



COLORADO

Office of the State Architect

Department of Personnel & Administration

ALERT 001

TO: SBP Delegates and Procurement Officers

FROM: Tana Lane, State Buildings Program Manager

DATE: September 13, 2021

SUBJECT: LCPTTracker Task Order Process
Prevailing Wage and Apprenticeship Expectations and Timing
New OSA Personnel

Attached you will find the FAQ document, Task Order template, the Master Agreement and Milestone Schedule regarding the implementation of Prevailing Wage and overall labor compliance. Every agency and institution that may have Public Projects as described in CRS 24-92-202 and the Office of the State Architect Policy, must purchase and utilize the cloud-based software LCPTTracker for monitoring labor compliance for construction.

In order to meet the training and implementation schedule of January 1, 2022, all agencies and institutions must have their Task Orders fully executed with LCPTTracker by **October 31, 2021**. Should you have specific questions regarding the fee, please contact Kris Vincil and Neil Armour at LCPTTracker.

Kris Vincil <kvincil@lcptracker.com>

Neil Armour <narmour@lcptracker.com>

For questions, regarding the State contract, please contact Cheri Gerou, State Architect



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PUBLIC PROJECT LABOR COMPLIANCE

What is considered a Public Project?

A Public Project is any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement on State owned land estimated to be \$500,000 or more in expenditures.

Apprenticeship Utilization Compliance

Who is required to Report Apprentice Utilization?

General Contractors bidding on Public Projects estimated at one million dollars or more that does not receive federal money are required to submit Apprenticeship Certification prior to the execution of the contract for all mechanical, sheet metal, fire suppression, sprinkler fitting, electrical, and plumbing trades.

Payroll Compliance

What is Certified Payroll?

In order to ensure that the construction labor workforce is paid prevailing wages for their work, contractors must enter project payroll data into the LCPtracker system on a weekly basis, and then certify that the data entered is compliant with The Office of the State Architect's Public Projects Policy. Contractors must also submit the Contractor Fringe Benefit Statement for each employee via LCPtracker, and benefits must be expressed as a dollar amount per hour. Benefits required by law are not eligible for consideration in the Fringe Benefits (e.g., Social Security, Affordable Care Act, and Workers' Compensation).

Who is Required to Report Certified Payrolls?

Every contractor and sub-contractor (subs) working on a State of Colorado Public Project is responsible for entering and certifying weekly payroll while actively working on the project. The prime contractor is then responsible for reviewing and approving all data entered by subs, and the project manager (agency or institution) will then review and either accept or reject the payrolls for the week.

LCPTracker

What is LCPTracker?

LCPTracker is the State of Colorado system for monitoring labor compliance for construction contracts. All construction contractors (primes and subs) must log in to LCPTracker weekly to submit and certify payrolls. Professional Services as defined by CRS 24-30-1402 are not required to use LCPTracker. LCPTracker allows the Department of Personnel & Administration (DPA) to monitor and report on labor compliance requirements including certified payroll and apprenticeship.

LCPTracker Roles & Responsibilities

Different project roles will utilize LCP differently; see the table below for your responsibilities.

Construction Subcontractors	Enter and certify data for employees
Construction Prime Contractors	Enter and certify data for employees, review and approve subcontractor data
Agency/IHE Administrators	Review and approve weekly project payrolls
Agency/IHE Project Managers	Review and approve weekly project payrolls
DPA/Office of the State Architect	QA/QC of data
DPA/Office of the State Architect	Statewide reporting of data
CDLE/Office of Labor Standards	Investigate wage complaints

Who holds the Master Task Order Agreement with LCPTracker?

The Colorado Department of Personnel & Administration holds the Master contract with LCPTracker.

What fees do I need to consider in my Task Order?

There are three mandatory fees that must be purchased by each state agency and institution:

- Flat rate for Start Up - \$3,160
- Wage Data Maintenance (annual) \$300
- Bulk Project License Fee (annual) – Based on the annual construction volume of each agency/IHE

BULK PROJECT PRICING TABLE

The Subscription Fees below for Bulk Project Pricing under this Schedule #1 are priced in accordance with the accurate Construction Capacity in the Services for each State Agency under the Contract during the one-year period of the applicable Subscription Term. The Subscription Term begins on the date of the relevant State Agency’s Task Order, or the yearly anniversary of such date, as applicable.

Bulk Project 2021 Subscription Fee Pricing for LCPtracker Professional licenses (upon reaching the applicable tier)	
Construction Capacity	LCPtracker Professional Yearly Subscription Fees
Up to \$5 Million	\$2,760.00
Up to \$10 Million	\$5,360.00
Up to \$25 Million	\$8,000.00
Up to \$50 Million	\$13,600.00
Up to \$100 Million	\$18,400.00
Up to \$200 Million	\$23,600.00
Up to \$300 Million	\$30,000.00
Up to \$400 Million	\$35,600.00
Up to \$500 Million	\$41,600.00
Up to \$750 Million	\$46,800.00
Up to \$1 Billion	\$52,000.00
Up to \$2 Billion	\$60,000.00
Up to \$4 Billion	\$85,600.00
Up to \$6 Billion	\$110,400.00
Up to \$8 Billion	\$134,000.00
Up to \$10 Billion	\$156,800.00

What if our Agency wants more customization or training?

Within the Master Task Order agreement, there are additional options that may be purchased including project management services, in-person training, and LCPTracker Academy for certification.

My agency is worried about collecting personal identifiable information. How does LCPTracker work within the confines of SB 21-131?

As a matter of privacy, each agency/institution should limit Administrator access to as few individuals as reasonably possible. The Department of Personnel & Administration as well as the Governor’s Office of Information Technology (GOIT) is responsible for reporting on the data collected by the software.

For More Information

Where do I find the Office of the State Architect (OSA) Public Projects Policy?

OSA policies can be found at:

<https://osa.colorado.gov/state-buildings/project-management-policies-guidelines>

For help navigating the LCPTracker system, please contact:

Ishmael Darjean, Prevailing Wage Analyst
ishmael.darjean@state.co.us

For questions regarding completing the LCPTracker Task Order, please contact:

Tana Lane, State Buildings Program Manager
tana.lane@state.co.us

Implementation Milestones



The below suggested training sessions are a Project Manager's "road map" for implementing accounts. Keep in mind that these suggestions are for virtual meetings, to be conducted via webinar. If an implementation is to happen in-person, sessions II, III, V and VI will happen at that time.

