISIONS.....	19
21.	COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1).....	23
	EXHIBIT A, GENERAL WORK REQUIREMENTS.....	1
	EXHIBIT B, STATEMENT OF WORK.....	2
	EXHIBIT C, PRICES AND RATES.....	1
	EXHIBIT D, SAMPLE OPTION LETTER.....	1

1. PARTIES

This Contract is entered into by and between Contractor named on the Signature and Cover Page for this Contract (the "Contractor"), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Contract (the "State"). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE**A. Effective Date**

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

B. Initial Term

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

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period of up to four (4) consecutive periods of 1 year or less each at the same rates and under the same terms specified in the Contract (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Exhibit D. Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Effective Date absent prior approval from the State Purchasing Director in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in §16, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

E. Order Term

Orders may only be placed prior to the expiration or earlier termination of this Contract, but may have a delivery date or performance period that extends no longer than 120 calendar days following that expiration or earlier termination date. Regardless of whether this Contract has expired or has been terminated, the Contractor shall comply with all Orders that extend past the expiration or termination, as described in this section, and all requirements of this Contract necessary to complete all outstanding Orders shall survive the expiration or termination of this Contract until all such Orders are complete.

F. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by §14.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to §14.A.i.a.

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily

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

3. AUTHORITY

Authority to enter into this Contract exists in §24-102-202 C.R.S. and 1 CCR 101-9 R-24-102-202-01.

4. PURPOSE

The Parties are entering into this Contract for the Contractor to provide Skills Assessments and Related Services to Purchasing Entities. The Contractor was selected as a result of RFP-CW-DHR-16-001.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- B. **"Business Interruption"** means any event that disrupts Contractor's ability to complete the Work for a period of time, and may include, but is not limited to a Disaster, power outage, strike, loss of necessary personnel or computer virus.
- C. **"Ceiling Price"** means the maximum price Contractor or a Subcontractor may charge for a Good or Service under this Contract.
- D. **"Contract"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- E. **"Contract Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Contract.
- F. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- G. **"Deliverable"** means the outcome to be achieved or output to be provided, in the form of a tangible or intangible object that is produced as a result of Contractor's Work that is intended to be delivered to the State by Contractor. Examples of Deliverables include, but are not limited to, report(s), document(s), server upgrade(s), software license(s), and may be composed of multiple smaller deliverables.
- H. **"Disaster"** means an event that makes it impossible for Contractor to perform the Work out of its regular facility or facilities, and may include, but is not limited to, natural disasters, fire or terrorist attacks.
- I. **"End of Term Extension"** means the time period defined in §2.D.

- J. **“Environmentally Preferable Products”** means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-207.5(1) C.R.S.
- K. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Contract.
- L. **“Exhibits”** means the following exhibits attached to this Contract:
 - i. **Exhibit A**, General Requirements.
 - ii. **Exhibit B**, Statement of Work.
 - iii. **Exhibit C**, Prices and Rates
 - iv. **Exhibit D**, Sample Option Letter.
- M. **“Extension Term”** means the time period defined in §2.C
- N. **“FTI”** means federal tax information including federal or state tax returns, return information, and such other tax-related information as may be protected by State and federal law.
- O. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- P. **“Incident”** means an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources of the State pursuant to CRS § 24-37.5-401 et seq. Incidents include, but are not limited to (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- Q. **“Initial Term”** means the time period defined in §2.B
- R. **“Order”** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Contract from the Contractor, and shall include any modification to such a document.
- S. **“Party”** means the State or Contractor, and “Parties” means both the State and Contractor.
- T. **“Purchasing Entity”** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.
- U. **“PCI Data”** means payment card industry information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- V. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or

trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.

- W. **"Services"** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- X. **"State Confidential Information"** means all information, data, records, and documentary materials which are of a sensitive nature and belong 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, PII, FTI, PCI, and other information or data concerning individuals, which has been communicated, furnished, or disclosed by the State to Contractor. Notwithstanding the foregoing, State Confidential Information shall not include State Records.
- Y. **"State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- Z. **"State Fiscal Year"** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- AA. **"State Information"** means the combination of State Confidential Information and State Records.
- BB. **"State Purchasing Director"** means the position described in the Colorado Procurement Code and its implementing regulations.
- CC. **"State Records"** means all information, data, records, and documentary materials which are not sensitive and belong 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, CRS § 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 State Confidential Information. Notwithstanding the foregoing, State Records shall not include State Confidential Information.
- DD. **"Subcontractor"** means any third party engaged by Contractor to aid in performance of the Work. The term "Subcontractor" includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- EE. **"Work"** means the delivery of the Goods and performance of the Services described in this Contract.
- FF. **"Work Product"** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work.

“Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

6. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibits A and B and any Order.

7. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

- i. Each Purchasing Entity will make its own payments under any Order that it enters into. The State shall not be liable to Contractor for any payments due under any Order unless the State is a party to that Order.
- ii. Contractor shall allow the State and Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the State or Purchasing Entity.
- iii. The State shall not pay any amount to Contractor under this Contract unless the state issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity that is not the State, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by and Purchasing Entity that is not the State.

B. Payment Procedures

i. Invoices

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity's Order. Contractor shall not invoice the State under any Order unless the State is a party to that Order. Contractor shall allow 45 days for the State and Purchasing Entities to pay an invoice following the receipt of that invoice, unless the State or a Purchasing Entity specifically agrees to a shorter time in an Order.

ii. Payment Disputes

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

iii. Erroneous Payments

Unless different procedures are specified in an Order, a Purchasing Entity may recover, at the Purchasing Entity's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor. The Purchasing Entity may recover such payments by deduction from subsequent payments under its Order, deduction from any payment due under any other Orders, contracts, grants or agreements between the Purchasing Entity and Contractor, or by any other appropriate method for collecting debts owed to the Purchasing Entity.

iv. Discount and Delinquency Period

Any applicable cash discount period or delinquency period for the amounts shown on an invoice shall begin on the date of the Purchasing Entity's approval of that invoice, or from the date of receipt of acceptable Goods or Services at the specified destination by an authorized Purchasing Entity representative, whichever is later.

