

Universal Preschool Colorado Program Service Agreement

This Universal Preschool Colorado Program (“Preschool Program”) Service Agreement is entered into by and between the State of Colorado acting by and through the Department of Early Childhood (the “State” or “CDEC”) and **[PROVIDER]** (the “Provider” to this “Agreement”).

By this reference, the Agreement includes Exhibit A which applies to private providers - Universal Preschool Colorado Program Service Agreement Terms and Conditions, which is hereby incorporated by reference. The “Term of the Agreement,” as defined in Section 2 of Exhibit A, begins July 1, 2024 (the “Effective Date”) and ends June 30, 2025 (the “Expiration Date”).

By this reference, the Agreement includes Exhibit B which applies to Intergovernmental Providers (School Districts, BOCES, Administrative Units, etc…) - Universal Preschool Colorado Program Service Agreement Terms and Conditions, which is hereby incorporated by reference. The “Term of the Agreement,” as defined in Section 2 of Exhibit B, begins July 1, 2024 (the “Effective Date”) and ends June 30, 2025 (the “Expiration Date”).

Provider agrees to provide preschool services in conjunction with the Preschool Program, a program financed and governed by CDEC, during the 2024-2025 school year. Provider agrees to provide these services in compliance with the Universal Preschool Colorado Program Act, §§ 26.5-4-201 through 26.5-4-211, C.R.S. and regulations promulgated at 8 C.C.R. 1404-1 ("Universal Preschool Program").

Provider agrees to provide each eligible child for the Preschool Program and enrolled with the Provider’s program with a minimum of 10 hours, tuition-free, high quality preschool programming for the Term of the Agreement. Provider shall comply with all requirements of Preschool Program, including, without limitation, the following:

**Program Requirements**

1. Provider must be licensed by CDEC to deliver preschool program services to eligible children. Provider shall adhere to the requirements of its license at all times.

2. Provider must have eligible children enrolled in its preschool program to qualify as a participating Provider.

3. Provider must agree to guarantee families at least the minimum number of hours defined in Rule for the rate that is provided. .

4. Provider is encouraged to offer CDEC feedback on how CDEC and Local Coordinating Organizations (LCOs) can better support the Preschool Program.

5. Provider is required to sign PII Certification attached as Exhibit C when executing the Agreement

6. Provider is required to cooperate with CDEC if any overpayment is made to the Provider, refunding any and all overpayment to CDEC within 30 days of the Provider being notified of the overpayment. This does not affect a Provider’s rights under “Provider Rights” of this Agreement nor under §§ 5 and 13 of Exhibit A or Exhibit B.

**Attendance and Reimbursement**

1. Provider shall ensure that accurate enrollment and attendance records are kept for each child enrolled in Provider’s program.

2. Provider agrees to post preschool tuition, enrollment, and ancillary costs on the Provider’s profile in the Universal Preschool Colorado Application Portal (“Application Portal”) prior to enrollment. These costs shall include the overall out-of-pocket cost to the family inclusive of all charges and fees the provider will charge for the 2024-2025 school year. Provider is prohibited from charging a participating family a fee that is not posted on the Provider’s profile in the Application Portal.

3. Provider shall not charge a family participating in Preschool Program tuition or fees for services that exceed the amount that is charged to families of preschool-aged children that do not participate in Preschool Program for the same or similar services. Provider is prohibited from charging a family to be on a waitlist for services.

4. Provider agrees to adhere to all deadlines and submit documents as required by CDEC. Documents may include but are not limited to attendance records, suspension and expulsion records, annual calendars, bell schedules, hours of operation, tuition schedules, and detailed expense reports, must be retained for verification and payment authorization, and must be provided to CDEC upon request within 5 Business Day (as defined in Exhibit A or Exhibit B)s. CDEC, at its sole discretion, may request other documentation as needed to implement the Preschool Program.

5. Should an eligible child cease enrollment or otherwise withdraw, Provider must notify CDEC within 10 Business Days of such withdrawal through the Application Portal.

6. CDEC will pay Provider in accordance with the adopted provider rate on a periodic basis as determined by CDEC for enrolled eligible children.