Estimated time per session:

I.	Initial project review & introductions	30-60 minutes +/-
II.	First Administrator Training	2 hours +/-
III.	Second Administrator Training	1.5 hours +/-
V.	"Go Live" Administrator Training	45-60 minutes +/-
VI.	Contractor Training	2 hours +/-

I. INITIAL PROJECT REVIEW AND INTRODUCTIONS (30-60 MINUTES)

Section	Item	Task Assigned To	Completion Date
A.	<p>Introductory Conference Call with Client and LCPtracker to review new project details and go through the standard implementation steps.</p> <p>Items to review in brief:</p> <ul style="list-style-type: none"> • Discuss Roles & Responsibilities – define who will be the key Admins (*These people should attend all start-up & training sessions) • Funding type • Prevailing wage requirements • Discuss any goals required (ex: Minority, Gender, Disadvantaged, etc.) • Discuss any Local, Residential or Community areas to monitor 	OSA & LCPtracker	
B.	Prevailing wages should be sent to LCPtracker as soon as possible in PDF, Word or Excel file format. (a Maximum of 8 hours of work time from LCPtracker's Wage Entry Team comes with initial purchase)	OSA	
C.	Logo to display in database sent to LCPtracker	OSA	

II. FIRST ADMINISTRATOR TRAINING			
Section	Item	Task Assigned To	Completion Date
D.	Review of software Log-In, Layout, and Training Material, including: <ul style="list-style-type: none"> • Training documents • Training videos • OnDemand classes 	Agency & LCPtracker	
E.	Overview of Main System Functions, including: <ul style="list-style-type: none"> • Project Set-up • Subcontractor Set-up • Certification tab • Reports 	Agency & LCPtracker	
F.	In-Depth discussion of the eDocument purpose and function. Explain difference in eDocument “types” and “templates”	Agency & LCPtracker	
G.	Introduction of all Database Configuration Settings. These include: <ul style="list-style-type: none"> • Validation • Department • Application Settings (accessible only by LCPtracker PMs) 	Agency & LCPtracker	

III. SECOND ADMINISTRATOR TRAINING			
Section	Item	Task Assigned To	Completion Date
H.	In-depth review & completion of department settings	Agency & LCPtracker	
I.	In-depth review & completion of validations	Agency & LCPtracker	
J.	In-depth review & completion of application settings	OSA & LCPtracker	
K.	Discuss the following tasks (or “homework”) needed to be completed by Admins as noted in Section IV	Agency/OSA & LCPtracker	



IV. TASKS FOR CLIENT ADMINISTRATORS PRIOR TO “GO LIVE” SESSION(S)			
Section	Item	Task Assigned To	Completion Date
L.	Review completed prevailing wage rates entered for accuracy	OSA	
M.	Research any labor laws or contract requirements questioned during trainings to date	OSA	
N.	Schedule and notify all known subcontractors of required use of software and date of training(s)	OSA	
O.	Create the eDocument list – what documents need to be uploaded into system and what will the requirements be when each doc needs to be submitted	OSA & LCPtracker	
P.	Post any eDocument Templates that Subs can access and download for use	OSA & LCPtracker	
Q.	Set up Prime Contractor and assign to project	Agency	
R.	Set up initial Subcontractor(s) and assign to project	Agency	

V. "GO LIVE" – ADMINISTRATOR FINAL TRAINING & REVIEW

Section	Item	Task Assigned To	Completion Date
S.	Final review of system – introduction of more advanced features	Agency/OSA & LCPtracker	
T.	Project set-up & assigning wages	Agency & LCPtracker	
U.	Prime contractor set-up	Agency & LCPtracker	
V.	Final review of the "Certifications Tab"	Agency & LCPtracker	
W.	Confirmation of project set-up and "lock-in" of prevailing wages	Agency & LCPtracker	
X.	Confirmation of initial Contractor(s) set-up	Agency & LCPtracker	
Y.	Final review of all database settings, to include: <ul style="list-style-type: none"> • Validations • Department settings • Application settings 	Agency/OSA & LCPtracker	
Z.	Confirm the "roles & responsibilities" for all main LCPtracker functions (refer to Implementation Guide for this form)	Agency/OSA & LCPtracker	
AA.	Review timeframe of LCPtracker project manager availability after implementation complete. (For standard implementations, PMs will continue to be available for an estimated two weeks. At that time, transition to the Support team will be made. PMs will always be available for high-level items, but day-to-day questions are referred to the Support team.)	Agency & LCPtracker	
AB.	Training on Database Set Up, entering and certification of Payrolls. <ul style="list-style-type: none"> • This will be an appropriate time for Database Administrators to review with the Subcontractors what the project expectations are, as far as what eDocuments are required to upload, when payrolls are due, and any goals that need to be met. 	Client, LCPtracker, & Contractors / Subcontractors	

VII. SIGN-OFF OF COMPLETE IMPLEMENTATION

Section	Item	Agency Representative	Completion Date
AC.	Sign-off after review of prevailing wage rates entered by LCPtracker		
AD.	Sign-off of Implementation completion – project set-up complete, Admins trained in all rudimentary system features, and initial subcontractors trained		

VIII. TRANSITION TO SUPPORT TEAM

Section	Item	Project Manager's Name	Completion Date
AE.	Sign-off after transition to Support team is made		

STATE OF COLORADO INFORMATION TECHNOLOGY MASTER TASK ORDER CONTRACT

COVER PAGE

State Agency Colorado Department of Personnel & Administration	Contract Number 170052		
Contractor LCPtracker, Inc.	Contract Performance Beginning Date The Effective Date		
Contract Authority Authority to enter into this Contract exists in C.R.S. §25.5-1-101, <i>et. seq.</i>	Initial Contract Expiration Date June 30, 2022		
Contract Purpose The purpose of this Contract is for Contractor to provide their Software-as-a-Service (SaaS) and other professional services to assist with the State's implementation of Davis-Bacon prevailing wage tracking for vertical construction projects with the State of Colorado.			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: <ul style="list-style-type: none"> • Exhibit A – Statement of Work • Exhibit B – Rates • Exhibit C – Sample Option Letter • Exhibit D – Information Technology Provisions • Exhibit E – Form of Task Order • Exhibit F – Contractor's General Requirements • Exhibit G – Sample Project Agreement <p>In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Colorado Special Provisions in §iv of the main body of this Contract. 2. Exhibit D, Information Technology Provisions. 3. The provisions of the other sections of the main body of this Contract. 4. Exhibit A, Statement of Work. 5. Exhibit F, Contractor's General Requirements. 6. Exhibit B – Rates. 7. Executed Option Letters (if any). 8. Executed Task Orders (if any). 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> For the State: Cheri Gerou, State Architect DPA – Office of the State Architect 1525 Sherman Street Office of the State Architect Denver, Colorado 80203 cheri.gerou@state.co.us </td> <td style="width: 50%; vertical-align: top;"> For Contractor: Kris Vincil LCPtracker, Inc. 117 E Chapman Ave. Orange, CA 92866 kvincil@lcptracker.com </td> </tr> </table>		For the State: Cheri Gerou, State Architect DPA – Office of the State Architect 1525 Sherman Street Office of the State Architect Denver, Colorado 80203 cheri.gerou@state.co.us	For Contractor: Kris Vincil LCPtracker, Inc. 117 E Chapman Ave. Orange, CA 92866 kvincil@lcptracker.com
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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

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

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Contract (each such period an “**Extension Term**”). In order to exercise this option, the State shall provide written notice to

Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code and agreement on additional terms with Contractor.