8. REPORTING - NOTIFICATION

A. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

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

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §16, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this §8.B shall constitute a breach of this Contract. This §8.B shall not apply if the Contract Funds include any federal funds.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date 3 years after the date this Contract expires or is terminated, (ii) final payment under this Contract is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is

pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by that governmental entity. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with and shall cause each of its Subcontractors and any other party performing Work under the Addendum or any Order to comply with the provisions of this §10 if it becomes privy to State Information or Purchasing Entity records in connection with its performance.

A. Confidentiality

Contractor shall comply with all laws and regulations concerning confidentiality of State Confidential Information. Any request or demand to Contractor by any third party for State Information shall be immediately forwarded to the State's primary contact described in the Participating Addendum.

B. Notification

Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with State 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 State Information.

C. Use, Security, and Retention

State Information and/or Purchasing Entity Records of any kind shall be stored, processed, or transferred only in, or to, facilities located within the United States, and shall not be distributed or sold to any third party, retained in any files or otherwise, or used by Contractor or its agents in any way, except as authorized by this Addendum, by law, or approved in writing by the State or the Purchasing Entity, as applicable. Contractor shall

provide and maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located.

D. Protection

- i. If Contractor provides physical or logical storage, processing, or transmission of State Information and/or Purchasing Entity Records, Contractor shall provide physical and logical protection for all related hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in this Addendum or an Order.
- ii. Contractor shall provide the State or a Purchasing Entity with access, subject to Contractor's reasonable access security requirements, 7 days a week, 24 hours a day, for the purpose of inspecting and monitoring access and use of State Information Purchasing Entity records, maintaining State or Purchasing Entity systems, and evaluating physical and logical security control effectiveness.
- iii. Contractor, if it retains, stores, or is given State Information or Purchasing Entity Records, at all times shall maintain, and shall cause its Subcontractors to maintain network, system, and application security, which includes network firewalls, intrusion detection, and annual security testing.
- iv. Contractor, if it retains, stores, or is given State Information or Purchasing Entity Records, shall comply and shall cause its Subcontractors to comply with State and federal regulations and guidelines related to security, confidentiality and auditing.
- v. Contractor, if it retains, stores, or is given State Information or Purchasing Entity Records shall ensure, and shall cause its Subcontractors to ensure, that security is not compromised by unauthorized access to computers, programs, software, databases, or other electronic environments and shall promptly report all Incidents to a representative of the Office of Information Security (OIS).
- vi. Neither Contractor nor its Subcontractors shall have any rights to use or access any Office of Information Technology (OIT) or other State agency data or information, except with the prior written approval of OIT or the other State agency.
- vii. Contractor shall review, on a semi-annual basis, all OIS policies and procedures which OIS has promulgated pursuant to CRS §§ 24-37.5-401 through 406 and 8 CCR § 1501-5 and posted at <http://oit.state.co.us/ois>, to ensure compliance with the standards and guidelines published therein.
- viii. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee.
- ix. Contractor shall perform, and shall cause its Subcontractor's to perform, in a form reasonably acceptable to the State or Purchasing Entity, current background checks on all of its respective employees and agents performing services or having access to State Information and/or Purchasing Entity Records provided under the Addendum. 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 Breach Remediation

- i. If Contractor becomes aware of an Incident involving State Information and/or Purchasing Entity Records, it shall notify the OIS, the State, and the Purchasing Entity immediately and cooperate with the State, the OIS, and the Purchasing Entity regarding recovery, remediation, and the necessity to involve law enforcement, if any.

Unless Contractor can establish that Contractor and any of its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.

- ii. Contractor shall be responsible for performing an analysis to determine the cause of an Incident, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future.
- iii. Contractor shall present its analysis and remediation plan to the State and the OIS within ten (10) days of notifying the State, the OIS, and the Purchasing Entity of an Incident. The State and/or the OIS reserve 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 and/or the OIS, in its sole discretion, may elect to perform such analysis, produce a remediation plan, and Contractor shall reimburse the State and/or the OIS for the reasonable costs thereof.

F. Rights in Data, Documents, and Computer Software

- i. Except to the extent specifically provided elsewhere in this Addendum, any State Information, pre-existing State 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 Addendum, shall be the exclusive property of the State or Purchasing Entity (collectively, "State Materials"). All State Materials shall be delivered to the State or Purchasing Entity by Contractor upon completion of an Order or termination thereof. The State's or Purchasing Entity's exclusive rights in any Work Product prepared by Contractor shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works, and to amend, update or alter such Work Product as the State or Purchasing Entity deems appropriate. Contractor shall not use, or willingly allow, cause or permit any State Materials to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State or Purchasing Entity.
- ii. Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned by or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Addendum, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property will be licensed to the State or Purchasing Entity as set forth in a license agreement that is: (i) entered into as an exhibit to this Addendum or any Order, (ii) obtained by the State or Purchasing Entity from an 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.

G. Disclosure-Liability

- i. Disclosure of State Information or Purchasing Entity Records by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State, the Purchasing Entity, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, the Purchasing Entity, and their 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 §10.

- ii. Notwithstanding any other provision of this Addendum or any Order, Contractor shall be liable to the State and Purchasing Entities for all consequential and incidental damages arising from an Incident caused by Contractor or its Subcontractors.

H. End of Agreement Data Handling

Upon request by the State or Purchasing Entity made before or within sixty (60) days after the effective date of termination of this Addendum, Contractor will make available to the State or Purchasing Entity a complete and secure (i.e. encrypted and appropriately authenticated), download file of all data, including all State Information Purchasing Entity Records, 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 upon termination of the provision of data processing services, the Contractor shall, at the choice of the State or Purchasing Entity, return all State Information and/or Purchasing Entity Records provided by the State or Purchasing Entity to Contractor, and any copies thereof, to the State or Purchasing Entity, or Contractor shall destroy all such State Information and/or Purchasing Entity records and certify to the State or Purchasing Entity that it has done so. If legislation applicable to Contractor prevents it from returning or destroying all or part of the State Information and/or Purchasing Entity Records provided by the State or Purchasing Entity to Contractor, Contractor warrants that it will guarantee thereafter the confidentiality of the State Information and/or Purchasing Entity Records provided by the State and/or Purchasing Entity and will not actively process such data anymore.