**Data Management**

1. Provider agrees to submit any additional information and/or documentation requested by CDEC related to Provider’s participation in the Preschool Program in accordance with applicable state and federal law.

2. Provider agrees to report data to CDEC via the Application Portal or in a secure method prescribed by CDEC on a periodic basis, detailing Preschool Program enrollment and capacity.

**Provider Rights**

If the Provider contends that CDEC or its payment vendor has not made adequate payment based on program rules for educational services provided, the procedures identified in §5 of Exhibit A or Exhibit B shall govern.

**CDEC Responsibilities**

1. CDEC shall, through a payment vendor, provide payments to Provider in accordance with 8 CCR 1404-1 and §5 of Exhibit A or Exhibit B.

2. CDEC shall, through the Application Portal, after receiving a complete application packet that has been verified, determine a family’s eligibility for preschool services within 20 Business Days of receiving a verified and complete application packet.

3. CDEC will pay Provider based on the information regarding the number of eligible children enrolled through the Application Portal. Providers will be paid beginning in August of each school year based upon the number of enrolled children. Subsequent payments will be made based upon actual enrollment throughout the school year. All payments will be governed by §5 of Exhibit A or Exhibit B.

4. Payments to providers will be made on a monthly basis, in accordance with the payment schedule provided by the State. Payments will be made in arrears, monthly. Providers must have children enrolled via the Application Portal to be eligible for payment.

**Additional Provisions**

1. Payments by the State shall constitute currently appropriated expenditures of the State and may be paid solely from legally available funds. All obligations of the State shall be subject to the action of the Colorado General Assembly in annually making funds available for payments thereunder. The obligations of the State to make payments are subject to appropriation by the Colorado General Assembly, and shall not be deemed or construed as creating an indebtedness of the State within the meaning of any provision of the Colorado Constitution or the laws of the State concerning or limiting the creation of indebtedness of the State and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the State within the meaning of Section 20(4) of Article X of the Colorado Constitution. Any conflicts between this provision and the Exhibits attached to this Agreement shall be governed by the the order of precedence listed below

2. CDEC and the School District Provider agree that school districts in the State of Colorado are subject to state and federal laws related to serving children with disabilities. Thus, provisions of the Agreement that conflict with state and federal legal requirements related to children with disabilities are inapplicable and of no force and effect against the School District Provider.

3. The provisions of Exhibit A, attached hereto, and not Exhibit B, apply to Private Providers. Exhibit B does not apply to private providers. In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions in §18 of Exhibit A.
2. Exhibit A
3. The provisions of the Provider Agreement
4. Exhibit C, PII Certification

4. The provisions of Exhibit B, attached hereto, and not Exhibit A, apply to Intergovernmental Providers (School Districts, BOCES, Administrative Units, etc…). Exhibit A does not apply to Intergovernmental Providers. In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions in §18 of Exhibit B
2. Exhibit B
3. The provisions of the Provider Agreement
4. Exhibit C-PII Certification

By signing below, Provider and CDEC agree to adhere to the terms and conditions of this Agreement and in Exhibit A or Exhibit B.

**VENDOR ADDRESS**

**LICENSE NUMBERS**

**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

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| --- | --- |
| **PROVIDER**INSERT-Legal Name of Grantee\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: Name & Title of Person Signing for ContractorDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **STATE OF COLORADO**Jared S. Polis, GovernorColorado Department of Early ChildhoodDr. Lisa Roy - Executive Director\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: Dawn Odean, Universal Preschool DirectorDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLERRobert Jaros, CPA, MBA, JD  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Laura Curnow, CDEC Controller  Effective Date is the latter of the date of signature or 7/1/2024:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. **PARTIES**

This Agreement is entered into by and between Provider named on the signature page for this Agreement (the “Provider”), and the STATE OF COLORADO acting by and through the State agency named on the signature page for this Agreement (the “State”). Provider and the State agree to the terms and conditions in this Agreement.