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 **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “**End of Term Extension**”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension and payment for the End of Term Extension will be on a pro rata basis using the rates in the Contract, as amended. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract or any Task Order ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract or that Task Order in whole or in part however notwithstanding any other provisions of this Contract, no refunds will be given to the State in such an instance. A determination that this Contract or any Task Order should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract or any Task Order by the State for Breach of Contract by Contractor, which shall be governed by **§13.A.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§15**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract or a Task Order, and shall include, to the extent practicable, the public interest justification for the termination. A termination of all or a part of a Task Order shall not be interpreted to terminate this Contract or any other Task Order.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§13.A.i.a**.

iii. Payments

If the State terminates this Contract or a Task Order in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract (if the entire Contract is being terminated) or the Task Order (if only a Task Order is being terminated) that corresponds to the percentage of Work satisfactorily completed and accepted under all terminated Task Orders (if the entire Contract is being terminated) or the percentage of Work satisfactorily completed and accepted under the Task Order being terminated (if applicable), as determined by the State, less payments previously made. Additionally, if this Contract or Task Order 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 or Task Order, 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 Contract Maximum Amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. "**Aggregated Statistics**" means data and information related to State's and Users' use of the Services that is used by Contractor in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
- B. "**Applicable Law**" means all federal, and Colorado specific state, local and other laws, rules and regulations, ordinances, interpretive letters and other official releases of or by any governmental authority, decrees, orders and codes as the same are promulgated, supplemented and or amended from time to time and as are, or may be, applicable to a Party's performance of its obligations under the Contract, including any applicable law relating to the privacy or processing, protection, collection, use, disclosure or distributions of personally identifiable information or personally identifiable healthcare information about an individual as more particularly described in any such applicable law.
- C. "**Breach of Contract**" means the failure of a Party to perform any of its material obligations in accordance with this Contract, in whole or in part in accordance with the obligations contained in this Contract. 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 of Contract. If Contractor is debarred or suspended under §24-109-105, C.R.S., at any time during the term of this Contract, then such debarment or suspension shall constitute a Breach of Contract.
- D. "**Business Day**" means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.
- E. "**Contractor IP**" means the, the Documentation, and any and all intellectual property provided to State or any User in connection with the foregoing. For the avoidance of doubt, Contractor IP includes Feedback and Aggregated Statistics, as provided herein.
- F. "**Chief Procurement Officer**" means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202, C.R.S., to procure or supervise the procurement of all supplies and services needed by the State.
- G. "**CJI**" means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- H. "**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.

- I. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract and all Task Orders.
- J. **“Contract Maximum Amount”** means an amount equal to the total of Contract Funds for all Task Orders issued pursuant to this Contract.
- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- L. **“Deliverable”** means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor.
- M. **“Documentation”** means the online user guides (Contractor Manual or Administrator Manual as relevant) for the applicable Services, accessible via login at Contractor online, and updated from time to time.
- N. **“End of Term Extension”** means the time period defined in **§2.D.**
- O. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- P. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- Q. **“Extension Term”** means the time period defined in **§2.C.**
- R. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract or in Task Orders and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services. For clarity, it is agreed that Contractor is not delivering any Goods under this Contract.
- S. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation, **(i)** successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; **(ii)** unwanted disruption or denial of service; **(iii)** the unauthorized use of a State system for the processing or storage of data; or **(iv)** changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- T. **“Initial Term”** means the time period defined in **§2.B.**
- U. **“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- V. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- W. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.

- X. “**PII**” means personally identifiable information including, without limitation, 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 and 24-73-101, C.R.S.
- Y. “**Project**” means a specific portion of the Work that is included in a Task Order.
- Z. “**Services**” means the services to be performed by Contractor as set forth in this Contract or in Task Orders and includes the licensed (pursuant to the Task Order under this Contract) AND NOT PURCHASED software solutions of Contractor.
- AA. “**Subscription Fees**” means the subscription and service fees payable for the Services that are chosen in the applicable Task Order.
- BB. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- CC. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- DD. “**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.
- EE. “**State Records**” means any and all State data, information, and records, regardless of physical form that are conveyed to Contractor and/or entered into the Services.
- FF. “**Subcontractor**” means any third party engaged by Contractor to aid in performance of the Work.
- GG. “**Task Order**” means a document issued in accordance with §4.B of this Contract that specifically describes the Work to be performed on a Project and is signed and agreed by both Parties.
- HH. “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- II. “**Users**” means persons who are authorized by State to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by State or by Users. State must ensure that Users not share their user identification or passwords and further protect them. Users may include but are not limited

to State and its employees, consultants, contractors and agents and use is solely for the benefit of State in connection with the project detailed in the relevant Task Order and State remains liable for any breach by any of the foregoing.

JJ. “**Work**” means the Goods delivered and Services performed pursuant to this Contract.

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

4. STATEMENT OF WORK AND TASK ORDERS

A. General Statement of Work

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A and any Task Order that is agreed between the Parties in writing. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract or a properly executed Task Order.

B. Task Orders

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

i. Task Order Development

To initiate a Task Order, the State will provide a request to Contractor describing the general scope and intent of the Work it desires Contractor to perform under that Task Order and the timeline for Contractor to submit a proposal in response to the request. Contractor shall submit a proposal to the State, within the timeline provided by the State, in response to the State’s request that contains, without limitation, a description of the following for the Project described in that Task Order:

- a. The Deliverables and other end results of the Project that the State will use to determine if the Project is complete and the dates on which those Deliverables and other end results will be complete.
- b. All activities necessary for Contractor to complete the Project. This description may be in the form of a work breakdown structure if requested or approved by the State.
- c. All timelines and milestones that the State will use to determine if Contractor is on schedule to complete the Project. This description may be in the form of a project plan if requested or approved by the State.
- d. The pricing methodology of the Project, including a breakdown of any applicable materials costs, labor costs and other cost components as requested by the State as described in this Contract. The total price of a Project shall be determined based on the rates described in this Contract, and Contractor shall not include any work in a Task Order for which an applicable rate is not provided in this Contract. If a Project will include rates not described in this Contract, such rates shall be added via a contract amendment in accordance with Section 18.A of this Contract prior to execution of a Task Order for the Project.

- e. Contractor may complete a Project in phases, so long as all other requirements of this paragraph **4.B.i** are included for each phase of the Project.

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

- ii. Task Order Issuance

If the State accepts a proposal from Contractor, then the State will include that proposal as the statement of work for a Task Order. The State shall execute that Task Order in a form substantially similar to the Form of Task Order attached to this Contract. The State's issuance of a Task Order based on Contractor's signed proposal may constitute acceptance of Contractor's proposal and no further signature shall be required on the part of Contractor. Contractor shall not begin work on any Project until the Task Order for that Project is fully executed.