I. Disposition of Data

The State and Purchasing Entities retain the right to use the established operational services to access and retrieve State Information and/or Purchasing Entity Records stored on Contractor's infrastructure, at their sole discretion. Contractor and its Subcontractors warrant that upon request of the State, a Purchasing Entity, and/or the OIS, Contractor will submit its data processing facilities for an audit of the measures referred to in §10.D. The State and Purchasing Entities reserve all right, title and interest, including all intellectual property and proprietary rights, in and to system data, State Information Purchasing Entity Records, and all related data and content.

J. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under the Addendum, Contractor shall provide for the security of such PII in a form acceptable to the State or Purchasing Entity, 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 PII in its possession or in the possession of its Subcontractors, and shall hold the State and Purchasing Entities harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.

K. Safeguarding FTI

If Contractor or any of its Subcontractors will or may receive FTI under the Addendum, Contractor shall provide for the security of the FTI, in a form acceptable to the State or

Purchasing Entity, and in accordance with 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 Addendum, 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 Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, revised and effective January 1, 2014, found at: <http://www.irs.gov/pub/irs-pdf/p1075.pdf> and incorporated herein by this reference. .

L. Safeguarding PCI Data

If Contractor or any of its Subcontractors will or may receive PCI Data under the Addendum, Contractor shall provide for the security of the PCI Data, in accordance with PCI Data Security Standard (DSS) 1.1. 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 Addendum, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications, and inspections.

M. Intellectual Property Indemnification

Contractor shall indemnify, hold harmless and defend, at Contractor's sole expense, the State and Purchasing Entities and their respective employees and agents against any and all loss, cost, expenses, or liability, including but not limited to attorneys fees, court costs and other legal expenses and damages arising out of a claim that any Deliverable, Good or Service, software ,or Work Product provided by Contractor under this Addendum (collectively, "IP Deliverables"), 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 any IP Deliverables provided by Contractor with any other product, system or method, unless the other product, system or method is (a) provided by Contractor or Contractor's subsidiaries or affiliates, or (b) specified by Contractor to work with the IP Deliverables, or (c) reasonably required in order to use the IP Deliverables in their intended manner and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function, or (d) is reasonably expected to be used in combination with the IP Deliverables.

N. Transition of Services

Upon expiration or earlier termination of this Addendum or any Services provided hereunder, Contractor shall accomplish a complete transfer of the Services from Contractor to the State or Purchasing Entity or any replacement entity designated solely by the State or Purchasing Entity without any interruption of or adverse impact on the Services or any other services provided by third parties hereunder. Contractor shall cooperate fully with the State or Purchasing Entity or such replacement entity, and promptly take all steps required to assist in effecting a complete transfer of the Services as designated by the State or Purchasing Entity. All work related to such transfer of Services shall be performed at no additional cost beyond what would be paid for the Services hereunder.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Workers' Compensation

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

B. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, 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 1 fire.

C. Protected Information

Liability insurance covering all loss of State Information, such as PII, PCI Data, claims and losses with respect to network, internet (cloud) or other data disclosure risks (such as data

breaches, released of confidential information, unauthorized access/use of information, and identity theft), and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

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

D. Additional Insured

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

E. Primacy of Coverage

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

F. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §16 within 7 days of Contractor's receipt of such notice.

G. Subrogation Waiver

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

H. Public Entities

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

I. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance

evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner, shall be 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 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in the Contract in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §13.B., shall have all of the remedies listed in this §14.A. in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

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

a. Obligations and Rights

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

possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

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

d. Removal

Demand immediate removal from the Work 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 by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Addendum, Contractor shall, as approved by the State or Purchasing Entity (a) secure that right to use such Work for the State or Contractor; (b) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives or through a dispute on an Order, as described in Exhibit A, §2.5, shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the State Purchasing and Contracts Director for resolution in accordance with the provisions of §§24-109-101, 24-109-106, 24-109-107, and 24-109-201 through 24-109-206 C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the State Purchasing and Contracts Director, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party's principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16

without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

For the State:	For Contractor:
Tara Larwick, State Procurement Administrator	Kelly Painter, Vice President of Sales
Department Name: Colorado Department of Personnel & Administration, State Purchasing & Contracts Office	Company Name: eSkill Corporation
Address: 1525 Sherman Street, 3 rd Floor	Address: 7 Technology Dr., Suite 101
Denver, CO 80203	Chelmsford, MA 01863
Email: tara.larwick@state.co.us	Email: Kelly.painter@eskill.com

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

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

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 shall apply. Contractor agrees to be governed by and comply with the provisions of §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

Except as otherwise provided in §20.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. 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.

I. Modification

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

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

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

K. Order of Precedence

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

- i. Colorado Special Provisions in §21 of the main body of this Contract.
- ii. The provisions of the other sections of the main body of this Contract.
- iii. Exhibit A, General Requirements
- iv. Exhibit B, Statement of Work.
- v. Exhibit C, Prices and Rates
- vi. Exhibit D, Sample Option Letter.

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any exhibit attached hereto, any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provision incorporated into any other document or agreement between the Parties that (i) requires the State to indemnify or hold harmless Contractor or any other party, (ii) is in violation of State laws, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State, or (iii) is contrary to any of the provisions incorporated into §21 or the main body of this Contract.

L. Severability

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

M. Survival of Certain Contract Terms

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

N. Taxes

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

Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §20.B., this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-103.5-101 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

T. Indemnification

i. General Indemnification

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

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any

act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

iii. **Intellectual Property Indemnification**

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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, §24-10-101 *et seq.* C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor 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 will 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 agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall 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.

F. 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.

G. 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.

II. 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.

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

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

J. VENDOR OFFSET. §§24-30-202(1) and 24-30-202.4, C.R.S.

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

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.* C.R.S.