1. **TERM and Effective Date**
	1. Effective Date

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

* 1. Initial Term

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

* 1. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement 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 Agreement by the State for Breach of Agreement by Provider, which shall be governed by **§12.A.i.**

* + 1. Method and Content

The State shall notify the Provider of such termination in accordance with **§14.** The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

* + 1. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Provider shall be subject to the rights and obligations set forth in **§12.A.i.a.**

* + 1. Payments

If the State terminates the Agreement in the public interest, the State shall pay Provider an amount equal to the percentage of the total reimbursement payable under the Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if the Agreement is less than 60% completed, as determined by the State, the State may reimburse Provider for a portion of actual out-of-pocket expenses, not otherwise reimbursed under the Agreement, incurred by Provider which are directly attributable to the uncompleted portion of Provider’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Provider hereunder.

1. **DEFINITIONS**

The following terms shall be construed and interpreted as follows:

* 1. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
	2. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
	3. “**Breach of Agreement**”means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Provider, or the appointment of a receiver or similar officer for Provider 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. If Provider is debarred or suspended under § 24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
	4. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
	5. “**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.
	6. “**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.
	7. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
	8. “**Deliverable**” means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Provider’s Work that is intended to be delivered to the State by Provider.
	9. “**Effective Date**” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement. If this Agreement 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 Agreement shall be the later of the date on which this Agreement is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Agreement is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Agreement.
	10. “**Exhibits**” means the exhibits and attachments included with this Agreement as shown on in the main body of the Agreement.
	11. “**Goods**” means any movable material acquired, produced, or delivered by Provider as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Provider in connection with the Services.
	12. “**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.
	13. **“Initial Term”** means the time period defined in **§2.B**.
	14. “**Party**” means the State or Provider, and “Parties” means both the State and Provider.
	15. “**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.
	16. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
	17. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. 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. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
	18. “**Services**” means the services to be performed by Provider as set forth in this Agreement, and shall include any services to be rendered by Provider in connection with the Goods.
	19. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall includes, 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 Provider which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Provider without restrictions at the time of its disclosure to Provider; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Provider to the State; (iv) is disclosed to Provider, 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.
	20. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to § 24-30-202(13)(a), C.R.S.
	21. “**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.
	22. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
	23. “**Subcontractor**” means any third party engaged by Provider to aid in performance of the Work.
	24. “**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.
	25. **“Universal Preschool Colorado Application Portal”** means the online application system that Providers will use to register with the Universal Preschool Colorado program and to match with potential eligible children..
	26. “**Work**” means the Goods delivered and Services performed pursuant to this Agreement.
	27. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

1. **STATEMENT OF WORK**

Provider shall complete the Work as described in this Agreement and in accordance with the provisions of the Agreement. The State shall have no liability to compensate the Provider for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

1. **PAYMENTS TO PROVIDER**
	1. Maximum Amount

The maximum amount payable under the Agreement is equal to the sum of the periodic award amounts, and shall not exceed the amount of enrollees the vendor has engaged. Award amounts including any monthly periodic payments will be determined using appropriate Provider rates and enrollment data in the Application Portal. Provider will receive notification of the award amount at least twice every year, and Provider may request information from the State regarding any unpaid balance at any point during the Term of the Agreement.

Payments to Provider are limited to the unpaid balance of the award amounts based on the applicable Provider rate and enrollment data. The State shall not pay Provider any amount under the Agreement and pursuant to these Terms and Conditions that exceeds the sum of the award amounts for the Term of the Agreement.

Payments to Provider are limited to the unpaid, obligated balance of the Agreement Funds. The State shall not pay Provider any amount under this Agreement that exceeds the Agreement Maximum for that State Fiscal Year contained in this Agreement.