- iii. Task Order Completion

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

- iv. Task Order Modifications

When the Parties desire to modify a Task Order, Contractor shall work with State to agree to update its proposal that was included in the Task Order to account for the modification the Parties desire to make. If both Parties agree to the updated proposal, they may modify the Task Order by executing an amendment to the Task Order that includes the updated proposal. No modified requirement of a Task Order shall be enforceable prior to the execution of the amendment to the Task Order that includes that modification. This paragraph 4.B.iv shall not apply to any modification to a Task Order that only modifies timelines within a Project without changing the due date of any Deliverable or other end result, or only modifies the breakdown of costs within a Project without changing the total maximum amount for any State Fiscal Year, which may be made if the State approves of the modification in writing.

- v. Task Order Termination

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

5. PAYMENTS TO CONTRACTOR

A. Contract Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds and unless otherwise specified herein are non-refundable. The Contract Maximum Amount for each State Fiscal Year shall be equal to the total maximum amount of all Contract Funds for Task Orders for that State Fiscal Year. The State shall not pay Contractor any amount

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

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit B and the terms of each Task Order.
- b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Goods and/or Services provided to the State by the Contractor. If the State determines that the amount of any invoice is not correct, then both Parties will endeavor to resolve such dispute amicably.

ii. Interest

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

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 60 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability, however there shall be

no refunds in such an eventuality and indemnity obligations will not be nullified. The State shall remain obligated to pay for Services and Goods that are agreed to in writing and delivered prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in §2.E.

v. Suspension of Service and Acceleration.

If any amount owing by State under any Task Order or other agreement made under this Contract for Services is more than forty-five (45) days overdue for any reason whatsoever, Contractor may, without limiting other rights and remedies, accelerate State unpaid Subscription Fee obligations under such Task Order or other agreements so that all such obligations become immediately due and payable, and/or suspend services to State until such amounts are paid in full. Contractor will give State at least ten (10) business days' prior written notice that State account is overdue, before suspending the Services to State.

C. Increasing the Quantity of Services – State's Option

The State, at its discretion, shall have the option to increase the quantity of Services based upon the rates established in this Contract, and increase the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Exhibit C, Sample Option Letter, attached to this Contract.

D. Modifying Existing Contract Rates – State's Option

The rates shown in Exhibit B are determined through Contractor's analysis at any given time in relation to Contractor's cost of doing business in the marketplace and remaining profitable. The State shall have the option to increase or decrease the rates shown in Exhibit B, as is necessary to account for updates in rates delivered by Contractor to the State. Contractor shall provide notice of any pricing modifications at least 30 days prior to the effective date of any pricing modifications. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Exhibit C, Sample Option Letter, attached to this Contract. Performance of Services shall continue at the same rates and terms as described in this Contract.

6. REPORTING - NOTIFICATION

A. ~~Quarterly Reports~~. Not Applicable.

B. Litigation Reporting

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

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

i. Performance Outside the State of Colorado

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 §15 and in a

form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado. Such notice shall specify the type of Services to be performed outside the State of Colorado and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a Breach of Contract. This section shall not apply if the Contract Funds include any federal funds.

ii. Performance Outside of the United States

Contractor shall request written approval from the State, acting through the Office of Information Technology, for Contractor to perform, or subcontract to perform, Services where State Confidential Information is accessed, processed, or stored outside the United States. The State may approve or deny such request within the State's sole discretion, whether or not services outside the United States are prohibited or restricted by any Exhibit attached to this Contract or any Task Order executed hereunder. Following written approval from the State, Contractor shall comply with the notice provisions for performance of Services outside the State of Colorado where State Confidential Information is accessed, processed, or stored. Any notice provided to the State by Contractor regarding performance outside the United States shall be deemed ineffective if the State has not granted prior written approval for such performance.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date three years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period"). Should the retention of Contractor Records would incur additional costs for storage, Parties shall negotiate and agree to storage costs and add them to the Contract via amendment prior to the State becoming liable for any such costs.

B. Inspection

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

C. Final Audit Report

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

8. CONFIDENTIAL INFORMATION

A. Confidentiality

- i. Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI. Contractor shall immediately forward any request or demand for State Records to the State's Principal Representative identified on the Cover Page of this Contract, unless precluded by applicable law.
- ii. State shall keep confidential mean all Contractor Confidential Information disclosed by Contractor, to State, whether orally or in writing, that is designated as confidential and reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. "Contractor Confidential Information" shall include all Services; and shall include business and marketing plans, technology and technical information, product plans, designs, and business processes disclosed by Contractor. Additionally, Contractor Confidential Information includes any other information disclosed by the Contractor not listed in the above definition which the State agrees in writing (including email) may be held confidential. However, Contractor Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to Contractor, (ii) was known to the State prior to its disclosure by the Contractor without breach of any obligation owed to the Contractor, (iii) is received from a third party without breach of any obligation owed to the Contractor, or (iv) was independently developed by the State without access or reference to the Contractor's Confidential Information.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns, and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors will have signed agreements containing nondisclosure provisions similarly protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any State Confidential Information. Contractor shall provide confirmation of execution of the nondisclosure provisions if requested by the State.

C. Use, Security, and Retention

Contractor shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that reasonably ensures confidentiality of all State Confidential Information. Contractor shall only process and store State Records at the following hosting facility location: Microsoft Azure US-only Datacenter Regions (“**Hosting Facility**”). Contractor shall provide the State with access by a mutually agreed timeframe, subject to Contractor’s reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Neither Party shall unreasonably delay or withhold such timeframe agreements. Upon the expiration or termination of this Contract, upon request by the State, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Information Security Compliance Reporting

Within seven (7) days after Contract execution of this Contract, Contractor shall provide to the State a SOC 2 Type II certification including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability. If Contractor cannot provide a SOC 2 Type II certification within seven (7) days following Contract execution, Contractor, at minimum, shall provide enough detail in supplementary reports to verify the same level of information security and remain compliant with NIST 800/53 Rev. 4 or later until Contractor is able to provide a SOC 2 Type II certification to the State. Contractor shall provide an updated certification to the State annually.

- i. Should the State have any additional questions or concerns regarding Information Security Compliance, Contractor shall respond promptly and shall, if needed, provide an Information Security specialist who can assist the State.

E. Incident Notice and Remediation

If Contractor becomes aware of any Incident which affects this Contract or the State’s Confidential Information in any way (defined herein as a “Material Incident”), Contractor shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that Contractor and its agents, employees, and Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident, in accordance with the Limitation of Liability terms in Section 11 of the Contract. After a Material Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Material Incident in the future, communicating such steps with the State and obtaining approval from the State that such steps are sufficient. The State will not unreasonably withhold this approval. If the Material Incident was not caused by the State’s action or inaction, any steps taken to prevent future Incidents shall be at no additional cost to the State. If a Material Incident is caused by the State and the State requires Contractor to provide additional services and/or upgrades to the system to meet the State’s needs, both parties shall execute an Amendment to the Contract in accordance with Section 18.I of the Contract prior to the start of any related Work.