[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 will perform work under this Contract and will 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 established under Pub. L. 104-208 or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., 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 (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., 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 §§8-17.5-101 *et seq.*, C.R.S., 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.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

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

EXHIBIT A, GENERAL WORK REQUIREMENTS

1. CONTRACTOR PERSONNEL

- 1.1. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.
 - 1.2. Key Personnel
 - 1.2.1. Contractor shall designate people to hold the following specific personnel positions:
 - 1.2.1.1. Primary Point of Contact
 - 1.2.1.1.1. The Primary Point of Contact shall be responsible for all of the following:
 - 1.2.1.1.1.1. Serving as the individual responsible addressing all questions and concerns for the State and Purchasing Entities, unless an Order specifies another point of contact for that Order.
 - 1.2.1.1.1.2. Ensuring the completion of all Work in accordance with the Contract's requirements. This includes, but is not limited to, ensuring the accuracy, timeliness and completeness of all Work.
 - 1.2.1.1.1.3. Overseeing all other personnel and ensuring proper staffing levels throughout the term of the Contract.
 - 1.2.1.1.1.4. Ensuring the completeness and accuracy of the Quarterly Volume Reports described in this Exhibit A.
 - 1.2.1.1.1.5. Ensuring the final submission of the Quarterly Volume Reports described in this Exhibit A by the appropriate due date for that report.
 - 1.2.1.1.2.
 - 1.2.1.1.3.
 - 1.2.1.1.4.
 - 1.2.1.1.5.
- 1.3. Subcontractors
 - 1.3.1. Contractor does not intend to use subcontractors for performance of work in the Contract. Subcontractors may perform certain work approved by the State pursuant to §20.B.

2. ORDERING AND ORDER FULFILLMENT

- 2.1. Ordering
 - 2.1.1. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by an Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.
 - 2.1.2. The State and Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.
 - 2.1.2.1. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity's Orders.
 - 2.1.3. Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this Contract.

- 2.1.4.** If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.
- 2.1.4.1.** Contractor's internet-based portal and electronic catalogs shall clearly designate that they are part of this Contract and shall have a link to the State's price agreement web location, as determined by the State. Contractor shall ensure that all Environmentally Preferable Products are clearly listed on internet-based portal and electronic catalogs.
- 2.1.4.2.** If Contractor provides an internet-based portal or electronic catalog, Contractor shall also provide paper catalogs or catalogs on other digital media to each Purchasing Entity upon request by that Purchasing Entity.
- 2.1.4.3.** If Contractor's catalog will be either hosted on or accessed through the State's eCommerce system, then Contractor shall comply with all policies, procedures and directions from the State in relation to hosting its catalog on or making its catalog accessible through that system. Contractor shall ensure that all information made available through the State's eCommerce system is accurate and complies with this Contract.
- 2.2. Delivery of Goods and Performance of Services**
- 2.2.1.** Contractor shall provide all Goods and perform all Services described in each Order.
- 2.2.2.** Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. All Goods shall be free on board ("F.O.B.") destination to the location specified in the Order.
- 2.2.3.** If a Good in an Order is out of stock, Contractor may only provide a substitute Good if it has notified the Purchasing Entity for that Order, in writing, that the Good is out of stock and has received the Purchasing Entity's approval to provide the substitute Good. Purchasing Entities may request additional information comparing the substitute Good with the original Good in the Purchasing Entity's sole discretion.
- 2.2.4.** The State or Purchasing Entity, in its sole discretion, may securely deliver State Information and/or Purchasing Entity Records directly to the facility where the data is used to perform the Work. State Information and/or Purchasing Entity Records are 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.
- 2.3. Inspection and Acceptance**
- 2.3.1.** Goods delivered to a Purchasing Entity under an Order shall not be deemed accepted prior to that Purchasing Entity inspecting the Goods in accordance with the Order and accepting those Goods.
- 2.3.2.** Services provided to a Purchasing Entity under an Order shall not be deemed completed until that Purchasing Entity has reviewed the Services, ensured that all Services were completed in accordance with the Order and have been accepted by the Purchasing Entity.
- 2.4. Ordering Support**
- 2.4.1.** Contractor shall provide the State and each Purchasing Entity with the contact information for the individual or individuals within Contractor's organization who are assigned to

handle questions and resolve problems that Purchasing Entity may have in relation to the Work or an Order.

- 2.4.1.1. Contractor shall make personnel available from 8:00 a.m. to 5:00 p.m. Mountain Time, as adjusted for daylight savings time, at a minimum, each Business Day as necessary to handle questions and resolve problems received by Contractor.
- 2.4.1.2. Contractor shall make all of these individuals available by phone (both through a local number and a toll-free number), fax and email at all times that the individual is available to handle questions and resolve problems received by Contractor.
- 2.4.1.3. Contractor shall provide all of these individuals with the ability to access the account information and other information relating to the State or Purchasing Entities to be able to respond to questions and resolve problems relating to any Order, including, without limitation, the status of Orders, delivery, back-orders, pricing, discounts, product availability, product information, and accounts and billing.
- 2.4.2. Contractor shall provide all training to Purchasing Entities necessary for those Purchasing Entities to place Orders and properly use the Goods and Services, as requested by Purchasing Entities.
- 2.4.2.1. Training on placing Orders shall include, without limitation, training on aspects of ordering, online ordering, product delivery, product returns, and Contractor's customer service processes, as requested by the Purchasing Entity.
- 2.4.2.2. Training on properly using the Goods and Services shall include, without limitation, training and providing information on energy efficiency of Goods, new features, opportunities for manufacturer/certified set up and training, Environmentally Preferable Products, and other services or options that are offered or available related to the Goods and Services, as requested by the Purchasing Entity.

2.5. Order Disputes, Termination and Resolution

- 2.5.1. If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §16 of the main body of this Contract. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contractor of any Order.
- 2.5.2. Purchasing Entities may terminate an Order if it determines that Contractor was in breach of that Order. Termination of an Order shall not automatically terminate any other Order or this Contract.
- 2.5.3. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

2.6. Marketing

- 2.6.1. If Contractor desires to distribute any materials, notices or literature with the intent to market the Goods or Services ("Marketing Materials"), Contractor shall deliver all such

Marketing Materials to the State for review and approval prior to distributing any such materials to a Purchasing Entity.

- 2.6.1.1. The State will review submitted Marketing Materials and may approve, deny or request changes to any Marketing Materials in its sole discretion. If the State requests changes, Contractor may make those changes or may chose to rescind its submission for review and approval.
- 2.6.1.2. Contractor shall not distribute any marketing materials to any Purchasing Entity prior to receiving the State's approval of those Marketing Materials.
- 2.6.2. The State shall not be responsible for maintaining any mailing lists or creating, printing, mailing or distributing any of Contractor's Marketing Materials, though the State may distribute Marketing Materials in its sole discretion.
- 2.7. Additional Terms
- 2.7.1. Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form, including, without limitation, terms regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Contract or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish receipt of Goods or completion of Services and shall not make any term of that form enforceable.