* 1. Payment Procedures
		1. Invoices and Payment
			1. The State shall pay Provider in the amounts and in accordance with the schedule and other conditions set forth in the Agreement.
			2. Provider shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
			3. The State shall pay each vendor within 45 days following the State’s confirmation of enrollment figures, so long as the amount correctly represents Work completed by Provider and previously accepted by the State during the term of the Agreement.
			4. The acceptance of an invoice shall not constitute acceptance of any Work performed under this Agreement. 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 Work completed by Provider and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then the Provider shall make all changes necessary to correct that invoice.
			5. The acceptance of an invoice shall not constitute acceptance of any Work performed or Deliverables provided under this Agreement.
		2. 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 disputes in writing. Provider shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

* + 1. Payment Disputes

If Provider disputes any calculation, determination or amount of any payment, Provider shall notify the State in writing of its dispute within 30 days following the earlier to occur of Provider’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 the Provider 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.

* + 1. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Provider beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds the State’s obligation to pay Provider shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State’s liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.

1. **REPORTING - NOTIFICATION**
	1. Quarterly Reports.

In addition to any reports required pursuant to **§16** or pursuant to any other Exhibit, for any Agreement having a term longer than three months, Provider shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

* 1. Litigation Reporting

If Provider 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 Agreement or may affect Provider’s ability to perform its obligations under this Agreement, Provider 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 in this Agreement.

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

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Provider shall provide written notice to the State, in accordance with **§14** and in a form designated by the State, within 20 days following the earlier to occur of Provider’s decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Provider to provide notice to the State under this section shall constitute a Breach of Agreement. This sectionshall not apply if the Agreement Funds include any federal funds.

1. **PROVIDER RECORDS**
	1. Maintenance

Provider shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the “Provider Records”). Provider Records shall include all documents, records, communications, notes and other materials maintained by Provider that relate to any Work performed by Subcontractors, and Provider shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Provider shall maintain Provider Records until the last to occur of: **(i)** the date three years after the date this Agreement expires or is terminated, **(ii)** final payment under this Agreement is made, **(iii)** the resolution of any pending Agreement matters, or **(iv)** if an audit is occurring, or Provider has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “Record Retention Period”).

* 1. Inspection

Provider 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 Provider Records during the Record Retention Period. Provider shall make Provider Records available during normal business hours at Provider’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.

* 1. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Provider’s performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Provider’s performance in a manner that does not unduly interfere with Provider’s performance of the Work.

* 1. Final Audit Report

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

1. **CONFIDENTIAL INFORMATION-STATE RECORDS**
	1. Confidentiality

Provider shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Provider 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 Agreement, permitted by law or approved in writing by the State. Provider shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Provider or any of its Subcontractors will or may receive the following types of data, Provider or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Agreement as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** 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, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, if applicable. Provider shall immediately forward any request or demand for State Records to the State’s Principal Representative.

* 1. Other Entity Access and Nondisclosure Agreements

Provider 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 Agreement. Provider shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Provider shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

* 1. Use, Security, and Retention

Provider 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 ensures confidentiality of all State Confidential Information. Provider shall provide the State with access, subject to Provider’s reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Provider shall return State Records provided to Provider or destroy such State Records and certify to the State that it has done so, as directed by the State. If Provider is prevented by law or regulation from returning or destroying State Confidential Information, Provider warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

* 1. Incident Notice and Remediation

If Provider becomes aware of any Incident, Provider 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 Provider can establish that Provider and its Subcontractors are not the cause or source of the Incident, Provider shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Provider shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Provider shall make all modifications as directed by the State. If Provider cannot produce its analysis and plan within the allotted time, the State, in its discretion, may perform such analysis and produce a remediation plan, and Provider shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Provider’s sole expense, require Provider to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Provider shall provide the State with the results of such audit and evidence of Provider’s planned remediation in response to any negative findings.

* 1. Data Protection and Handling

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

* 1. FERPA

Provider agrees to comply with the Family Educational Rights and Privacy Act (FERPA), if applicable, and any other federal and state data privacy laws that govern education records in the provider’s possession.

* 1. Safeguarding PII

If Provider or any of its Subcontractors will or may receive PII under this Agreement, Provider shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Provider 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. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Provider, including, but not limited to, Provider’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Provider is given direct access to any State databases containing PII, Provider shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit C on an annual basis Provider’s duty and obligation to certify as set forth in Exhibit C shall continue as long as Provider has direct access to any State databases containing PII. If Provider uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Provider shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

1. **CONFLICTS OF INTEREST**
	1. Actual Conflicts of Interest

Provider 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 Provider under this Agreement. Such a conflict of interest would arise when a Provider 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 Agreement.