F. Data Protection and Handling

Contractor shall ensure that all State Records in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

G. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form reasonably acceptable to the State. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S., and shall maintain security procedures and practices consistent with §§24-73-101, *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

C. Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Should Contractor be made aware of a potential Conflict of Interest, Contractor shall address the potential risk to ensure all employees, agents, and subcontractors involved in the potential Conflict of Interest 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. If a potential Conflict of Interest is addressed and determined to be an actual Conflict of Interest, the disclosure requirements detailed in Section 9.C below shall apply. Disclosure to the State

If a conflict, or if Contractor is uncertain whether 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 conflict constitutes a Breach of Contract.

D. State Employee Conflict of Interest

Contractor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S., with regard to this Contract. For the avoidance of doubt, an actual conflict of interest shall exist if Contractor employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Should Contractor be made aware of an actual Conflict of Interest related to Section 9.C, Contractor shall provide a disclosure statement as described in §9.C. no later than ten days following confirmation of the actual Conflict of

Interest. Failure to timely submit a disclosure statement shall constitute a Breach of Contract. Contractor may also be subject to such penalties as are allowed by law.

10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

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

E. Professional Liability Insurance

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

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

F. Crime Insurance

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

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

G. Additional Insured

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

H. Primacy of Coverage

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

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §15 within seven days of Contractor's receipt of such notice.

J. Subrogation Waiver

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

K. Public Entities

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

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days upon written request following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. LIMITATION OF CONTRACTOR'S LIABILITY TO STATE

The liability of Contractor, its Subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss of State Records or unauthorized disclosure of State Confidential Information, not to exceed \$3,000,000. The Contractor retains all of its defenses at law and at equity.

No limitation on Contractor's liability to the State under this Section shall limit or affect:

- A. Any claims, losses, or damages for which coverage is available under any insurance required under this Contract;
- B. Claims or damages arising out of bodily injury, including death, or damage to tangible property of the State caused by the negligence or willful misconduct of the Contractor or its employees, agents, or Subcontractors; or
- C. Claims or damages resulting from the recklessness, bad faith, or intentional misconduct of Contractor or its Subcontractors.

12. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §13 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, if Contractor is debarred or suspended under §24-109-105, C.R.S., need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

13. REMEDIES

A. State's Remedies

If Contractor is in material breach under any provision of this Contract or any Task Order and fails to cure such breach, the State, following the notice and cure period set forth in §12, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively. "Material" means a fact, circumstance, change, effect, matter, action, condition, event, occurrence or development that, individually or in the aggregate, is, or would reasonably be expected to be, material to the business, affairs, results of operations or financial condition of the State.

i. Termination for Breach of Contract

In the event of Contractor's uncured breach, the State may terminate this Contract or the Task Order, which is the subject of the breach, in whole or in part. Contractor shall continue performance of this Contract and such Task Order to the extent not terminated, if any.

a. Obligations and Rights

- b. 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. 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 a legitimate interest in protecting. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for Work performed up to the date of termination for material uncured Breach of Contract if the Contract is terminated. If the Contract is so terminated, Contractor will further refund pro rata fees prepaid in respect of the Contract from the date of termination to the next renewal date. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor.

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 any portion of the Work pending corrective action for Services not performed in accordance with the terms of the Task Order, 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. Deny Payment

Deny payment for Work not performed.

c. Intellectual Property

If any Work infringes or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract or a Task Order and does not cure such breach, Contractor, following the notice and cure period in **§12** and the dispute

resolution process in §14, shall have all remedies available at law and equity.

C. Termination for Discontinuance or Applicable Law.

Contractor may, with no liability to the State (except a pro rata refund of applicable pre-paid fees) or the Users, also terminate this Contract and/or any applicable Task Order(s) to the extent (i) Contractor discontinues any Services thereunder, or (iii) Contractor considers that it is commercially impractical due to developments in the Applicable Law to continue to provide certain Services, in each case upon ninety (90) days prior written notice to State.

D. Termination Processes

Upon termination of a Task Order or this Contract for any reason, State's (and any Users') right to continue using the Services under the applicable Task Order(s) shall immediately cease and State shall destroy or return (as directed by Contractor) all Contractor Confidential Information related to such Task Order and an officer of State shall certify the same in writing within thirty (30) days after such termination. Contractor shall also return any State Confidential Information within thirty (30) days after such termination. A termination of Contract or a Task Order hereunder does not affect any other remaining Task Order(s) hereunder which shall remain subject to the terms of this Contract unless such Task Order(s) are terminated in accordance with the terms hereof; provided that no further Task Orders may be entered into as of the effective date of termination of this Contract. Upon any termination by State for cause under Section 13(A)(i), Contractor shall refund State any prepaid Subscription Fees covering the remainder of the applicable Subscription Term within thirty (30) days after the relevant effective date of termination. Unless provided otherwise herein, upon any other termination, State shall remain obligated for and shall immediately pay any unpaid Subscription Fees covering the remainder of the Subscription Term for all Task Orders as of the relevant effective date of termination.

E. Service Suspension.

Notwithstanding anything to the contrary in this Contract, Contractor may temporarily suspend State's and any User's access to any portion or all of the Services if: (i) Contractor reasonably determines that (A) there is a threat or attack on any of the Contractor IP; (B) State's or any User's use of the Contractor IP disrupts or poses a security risk to the Contractor IP or to any other customer or vendor of Contractor; (C) State, or any User, is using the Contractor IP for fraudulent or illegal activities; (D) subject to Applicable Law, State has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Contractor's provision of the Services to State or any User is (a) prohibited by Applicable Law, or (b) deemed by Contractor to be commercially unfeasible due to Applicable Law; (ii) any vendor of Contractor has suspended or terminated Contractor's access to or use of any third-party services or products required to enable State to access the Services; or (iii) in accordance with Section 5 (b) (5) (any such suspension described in subclause (i), (ii), or (iii) of this Section 13(E), a "**Service Suspension**"). Contractor shall use commercially reasonable efforts to provide written notice of any Service Suspension to State and to provide updates regarding resumption of access to the Services following any Service Suspension. Contractor shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. If a Service Suspension is the result of action or inaction by the State or its employees or agents, Contractor will have no liability for any damage, liabilities, losses (including any loss of data

or profits), or any other consequences that State or any User may incur as a result of a Service Suspension, or a termination due to a Service Suspension.

14. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §14.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract or a Task Order by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S., for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

15. NOTICES AND REPRESENTATIVES

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

16. RIGHTS IN SERVICES

A. All rights not expressly granted herein are reserved by Contractor and/or its licensors and/or suppliers. State receives no rights and will not: (i) modify (except as expressly permitted under this Contract or the applicable Task Order), port, translate, localize or create derivative works based on the Services, (ii) use, copy, rent, lease, market, distribute or sublicense the Services except as otherwise specifically permitted hereunder; (iii) reverse engineer, decompile, or disassemble the Services; (iv) disclose the results of benchmark or other performance test run on the Services to any third party without Contractor's prior written consent (which results are Contractor Confidential Information). This Contract grants no

additional express or implied license, right or interest in any copyright, patent, trade secret, trademark, invention or other intellectual property right of Contractor. State will not remove, or allow to be removed, any Contractor copyright, trade secret or other proprietary rights notice from any Contractor product.

- B. The Services are licensed and not sold to State. Contractor has and retains all rights, title and interest in and to the Services. State is granted a limited, revocable, non-transferable (except in accordance with this Contract) and non-exclusive right to access and use the specified Services solely for the State's internal business purposes, subject to the terms and conditions of this Contract, the Documentation and the applicable Task Order for the applicable Subscription Term(s). Subject to the limited rights expressly granted hereunder, Contractor reserves all rights, title and interest in and to Services and its underlying software covered by this Contract, including but not limited to all related intellectual property rights. No rights are granted to State hereunder (whether by waiver, implication, estoppel, or otherwise) other than as expressly set forth herein.

- C. Suggestions and Aggregated Statistics.

Any suggestions, enhancement requests, recommendations or other feedback relating to the operation of the Services provided by State, including by Users ("Feedback"), during and after the Subscription Term is and remains the intellectual property of Contractor and Contractor has all rights therein to exploit and commercialize any Feedback as Contractor chooses without compensation or other consideration to State or any Users. Contractor is not required to use any Feedback. Notwithstanding anything to the contrary in this Contract, Contractor may monitor State and Users use of the Services and collect and compile Aggregated Statistics. As between Contractor, the State and its Users, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Contractor without compensation or other consideration to State. State acknowledges that Contractor may compile Aggregated Statistics based on Feedback. State agrees that Contractor may (i) make Aggregated Statistics publicly available in compliance with Applicable Law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under Applicable Law; provided that such Aggregated Statistics do not identify the States' or Users' Confidential Information.

- E. Federal Government End Use Provisions.

Contractor provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Contract. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Contractor to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement. State Records. Contractor acknowledges that, as between Contractor and State, State owns all right, title, and interest, including all intellectual property rights, in and to the State Records. To the extent required to provide the Services, State hereby grants to Contractor a non-exclusive, non-transferable, royalty-free, worldwide license to reproduce, distribute, and otherwise use,

display and perform all acts with respect to the State Records. The State hereby grants to Contractor a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display State Records incorporated within the Aggregated Statistics and Feedback; provided that such Aggregated Statistics and Feedback are anonymized.

17. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S., regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract and all executed Task Orders, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

18. 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 **§18.A**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

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

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

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

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

L. Severability

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

M. Survival of Certain Contract Terms

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

N. Taxes

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§18.A**, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations

- i. 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. The State will comply with all Colorado laws including, without limitation, laws pertaining to State Confidential Information.

T. Indemnification

- i. General Indemnification.

Contractor shall defend State against any claim, demand, suit, or proceeding made or brought against State by a third party alleging that the use of the Services as permitted

hereunder infringes or misappropriates the US intellectual property rights of such third party in respect of the Services (a "Claim Against State"), and shall indemnify State for any damages, reasonable attorney fees and costs finally awarded against State as a result of, and for amounts paid by State under a Claim Against State; provided that State (a) promptly provides Contractor written notice of the Claim Against State; and (b) provides to Contractor all reasonable assistance, at Contractor's expense, for Parties to mutually control the defense and settlement of the Claim Against State.

ii. Intellectual Property Indemnification.

In the event of a Claim Against State, or if Contractor reasonably believe the Services may infringe or misappropriate a third party's intellectual property rights, Contractor may, in Contractor's sole discretion and at no cost to State, (i) modify the Services so that they are no longer infringing, without breaching Contractor warranties under Exhibit D, (ii) obtain a license for State's continued use of the Services in accordance with this Contract, or (iii) if Contractor determines that neither of the foregoing is commercially practicable and if State is not permitted to continue using the Services, then this Contract will terminate with respect to such infringing Services, and State shall be entitled to recover from Contractor an amount equal to a pro-rated portion of the applicable prepaid Subscription Fees paid for the Services for the remaining Subscription Term for the applicable Services, plus a pro-rated portion of the Subscription Fees paid for any other Services furnished by Contractor to State that were provided in conjunction with the terminated Services and that cannot be utilized effectively or completely by State without using the terminated Services. Contractor shall have no liability for any infringement claim based on State Records, or State's or its Users' use of the Services in a manner not permitted hereunder, where such claim would not arise but for such State Records or State's or its Users' unauthorized use of the State Records or the Services.

iii. Confidential Information Indemnification.

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

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109, C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

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 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 the program procedures of the Colorado Department of Labor and Employment ("Department Program")

to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three 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 three 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 Department 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 Department 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 eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(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.

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EXHIBIT A, SCHEDULE OF SERVICES (SCHEDULE #1)

A. DEFINITIONS

Terms not defined herein shall have the meaning ascribed to them in the Contract. The following definitions are added and apply only to this Schedule, as amended:

- a. **“State Agency”** means any State entity which executes a Task Order under this Master Task Order Agreement. A “State Agency” shall be considered to be the “State” in all instances of “State” within this Contract’s terms, as it relates to that State Agency’s Task Order(s).
- b. **“Budget”** means the awarded total construction bid amount (not just labor costs) of the applicable awarded project for all phases. The “Budget” field is contained in the Services, and are updated by the State in accordance with Section D.a.i.1 of this Schedule.
- c. **“Change Order”** means a modification to an active construction project. This term applies only to construction projects utilized in the calculation of the Budget and Construction Capacity as it relates to this Schedule, not to modifications made to this Contract or any of its Task Orders.
- d. **“Construction Capacity”** means the value of construction calculated by adding the value of all active construction projects (“Open/Active” projects) in each State Agency’s account in the Services. The value of projects marked as “Open/Active” within the database for each State Agency is determined by the accurate total of project Budget amounts, including qualifying change orders. This calculation is done monthly by LCPtracker. If a project is completed and closed, the project will no longer be counted in that month's open active projects.

B. SERVICES

State is licensing the following Services from the Effective Date subject to the terms and conditions of the Contract and this Schedule #1. To order Services under this Master Task Order Contract, each State Agency will execute a Task Order. Each Task Order shall constitute a separate purchase if ordered by a different State Agency. By executing a Task Order, each such State Agency agrees to be bound by the provisions of the Contract in the same way as State (including limitations on liability therein which are cumulative and apply to all Task Orders together and not separately), and to be responsible for all of their authorized Users in the Services.