3. VOLUME AND OPERATIONAL REPORTING

3.1. Volume Reporting

- 3.1.1. The State will use a centralized method of tracking volume. Contractor shall populate a Quarterly Volume Report, using the format as specified by the State, for each State Fiscal Year Quarter that contains, at a minimum, all of the following:
 - 3.1.1.1. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
 - 3.1.1.1.1. The total spent by each type of Purchasing Entity under this Contract.
 - 3.1.1.1.2. The total of the list cost of all items purchased by each type of Purchasing Entity under this Contract.
 - 3.1.1.1.3. The total estimated cost savings for each type of Purchasing Entity under this Contract, calculated as the total list cost minus the total spent for that Purchasing Entity.
 - 3.1.1.1.4. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Contract.
 - 3.1.1.1.5. Any additional summary information as requested by the State.
 - 3.1.1.2. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
 - 3.1.1.2.1. The name of the Purchasing Entity who the sale was made to.
 - 3.1.1.2.2. The date of the sale.

- 3.1.1.2.3. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended cost for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list cost for the item calculated by multiplying the quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list cost.
- 3.1.1.2.4. Any other detail information as requested by the State.
- 3.1.2. Contractor shall deliver a Quarterly Volume Report to the State on a quarterly basis.
 - 3.1.2.1. DELIVERABLE: Quarterly Volume Report
 - 3.1.2.2. DUE: Quarterly, within 30 calendar days following the end of the State Fiscal Year quarter that the report covers.
- 3.1.3. If any due date for a Quarterly Volume Report falls on a day that is not a Business Day, then the due date shall be automatically extended to the next Business Day, unless otherwise directed by the State.
- 3.1.4. All data and information contained in a Quarterly Volume Report shall be the property of the State and shall not be considered proprietary.
- 3.2. Additional Operational Reporting
 - 3.2.1. Upon request by the State, the Contractor shall develop and deliver to the State Ad-Hoc Operational Reports that include all detailed and summary transaction, historical or payment information related to the State or any of the Purchasing Entities as requested by the State.
 - 3.2.1.1. DELIVERABLE: Ad-Hoc Operational Reports
 - 3.2.1.2. DUE: Within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

4. PERIODIC BUSINESS REVIEWS

- 4.1. The State may schedule periodic business reviews to review Contractor's performance under this Contract.
- 4.2. Contractor shall ensure personnel assigned to the Contract are available for these meetings with the State as scheduled by the State.
- 4.3. Contractor's key personnel designated in §1.1 of this Exhibit A shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

5. CLOSEOUT PERIOD

- 5.1. This Contract shall have a Closeout Period that begins 30 days prior to the expiration of this Contract and continues until the State has determined that all Work has been completed.
 - 5.1.1. During the Closeout Period, Contractor shall complete all of the following, as directed by the State:
 - 5.1.1.1. Provide to the State, or any other contractor at the State's direction, all reports, data, systems, Deliverables and other information reasonably necessary for the State to ensure Contractor's completion of the Work, as determined by the State.

- 5.1.1.2. Notify any Subcontractors of the termination of the Contract, as directed by the State.
- 5.1.1.3. Remove all references to the State's price agreement from its websites, materials and other documentation, and inform entities that contact Contractor that it no longer has a price agreement with the State.
- 5.1.2. The Closeout Period may extend past the termination of the Contract. The State will perform a closeout review to ensure that Contractor has completed all requirements of the Closeout Period. If Contractor has not completed all of the requirements of the Closeout Period by the date of the termination of the Contract, then any incomplete requirements shall survive termination of the Contract.

6. PRICING

6.1. Price Lists

- 6.1.1. The State may publish any pricing information under this Contract, including, without limitation the pricing shown on Exhibit C, Prices and Rates, on the State's website and any other website as the State determines is necessary or efficient to facilitate the use of this Contract by Purchasing Entities.
- 6.1.2. If Contractor modifies any of its prices in accordance with §6.2, or discontinues any item shown on the existing pricing information, Contractor shall provide updated pricing information to the State for the State to publish.

6.2. Price Modifications

6.2.1. Price Increases

- 6.2.1.1. Contractor may request an increase in the prices listed in Exhibit C by submitting its request to the State in writing as described in §16 of the main body of this Contract. Requests for increases in prices are limited as follows:
 - 6.2.1.1.1. Contractor may not request a price increase during the first 12 months of this Contract.
 - 6.2.1.1.2. Contractor may not request a price increase within any 12-month period following the State's approval of a price increase under this section.
 - 6.2.1.1.3. Contractor may not submit a request for a price increase to the State fewer than 60 days prior to when Contractor intends those increased prices to be effective.
 - 6.2.1.1.4. Contractor may only request a price increase if it can justify that increase based on the Producer Price Index or the Consumer Price Index issued by the US Department of Labor, Bureau of Labor Statistics; or a similar industry pricing guide. Increase not to exceed 3%.
- 6.2.1.2. The State may approve or deny any request for a price increase based on the information provided by Contractor and other circumstances in its sole discretion.
- 6.2.1.3. If the State approves a price increase, that price increase shall not take effect unless it is included in this Contract. The State may increase the prices in Exhibit C through the use of an Option Letter.
 - 6.2.1.3.1. Contractor may only begin using the increased prices in Orders that are issued following the effective date of the modification that increases the prices. For Orders placed prior to a price increase that are in effect at the time of the price increase,

Contractor shall only charge the Purchasing Entity the prices that were in effect at the time the Order was placed.

- 6.2.1.4. If the State does not approve a price increase, or Contractor increases its prices without submitting a request to the State, then those increased prices shall be void in any Order in which they are used and Contractor shall fulfill the Order at the existing rates approved by the State under this Contract. Contractor's use of rates in any Order that exceed those approved by the State under this Contract shall be a material breach of this Contract.