* 1. Apparent Conflicts of Interest

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

* 1. Disclosure to the State

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

* 1. Provider acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Provider further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Agreement.
1. **INSURANCE**

Provider 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 Agreement. All insurance policies required by this Agreement shall be issued by insurance companies as approved by the State.

* 1. Workers’ Compensation

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

* 1. 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:

* + 1. $1,000,000 each occurrence;
		2. $1,000,000 general aggregate;
		3. $1,000,000 products and completed operations aggregate; and
		4. $50,000 any one fire.
	1. 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.

* 1. Protected Information

Liability insurance covering all civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and all loss income or extra expense as a result of actual or alleged breach, violation or infringement of a 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:

* + 1. $1,000,000 each occurrence; and
		2. $2,000,000 general aggregate.
	1. Professional Liability Insurance

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

* + 1. $1,000,000 each occurrence; and
		2. $1,000,000 general aggregate.
	1. Crime Insurance

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

* + 1. $1,000,000 each occurrence; and
		2. $1,000,000 general aggregate.
	1. 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 Provider and Subcontractors.

* 1. Primacy of Coverage

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

* 1. 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 Provider and Provider shall forward such notice to the State in accordance with **§14** within seven days of Provider’s receipt of such notice.

* 1. Subrogation Waiver

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

* 1. Public Entities

If Provider is a “public entity” within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the “GIA”), Provider shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement 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, Provider shall ensure that the Subcontractor maintains at all times during the terms of this Agreement, 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.

* 1. Certificates

Provider shall provide to the State certificates evidencing Provider’s insurance coverage required in this Agreement within seven Business Days following the Effective Date. Provider shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Provider’s subcontract is not in effect as of the Effective Date, Provider shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Provider’s execution of the subcontract. No later than 15 days before the expiration date of Provider’s or any Subcontractor’s coverage, Provider shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Provider 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.

1. **BREACH OF AGREEMENT**

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Agreement, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§12** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Provider is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

1. **REMEDIES**
	1. State’s Remedies

If Provider is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§11,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

* + 1. Termination for Breach of Agreement

In the event of Provider’s uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Provider shall continue performance of this Agreement to the extent not terminated, if any. Notwithstanding any of the foregoing, Provider license revocation is grounds for immediate termination for Breach of Agreement. In the event of termination of the Agreement for Breach of Agreement, Provider shall be required to reimburse to the State any advance payments received for Services on or after the date of termination.

* + - 1. Obligations and Rights

To the extent specified in any termination notice, Provider 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, Provider shall complete and deliver to the State all Work not canceled by the termination notice, and may incur obligations as necessary to do so within this Agreement’s terms. At the request of the State, Provider shall assign to the State all of Provider’s rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Provider shall take timely, reasonable and necessary action to protect and preserve property in the possession of Provider but in which the State has an interest. At the State’s request, Provider shall return materials owned by the State in Provider’s possession at the time of any termination. Provider shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State’s request.

* + - 1. Payments

Notwithstanding anything to the contrary, the State shall only pay Provider for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Provider was not in breach or that Provider’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 Agreement had been terminated in the public interest under **§2.C**.

* + - 1. Damages and Withholding

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

* + 1. Remedies Not Involving Termination

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

* + - 1. Suspend Performance

Suspend Provider’s performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Provider to an adjustment in price or cost or an adjustment in the performance schedule. Provider 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 Provider after the suspension of performance.

* + - 1. Withhold Payment

Withhold payment to Provider until Provider corrects its Work.

* + - 1. Deny Payment

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

* + - 1. Removal

Demand immediate removal of any of Provider’s employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State’s best interest.

* + - 1. 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, Provider shall, as approved by the State **(i)** secure that right to use such Work for the State and Provider; **(ii)** replace the Work with non-infringing 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.