	Services	Unit	Cost per each State Agency
1.	Start-Up Fee (web-based). This fee includes: <ul style="list-style-type: none"> • Configuration and setup of administrative account/database; • 4 Implementation sessions comprising: Welcome Call, Admin #1, contractor/Prime Approver training, and Go Live; • Assigned personal LCPtracker Account Manager for all State Agency administrators 	One-time	\$3,160.00
2.	Bulk project Subscription Fee for license for LCPtracker Professional (based on Construction Capacity for the sum of all projects listed in each State Agency’s account) This bulk project Subscription Fee for LCPtracker is payment for the following Services: <ul style="list-style-type: none"> • Unlimited administrative Users; • Unlimited contractor Users; • Phone, email and live chat technical support for administrative and contractor Users (not training); 	Per Year	Fee determined by each State Agency’s Construction Capacity (see Table in Section C below)

	<ul style="list-style-type: none"> Unlimited contractor and administrator access to on-demand, pre-recorded web training videos; and Unlimited contractor and administrator access to LCPtracker's online training portal (user manual/guides and training and support documents) 		
3	Wage Data Maintenance (for State of Colorado prevailing Wages) Includes: <ul style="list-style-type: none"> Data entry of two, State of Colorado prevailing wage determinations; and Two annual updates to each State of Colorado wage determination 	Per Year	\$300.00

C. BULK PROJECT PRICING TABLE

The Subscription Fees below for Bulk Project Pricing under this Schedule #1 are priced in accordance with the accurate Construction Capacity in the Services for each State Agency under the Contract during the one-year period of the applicable Subscription Term. The Subscription Term begins on the date of the relevant State Agency's Task Order, or the yearly anniversary of such date, as applicable.

Bulk Project 2021 Subscription Fee Pricing for LCPtracker Professional licenses (upon reaching the applicable tier)	
Construction Capacity	LCPtracker Professional Yearly Subscription Fees
Up to \$5 Million	\$2,760.00
Up to \$10 Million	\$5,360.00
Up to \$25 Million	\$8,000.00
Up to \$50 Million	\$13,600.00
Up to \$100 Million	\$18,400.00
Up to \$200 Million	\$23,600.00
Up to \$300 Million	\$30,000.00
Up to \$400 Million	\$35,600.00
Up to \$500 Million	\$41,600.00
Up to \$750 Million	\$46,800.00
Up to \$1 Billion	\$52,000.00
Up to \$2 Billion	\$60,000.00
Up to \$4 Billion	\$85,600.00
Up to \$6 Billion	\$110,400.00
Up to \$8 Billion	\$134,000.00
Up to \$10 Billion	\$156,800.00

D. PAYMENT TERMS

- a. Unless otherwise stated, the prices set forth above are for one (1) year Subscription Terms and are payable upon execution of each relevant Task Order. If a Task Order includes multiple Subscription Terms, payment for subsequent Terms will be due upon the annual anniversary of each Subscription Term. If a Task Order does not include additional Subscription Terms, the Task Order shall be modified in accordance with Section 4.B.iv of the Master Task Order Contract prior to the start of any additional

- Subscription Term. Subscription Terms shall not be automatically renewed if not supported by an executed Task Order.
- b. The Subscription Fees for the licenses detailed above will change for any State Agency if one of the following events occurs:
 - i. If the sum of all Budget amounts for projects entered in LCPtracker during the then current Subscription Term exceed the Construction Capacity level purchased;
 1. The State Agency will keep the Budget updated and accurate (through written requests to LCPtracker Support Department – support@LCPtracker.com) at all times. Failure by State Agency to accurately update LCPtracker Support Department of changes to the Budget field will be a material breach under the Contract and will not remove the State Agency's obligation to pay the amounts due for the Services based on an accurate Budget field.
 2. If a change to the sum of all Budget amounts exceeds the Construction Capacity level purchased, any increases in the Subscription Fee shall not be effective until after a modification to the Task Order is executed in accordance with Sections 5.D and 18.I of the Master Task Order Contract.
 - i. The Construction Capacity increases beyond the previously purchased level at the time of renewal for that State Agency; or
 - ii. State Agency has no active projects at the time of renewal and State Agency wishes to keep its account open (in such case the then current LCPtracker active database fee (currently this fee is \$100 per month) shall apply.
 - c. The State Agency listed on the Task Order is responsible for closing each project upon the completion of such project in order for it not to be included in the Construction Capacity amount.
 - d. The prices and terms of this Schedule #1 are subject to change in accordance with Section 5.D and 18.I of the Master Task Order Contract, but shall not be effective until the effective date of a contract modification executed in accordance with the terms of the same sections. If any rates change in the middle of a Subscription Term, the modified rates will only become effective on the renewal date of the Subscription Term. The State shall not be liable for additional prorated Subscription Fees due to price increases in the middle of a Subscription Term, nor will the State be entitled to prorated refunds of Subscription Fees caused by price decreases in the middle of a Subscription Term.

EXHIBIT B, SUPPLEMENTARY RATES FOR ADDITIONAL SERVICES

	Service	Unit	Fees
1.	OnSite Module Start Up	One-time/Per Agency	\$500.00
2.	Custom Development (system requests, reports, SOCs, etc.)	Per Hour	275.00
3	Wage (prevailing, union or living) Data Entry & Maintenance Pricing <ul style="list-style-type: none"> • State of Colorado prevailing wages • Federal prevailing wage, union or living wages 	<ul style="list-style-type: none"> • Per State of Colorado WD • Per Hour 	<ul style="list-style-type: none"> • \$150.00 • \$125.00
4	Custom Documentation	Per Hour	\$125.00
5	Project Management Services (beyond standard implementation)	Per Hour	\$150.00
6	Web-based Admin Training	Per Session	\$625.00
7	In-Person Admin Training (not including flat rate travel fee)	Per Session (1 day)	\$1,500.00
8	Flat Rate Travel Fee (flight, car, hotel for one night)	Flat Rate	\$1,200
9	Web-based Contractor Training (an exclusive web class for the Administrator's contractors only; no charge, non-exclusive, on-demand, pre-recorded classes are available via LCPtracker's training portal)	Per Web Session	\$250.00
10	LCPtracker Academy – Federal Davis-Bacon Certified Professional Certification (1 certification) <ul style="list-style-type: none"> • Single Person/User • 2 or more people from same agency (10% discount) • 5 or more people from same agency (20% discount) 	<ul style="list-style-type: none"> • Per Person • Per Person • Per Person 	<ul style="list-style-type: none"> • \$800.00 • \$720.00 • \$640.00

BULK PROJECT PRICING TABLE

The Subscription Fees below for Bulk Project Pricing under this Exhibit are priced in accordance with the accurate Budget totals indicated as "Open/Active" projects in the Services for a State Agency (defined in Exhibit A) during the one-year period of the applicable Subscription Term. The Subscription Term begins on the date of the Task Order under which the OnSite Module is ordered, or the yearly anniversary of the Task Order, as applicable. Prices below are per State Agency:

Construction Capacity	OnSite Module (Yearly Service Fees)
Up to \$5 Million	\$1,200.00
Up to \$10 Million	\$1,200.00
Up to \$25 Million	\$1,600.00
Up to \$50 Million	\$2,080.00
Up to \$100 Million	\$2,400.00
Up to \$200 Million	\$2,400.00
Up to \$300 Million	\$3,200.00
Up to \$400 Million	\$3,200.00
Up to \$500 Million	\$4,160.00
Up to \$750 Million	\$4,160.00
Up to \$1 Billion	\$4,960.00
Up to \$2 Billion	\$5,760.00
Up to \$4 Billion	\$8,240.00
Up to \$6 Billion	\$10,720.00
Up to \$8 Billion	\$12,400.00
Up to \$10 Billion	\$14,800.00

OPTION LETTER

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

1. OPTIONS:

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Services under the Contract
- C. Option to modify Contract rates

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section 2.C of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning [Insert start date] and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
- B. **For use with Options 1(B):** In accordance with Section 5.C of the Original Contract referenced above, the State hereby exercises its option to Increase the quantity of the Services at the rates stated in the Original Contract and Exhibit B, as amended.
- C. **For use with Option 1(C):** In accordance with Section 5.D of the Original Contract referenced above the State hereby exercises its option to modify the Contract rates specified in Exhibit B (as amended). The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
- D. **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

- A. The effective date of this Option Letter is upon approval of the State Controller or [], whichever is later.

STATE OF COLORADO Jared S. Polis, Governor Department of Personnel & Administration Kara Veitch, Executive Director <hr/> By: <input type="checkbox"/> Tobin Follenweider, Deputy Executive Director <input type="checkbox"/> Kara Veitch, Executive Director Date: _____	In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. <div style="text-align: center;"> STATE CONTROLLER Robert Jaros, CPA, MBA, JD </div> <hr/> By: <input type="checkbox"/> Michelle Franca, DPA Department Controller <input type="checkbox"/> _____ Option Effective Date: _____
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EXHIBIT D, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

1. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
- B. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. “Information Technology” is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
 - i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;
 - ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
 - iii. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
- C. Contractor shall, and shall cause its Subcontractors to meet all of the following:
 - i. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
 - ii. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - iii. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - iv. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - v. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State’s Office of Information Security (“OIS”).
 - vi. Comply with all rules, policies, procedures, and standards issued by the Governor’s Office of Information Technology (“OIT”), including change

management, project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at:

a. www.oit.state.co.us/about/policies.

- D. Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
- E. Contractor shall have performed background checks, or shall have required background checks be performed, on all of its respective employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors.
 - i. Upon request, Contractor shall provide notice to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
 - ii. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

2. DATA HANDLING

- A. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- B. Contractor shall not allow remote access to State Records from outside the United States by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- C. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a mutually agreed upon download file of all State Records. for the then current fee of Contractor for the provision of such services.
 - i. This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
 - ii. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by

the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall keep confidential all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.

- D. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract, including but not limited to Section 8.

3. DELIVERY & ACCEPTANCE.

- A. Contractor's delivery of any Work or Deliverables to the State shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications identified in this Contract and any Task Order.
- B. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. Such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor's gross negligence or willful misconduct. For any Work or Deliverable that constitutes the purchase or license of commercially available goods or software, the State's payment of an invoice, in lieu of other affirmative written communication, shall constitute such acceptance.

4. WARRANTY

- A. Contractor warrants that the Work of Deliverable shall perform materially in accordance with the Documentation. In the event any Work or Deliverable fails to perform materially in accordance with the Documentation at any time during the Term of this Contract, Contractor shall repair or replace the Work or Deliverable to bring them into conformance with the Documentation. Contractor does not make any representations or guarantees regarding uptime or availability of the Works unless specifically identified in the Task Order. For any breach of a warranty above, State's exclusive remedy shall be as provided for in the case of a termination for Material Breach. **THE FOREGOING WARRANTY DOES NOT APPLY, AND CONTRACTOR STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4, THE CONTRACTOR IP IS PROVIDED "AS IS" AND CONTRACTOR DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, , AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT AS EXPRESSLY PROVIDED**

HEREIN, CONTRACTOR MAKES NO WARRANTY OF ANY KIND THAT THE CONTRACTOR IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET STATE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR, ACCURATE, COMPLETE.

- B. State represents and warrants that the State's use of the Services will comply with all Colorado and Federal laws including, without limitation, laws pertaining to State Confidential Information. For the avoidance of doubt, Contractor does not warrant or guarantee that any of the classifications or pay rates are correct in our software, it is up to Users to pay the correct amounts to their employees and we do not give legal advice. Contractor provides a licensed SaaS solution that makes it easier for State to upload certified payroll reports and provides a checking mechanism that may, but is not guaranteed to, catch all errors in prevailing wage matters.
- C. State agrees that State's license of Services hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Contractor regarding future functionality or features. It is the State and the Users responsibility to maintain their own back-ups of their original data for the required statutory periods.

5. COMPLIANCE

- A. In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with the following (however this shall not affect State's obligations to comply with Section (4)(b) of this Contract):
 - i. All OIS policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S., and 8 CCR §1501-5 and posted at <http://oit.state.co.us/ois>.
 - ii. All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:
 - a. Health Information Portability and Accountability Act (HIPAA)
 - b. IRS Publication 1075
 - c. Payment Card Industry Data Security Standard (PCI-DSS)
 - d. FBI Criminal Justice Information Service Security Addendum
 - e. CMS Minimum Acceptable Risk Standards for Exchanges
 - f. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration
 - iii. Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, *et seq.*, C.R.S. Contractor shall comply with all State of Colorado technology standards related

to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at:

a. <https://www.w3.org/TR/WCAG21/>.

- B. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include the Information Security Compliance reporting detailed in Section 8 of the Original Contract.
- D. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with a copy of Contractor's SOC 2 Type II certification as soon as it is procured. Contractor shall also provide a copy of Contractor's SOC 2 Type II certification annually, due one year after the date such certification is procured and each year after.

6. TRANSITION OF SERVICES

Upon request by the State prior to expiration or earlier termination of this Contract, any Task Order or any Services provided in this Contract or any Task Order, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State or any successor provider and shall promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at the rates then in effect at Contractor for work implementing any such transition, subject to such rates then in effect being reasonable for the work being completed.

- 9. If Contractor is requested to convert certified payroll information into another format for State convenience or to comply with any of State's contractual or administrative requirements, Contractor does so in order to facilitate your compliance but requires that State confirm itself the accuracy of Contractor use of a non-native submission protocol.
- 10. If Contractor accepts data from State for bulk upload, Contractor does so in order to facilitate your needs and requirements but requires you to confirm the accuracy of this bulk upload integration into the Contractor SaaS solution in the Services.
- 11. State covenants to Contractor that it will not provide any PHI to Contractor.