6.2.2. Price Decreases and Ceiling Prices

- 6.2.2.1. Contractor may decrease its prices shown in Exhibit C at any time by providing written notice to the State.
- 6.2.2.2. The prices listed in Exhibit C are Ceiling Prices, and Contractor may offer lower prices to Purchasing Entities, and Purchasing Entities may negotiate lower prices with Contractor, without the review or approval of the State. Contractor shall not allow a Subcontractor to charge an amount greater than the Ceiling Price for any Order.

EXHIBIT B, STATEMENT OF WORK

1. GOODS AND/OR SERVICES

- 1.1. Contractor shall provide Products and Services to eligible Purchasing Entities within the terms and conditions as stated below for Online Skills Assessments and Related Services.
- 1.2. Related services are to provide administrators and employment applicants secure, online access to a catalog of assessments and/or assessment questions through a common web portal, training to Purchasing Entity personnel in the appropriate use of the products, and maintain the security of the online assessment system.

2. TECHNICAL SERVICES REQUIREMENTS:

- 2.1. Provision of an "online assessment system" includes the web portal to access the proposed assessments via a unique identifier; hand or automatic entry of demographic and other candidate information, but not Personally Identifiable Information (PII); the instructions and presentation of the assessments to the administrators and candidates; and the reporting generated by the online assessment system. Contractor is responsible for the 24 hours a day/7 days a week operation of its online assessment system.
- 2.2. Online Skills Assessments and Related Services and products offered by Contractor shall maintain security and integrity of electronic information, comply with the Colorado Information Security Act (C.R.S. 24-37.5), Part 4; and all applicable policies regarding ~~authorized access and use of systems per the State of Colorado's Governor's Office of Information Technology (OIT), Office of Information Security.~~
- 2.3. Contractor is NOT responsible for the maintenance of an Purchasing Entity's owned (or leased) computer or network equipment used to access the online assessments.

3. TECHNICAL REQUIREMENTS:

Contractor shall offer all features and element listed below:

3.1. Content-based requirements

- 3.1.1. Over 600 standard job-based assessments
- 3.1.2. Customizable tests from over 450 subjects with selectable subtopics
- 3.1.3. Simulation testing with allowance for multiple correct answers
 - 3.1.3.1. Will ensure candidates are confronted with practical situations
 - 3.1.3.2. Skill levels evaluated according to real time efficiency
 - 3.1.3.3. Evaluates candidates'
 - 3.1.3.3.1. Knowledge
 - 3.1.3.3.2. Problem-solving abilities
 - 3.1.3.3.3. Speed of response
- 3.1.4. Access to standard test libraries
- 3.1.5. Access to modular subjects with various discipline subtopics

- 3.1.6. Ability to create tailor-made tests with company-specific content
- 3.1.7. Auto compilation into test score reports that include general and specific content
- 3.1.8. Computer-related skills simulation tests
- 3.1.9. Communication or listening skills simulation tests
- 3.1.10. eSkill editor – content authoring tool
- 3.1.11. create and edit own test questions
- 3.1.12. Inclusion of
 - 3.1.12.1. alternative languages
 - 3.1.12.2. audio files
 - 3.1.12.3. graphics
 - 3.1.12.4. ability to upload completed documents

3.2. Information Technology Requirements

- 3.2.1. The eSkill application will be compatible with all of the following Internet Browsers:
 - 3.2.1.1. Microsoft Internet Explorer 9 or later
 - 3.2.1.2. Mozilla Firefox 3.6 or later
 - 3.2.1.3. Google Chrome 5 or later (for PC)
 - 3.2.1.4. Safari 8 or later (for Mac)
- 3.2.2. The eSkill application can be accessed by applicants using Windows XP SP3, 2003 Server, Vista, 7,8 or Linux for PCs and Mac OS X 10 Windows XP SP3, 2003 Server, Vista, 7,8 or Linux for PC users and Mac OS X 10.3.9 (Panther) or later for Apple users.
- 3.2.3. Users must have Adobe Flash Player 10 or later installed or use a compatible browser that offers support for HTML5 such as IE 9 or later, Firefox 26 or later, Chrome 5 or later, and Safari.
- 3.2.4. Contractor will provide professional simulation tests for commonly-used programs like Microsoft Word, Excel, Outlook, and PowerPoint that require no test-taking plug-ins and allow for multiple correct responses.
- 3.2.5. The eSkill application will provide several ways to view test results including:
 - 3.2.5.1. Score notification emails are sent to up to 10 results receivers when test taker selects “end test and submit results.” A link within the email allows one to see the results of all applicants who have taken the test.
 - 3.2.5.2. The “Latest Tests” section in the dashboard of the test center has a “View Test Scores” button. Clicking on this button will open the Score Summary window, where the results of all the applicants who have taken the test can be seen. This function also allows for the following:
 - 3.2.5.2.1. Search for a test taker
 - 3.2.5.2.2. Email the results to the test taker

- 3.2.5.2.3. View the details about the test taker's results of the test (seeing the overall results per subject and then the results per question)
- 3.2.5.3. The "Latest Score Results" section in the dashboard also displays score results. Clicking on the name of the test will open the "Score Summary" window. Clicking on the test taker's name will open the Test Results window where the results by subject or question can be seen.
- 3.2.5.4. The "Test Center" section allows viewing of the test results by clicking on the number displayed in the "Scores" column.
- 3.2.6. The eSkill application allows editing of tests and setting time limits through the following options:
 - 3.2.6.1. TEST NAME/DESCRIPTION allows you to add a test name and a description that will be visible only in your Test Center when you mouse over the test name.
 - 3.2.6.2. SHOW RESULT shows test results
 - 3.2.6.3. SCORE NOTIFICATION allows the entry of email addresses for email notification of test results
 - 3.2.6.4. AUTOMATED SHUFFLE reorders the test questions for each test taker to reduce any chance of copied answers
 - 3.2.6.5. TIME LIMIT allows for an overall limit either per question or per test. Typing questions are not included in these limits. Time can be set at zero if no time limit is needed
 - 3.2.6.6. PASSING SCORE specifies the minimum score a test taker must obtain to pass the test. This can be as a percentage in the Test Center
 - 3.2.6.7. MAXIMUM ATTEMPTS limits the number of times a user can try to answer a question (only valid for Simulator questions)
 - 3.2.6.8. TEST Questions provide the following options:
 - 3.2.6.8.1. Drop-down list to choose a subject. "Pick Questions" allow the preview and selection of any question from the chosen subject
 - 3.2.6.8.2. "Add Selected Questions" button adds questions to the test
 - 3.2.6.8.3. From the Test Questions section you can:
 - 3.2.6.8.3.1. Pick questions from another subject
 - 3.2.6.8.3.2. Add questions directly by entering the ID numbers pre-assigned to the questions
 - 3.2.6.8.3.3. Create a typing or free response question
 - 3.2.6.8.3.4. Reorder or shuffle the selected questions
 - 3.2.6.8.3.5. "Save Test" button allows changes to be saved
- 3.2.7. Reporting options, metrics, track testing statistics
 - 3.2.7.1. "Results" reports will allow clients to scan smallest details of test takers' answers
 - 3.2.7.2. Reports are broken down by percentiles and correct answers for thorough score analysis and multiple test result analysis