* 1. Provider’s Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Provider, following the notice and cure period in **§11** and the dispute resolution process in **§13** shall have all remedies available at law and equity.

1. **DISPUTE RESOLUTION**
	1. Initial Resolution

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

* 1. Resolution of Controversies

If the initial resolution described in **§13.A** fails to resolve the dispute within 10 Business Days, Provider shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §24-106-109, C.R.S., and §§24-109-101.1 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Provider wishes to challenge any decision rendered by the Procurement Official, Provider’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 Provider 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.

1. **NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative in this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement 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 below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth in this Agreement. 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 in this Agreement. 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 Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

1. **RIGHTS IN WORK PRODUCT And Other Information**
	1. Work Product
		1. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Provider hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Provider cannot make any of the assignments required by this section, Provider hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

* + 1. Patents

In addition, Provider grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Provider that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

* + 1. Assignments and Assistance

Whether or not Provider is under Agreement with the State at the time, Provider shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire. Provider assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

* 1. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Provider are the exclusive property of the State (collectively, “State Materials”). Provider shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Provider’s obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Provider shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

* 1. Exclusive Property of Provider

Provider retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Provider including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Provider under the Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Provider Property”). Provider Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: **(i)** entered into as exhibits to this Agreement; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

1. **STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Provider under this Agreement is $100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Provider 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 Agreement performance information in the State’s Agreement management system (“Contract Management System” or “CMS”). Provider’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller Policies.

1. **GENERAL PROVISIONS**
	1. Assignment

Provider’s rights and obligations under this Agreement 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 Provider’s rights and obligations approved by the State shall be subject to the provisions of this Agreement.

* 1. Subcontracts

Provider shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Provider shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Provider in connection with this Agreement 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 Agreement.

* 1. Binding Effect

Except as otherwise provided in **§17.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.

* 1. Authority

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

* 1. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement 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.

* 1. Counterparts

This Agreement 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.

* 1. Entire Understanding

This Agreement 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 Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

* 1. Digital Signatures

If any signatory signs this Agreement 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 Agreement by reference.

* 1. Modification

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

* 1. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement 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 Agreement.

* 1. 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 Provider’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 Agreement.

* 1. Severability

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

* 1. Survival of Certain Agreement Terms

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

* 1. 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 Provider. Provider shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Provider may wish to have in place in connection with this Agreement.

* 1. Third Party Beneficiaries

Except for the Parties’ respective successors and assigns described in **§** **17.A,** this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement 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 Agreement are incidental to this Agreement, and do not create any rights for such third parties.

* 1. Waiver

A Party’s failure or delay in exercising any right, power, or privilege under this Agreement, 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.

* 1. CORA Disclosure

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

* 1. Standard and Manner of Performance

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

* 1. Licenses, Permits, and Other Authorizations

Provider shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, 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 Agreement.

* 1. Indemnification
		1. General Indemnification

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

* + 1. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Provider in violation of **§8** may be cause for legal action by third parties against Provider, the State, or their respective agents. Provider 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 Provider, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

* + 1. Intellectual Property Indemnification

Provider shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Provider under this Agreement (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Provider’s obligations hereunder shall not extend to the combination of any IP Deliverables provided by Provider with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Provider or Provider’s subsidiaries or affiliates; **(b)** specified by Provider to work with the IP Deliverables; **(c)** reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or **(d)** is reasonably expected to be used in combination with the IP Deliverables.

* + 1. Accessibility Indemnification

Provider shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to Provider’s failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

* 1. Accessibility
		1. Provider shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the*Accessibility Standards for Individuals with a Disability,* as established by the Governor’s Office Of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Provider shall also 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.
		2. The State may require Provider’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Provider’s Work Product and software is in compliance with §§24-85-101, *et seq*., C.R.S., and the*Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.
1. **COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics. For this section “Contract” or “contract” shall mean “Agreement.”

* 1. **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 Agreement 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.

* 1. **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.

* 1. **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 Agreement 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.