- 3.2.7.3. The eSkill application will provide 19 types of reports including, but not limited to
 - 3.2.7.3.1. printable versions of tests
 - 3.2.7.3.2. statistical reports on questions most often responded to incorrectly
 - 3.2.7.3.3. reports of score summaries
 - 3.2.7.3.4. reports of tests taken in a specific time interval
 - 3.2.7.3.5. history of the tests sent via email

- 3.2.7.4. Reports can be downloaded in the following formats:

- 3.2.7.4.1. PDF
- 3.2.7.4.2. MS Excel Worksheet (including .csv files)
- 3.2.7.4.3. MS Word documents

3.2.8. Multiple Administrator Access

Accounts will allow for the ability to have more than one user associated with them with the following parameters:

- 3.2.8.1. The first user is created upon subscription and is the Account Administrator. This user cannot be deleted
- 3.2.8.2. Each additional user can have differing roles depending on need
 - 3.2.8.2.1. **Administrator.** This role has unlimited power in using the Contractor's product and all of its features. This type of user can access the full customer portal (Dashboard), update the account subscription, manage users, create/view/edit/delete all tests (even if the test was created by another user), and can view/delete scores
 - 3.2.8.2.2. **Individual.** This user type can manage (create/view/edit/delete) only his or her tests and associated scores
 - 3.2.8.2.3. **Read-only.** This user type has access to a limited version of the Dashboard and cannot make changes to tests, scores, subscription, or users. He/She can see all the tests and scores but cannot edit/delete any of them
 - 3.2.8.2.4. **Individual Read-only.** This user type can only view his or her tests and associated scores. He/she has access to a limited version of the Dashboard and cannot edit/delete any tests and scores

As an administrator for an account, you can edit user details such as username, password, or user type (role)

3.2.9. Multiple "child" accounts under multiple "parent" accounts

- 3.2.9.1. Contractor's platform will allow configuration with hierarchy permissions, allowing customer to provide user with access permissions to single accounts
- 3.2.9.2. Contractor will provide the ability to create sub-accounts in order to separate tests, candidates, and results for a single location, division, or country

**Each child account created will incur a cost based on the number of credits required for the account.*

3.2.10. Reliability and server uptime.

3.2.10.1. Contractor agrees to provide a ~~minimum~~ of 99.97 % uptime.

3.2.11. ADA Compliancy

The eSkill application will provide the following for ADA compliancy

- 3.2.11.1. High contrasting colors for text and background
- 3.2.11.2. Unjustified text and accessible font styles for all eSkill application questions
- 3.2.11.3. ~~Improved navigation for quick access to buttons, forms, and combo boxes~~
- 3.2.11.4. Standard and consistent layouts for all questions
- 3.2.11.5. Labels explicitly associated with their controls

**Only the quiz section allows visually-impaired test takers to fully access most of the questions with the exception of those with images or simulations.*

3.2.12. eSkill Application Programming Interface (API) can be fully integrated into the existing applicant database, Applicant Tracking System (ATS), or Learning Management System (LMS) with the information flow taking place in two ways:

- 3.2.12.1. One-way system. Candidates are redirected to the Contractor's website through the use of a link where, after logging in, the test is administered. At the end of the test, Contractor sends the results via email to the State
- 3.2.12.2. Two-way system. Candidates and trainees are able to access eSkill application assessments directly from within the State website or internet and are taken to Contractor's website for the assessment. Test results are sent to the client with the option of forwarding it to the test takers. State's database, ATS, or LMS will be able to access individual test results to aid in management of applicants and trainees

3.2.13. At an additional cost, Contractor will turn paper-based in-house assessment training materials into online assessments that can be easily tracked and used within the secure eSkill Test Center

- 3.2.13.1. Paper tests can be scanned in MS Word, PowerPoint, or PDF. In some instances, Contractor personnel can type question text if not in one of the described formats
- 3.2.13.2. Proprietary content is only available to the Client
- 3.2.13.3. Questions can be mixed and matched with questions from Contractor's test bank to create the tailor-made assessments for recruiting and testing needs.
- 3.2.13.4. Questions can be created at beginner, intermediate, advanced, or expert levels and can be
 - 3.2.13.4.1. Multiple Choice with one or several correct answers
 - 3.2.13.4.2. True/False
 - 3.2.13.4.3. Fill in the blank
 - 3.2.13.4.4. Free response formats
- 3.2.13.5. Questions can include a subject title, topic title, question description, difficulty level, correct answer, and an explanation
- 3.2.13.6. Additional services provided include spell-checking and proofreading

3.2.14. Contractor partners with a third party to provide a proctoring service customers for an additional cost

3.2.15. eSkill application test credits will be available for a 2-year term prior to expiration, which date is established at the date of the purchase

3.3. Customer Service requirements

3.3.1. Dedicated Customer-Service representatives/assistance

3.3.1.1. Contractor will assign a Dedicated Client Success Manager to:

3.3.1.1.1. Provide initial and ongoing training for all system users

3.3.1.1.2. Provide implementation planning, guidance, and execution

3.3.1.1.3. Continuous support with a results driven strategy

3.3.1.2. Contractor will provide support for test takers and users Monday through Friday 8:00 a.m. to 5:00 p.m. MT (adjusted for DST) and by appointment after hours. Support will be available by

3.3.1.2.1. chat

3.3.1.2.2. support email

3.3.1.2.3. toll-free number

3.3.2. Training

One (1) hour of initial training will be provided to each Purchasing Entity. The training will be delivered via web conference and will include the following:

3.3.2.1. Test development

3.3.2.2. Test administration

3.3.2.3. Test reporting by individual and batch

3.3.2.4. Review of testing subjects

3.3.2.5. Configuration of testing center

3.3.2.6. Candidate support

Ongoing training will be provided upon request and customer support is available for any additional training or questions

3.4. Ordering and Delivery.

3.4.1. Ordering

Contractor will provide the following:

3.4.1.1. Various purchasing methods such as via telephone, email, FAX, on-line, or mail

3.4.1.2. An established business process to enable Purchasing Entities to easily set up an account

3.4.1.3. Contractor will set up and maintain internally hosted catalogs (i.e. list of items and unit pricing) and/or punch-out catalogs. The State has the right to implement catalogs in a phased approach

- 3.4.1.4. Acceptance of payment with procurement cards (credit cards) for orders in addition to other payment methods such as issued checks and/or electronic funds transfers (EFT).
- 3.4.1.5. At minimum, establish new Purchasing Entity accounts within two (2) business days of an Purchasing Entity's request
- 3.4.1.6. At minimum, the State requires that Contractor establish a working relationship with the Purchasing Entity within ten (10) business days of a Purchasing Entity request. Working relationship may mean attending an Purchasing Entity's telephonic or on-site meeting(s) to develop a customized product assortment, strategic delivery plan, service plans, service reports, and other agency-identified and reasonable requirements

3.4.2. Points of Contact and Hours of Operation

- 3.4.2.1. Point of Contact – Contract: Contractor shall designate a single representative to serve as the central point of contact for the State account. At a minimum, Contractor's contact person must be available Monday through Friday, 8 a.m. to 5 p.m. (MT-adjusted for DST). See Price Agreement, Section 17, Notices & Representatives for contact information.
- 3.4.2.2. Point of Contact – Services: The State requires that the level of representation, meaning the number of Contractor representatives and their experience level, is maintained to the State's satisfaction throughout the term of a Price Agreement. Contractor shall provide and maintain a contact sheet (list) that identifies the name, title, location, geographic coverage area(s), phone, and email address for all company representatives assigned to support the resulting Price Agreement; and shall provide written periodic updates (email is acceptable) to the SPO. The State reserves the right to approve changes in Contractor representation levels through the optional years of renewal of a resulting Price Agreement
- 3.4.2.3. Additionally, Contractor shall designate a single representative to serve as the central point of contact for day-to-day customer services. This person is responsible for the overall relationship between Contractor and the State, and may be involved in high-level activities, such as account reviews. At a minimum, Contractor's contact person must be available Monday-Friday, 8 a.m. to 5 p.m. (MT-adjusted for DST). See Price Agreement, Section 17, Notices & Representatives for contact information
- 3.4.2.4. Hours of Operation – Customer Service (includes Technical Support): At a minimum, Contractor's services are expected to be provided during the following work hours: Monday through Friday, 8:00 a.m. to 5:00 p.m. (MT-adjusted for DST), except State recognized holidays

3.4.3. Price

- 3.4.3.1. Contract Pricing: Contractor is required to hold its pricing for the first 12 months of its initial award according to the main body of the agreement, **Section 6, Price**. Pricing includes all delivery and services costs associated with the services
- 3.4.3.2. Price Decreases: Contractor shall pass any price decreases immediately on to Purchasing Entities

EXHIBIT C, PRICES AND RATES***Online Skills Assessment Pricing Options (FY1516 - FY1617)*****GENERAL INFORMATION**

Contractor provides two options for purchase: test credits pricing and subscription pricing. The two options are outlined below.

For each option under the purchase options, each agency will act as their own administrator, and have the ability to create custom tests from a library of over 600 standard job-based and subject-based assessments and download scores.

Option #1, SUBSCRIPTION PRICING

Under this pricing structure, each agency will set up an account with Contractor under one State branded site. The negotiated price to set-up and use an account for unlimited use is \$1500. For an additional \$1000, Contractor will add the test editor, which allows agencies to create their own examinations including the ability to upload audio files to test for listening skills.

Agencies may share one account and one log-in if one or more agencies cannot meet the buy-in price on their own. Set up and payment arrangements should be negotiated between partnering agencies. An inter-agency agreement will determine which agency acts as the primary administrator and/or how account log-in information is shared.

Option #2, TEST CREDIT PRICING

Under this pricing structure, each agency will set up an account with Contractor under one State branded site and can purchase session IDs in blocks of 25 or more. The following matrix shows the cost for this option.

Number of credits	Amount	Cost per credit
25	\$800	\$32
50	\$1350	\$27
100	\$2300	\$23

EXHIBIT D, SAMPLE OPTION LETTER

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
--------------	---------------------------------	------------------------	----------------------

1) OPTIONS: Choose all applicable options listed in §I and in §2 and delete the rest.

- a. Option to renew only (for an additional term)
- b. Increase prices as permitted in the Contract

2) REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

- a. **For use with Options 1(a-e):** In accordance with Section(s) _____ of the Original Contract between the State of Colorado, Insert Name of Department or Higher Ed Institution, and Contractor's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at a cost/price specified in Section _____, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Identify the Section, Schedule, Attachment, Exhibit etc.
- b. **For use with Option 1(f), please use the following:** In accordance with Section(s) _____ of the Original Contract between the State of Colorado, Insert Name of Department or Higher Ed Institution, and Contractor's Name, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc for the term beginning Insert start date and ending on Insert ending date at the cost/price specified in Section _____.
- c. **For use with all Options 1(a-f):** The amount of the current Fiscal Year contract value is increased/decreased by \$ amount of change to a new contract value of Insert New \$ Amt to as consideration for services/goods ordered under the contract for the current fiscal year indicate Fiscal Year. The first sentence in Section _____ is hereby modified accordingly. The total contract value including all previous amendments, option letters, etc. is Insert New \$ Amt.

3) Effective Date. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

STATE OF COLORADO
John W. Hickenlooper, Governor
 Name of Agency or IHE

By: Insert Name & Title of Person Signing for Agency or IHE

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter 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: _____

Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

Date: _____