* 1. **INDEPENDENT CONTRACTOR.**

Provider shall perform its duties hereunder as an Independent Contractor and not as an employee. Neither Provider nor any agent or employee of Provider shall be deemed to be an agent or employee of the State. Provider shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Provider 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 Provider or any of its agents or employees. Provider shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Provider 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.

* 1. **COMPLIANCE WITH LAW.**

Provider 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.

* 1. **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 Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

* 1. **PROHIBITED TERMS.**

 Any term included in this Agreement that requires the State to indemnify or hold Provider harmless; requires the State to agree to binding arbitration; limits Provider’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 Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

* 1. **SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Provider hereby certifies and warrants that, during the term of this Agreement and any extensions, Provider has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Provider 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 Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

* 1. **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. Provider has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Provider’s services and Provider shall not employ any person having such known interests.

* 1. **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 Provider in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Provider by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Provider, or by any other appropriate method for collecting debts owed to the State.

**19. DEPARTMENT OF EARLY CHILDHOOD PROVISIONS**

A. Restrictions on Public Benefits

If applicable, Provider shall comply with C.R.S. §§ 24-76.5-101 – 103 exactly as the State is required to comply with C.R.S. §§ 24-76.5-101 – 103.

**20. THIRD PARTY CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S, if Provider is to be granted access to Personal Identifying Information through a database or automated network that is not publicly available information, Provider certifies, and will certify annually, under penalty of perjury that Provider has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

If Provider’s agents, employees, assigns or Subcontractors require certification pursuant to § 24- 74-105, C.R.S., Provider shall require annually that its agents, employees, assigns or Subcontractors. PII Certification is attached as **Exhibit C.**

1. **PARTIES**

This Agreement is entered into by and between Provider named on the signature page for this Agreement (the “Provider”), and the STATE OF COLORADO acting by and through the State agency named on the signature page for this Agreement (the “State”). Provider and the State agree to the terms and conditions in this Agreement.

2.  **TERM AND EFFECTIVE DATE**

A. Effective Date

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

B. Initial Term

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

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement 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 Agreement by the State for breach by Provider, which shall be governed by **§12.A.i**.

1. Method and Content

The State shall notify Provider of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

1. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Provider shall be subject to the rights and obligations set forth in **§12.A.i.a**.

1. Payments

If the State terminates this Agreement in the public interest, the State shall pay Provider an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Provider for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Provider which are directly attributable to the uncompleted portion of Provider’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Provider hereunder.

3. **DEFINITIONS**

The following terms shall be construed and interpreted as follows:

1. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
2. **“Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
3. “**Breach of Agreement**”means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. If Provider is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
4. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
5. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
6. “**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.
7. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
8. “**Effective Date**” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement. If this Agreement 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 Agreement shall be the later of the date on which this Agreement is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Agreement is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Agreement.
9. “**Exhibits**” means the exhibits and attachments included with this Agreement as contained in this Agreement.
10. “Extension Term” means the time period defined in §**2.C**.
11. “**Goods**” means any movable material acquired, produced, or delivered by Provider as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Provider in connection with the Services.
12. “**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 Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.”
13. “**Initial Term**” means the time period defined in **§2.B**.
14. “**Party**” means the State or Provider, and “Parties” means both the State and Provider.
15. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
16. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual‘s identity, such as name, social security number, date and place of birth, mother‘s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. 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.“PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
17. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
18. “**Services**” means the services to be performed by Provider as set forth in this Agreement, and shall include any services to be rendered by Provider in connection with the Goods.
19. “**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 Provider which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Provider without restrictions at the time of its disclosure to Provider; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Provider to the State; (iv) is disclosed to Provider, 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.
20. “**State Fiscal Rules**” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
21. “**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.
22. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
23. “**Subcontractor**” means third-parties, if any, engaged by Provider to aid in performance of the Work.
24. “**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.
25. “**Work**” means the Goods delivered and Services performed pursuant to this Agreement.
26. “**Universal Preschool Colorado Application Portal”** means the online application system that Providers will use to register with the Universal Preschool Colorado program and to match with potential eligible children.
27. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.
28. Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. **STATEMENT OF WORK**

Provider shall complete the Work as described in this Agreement and in accordance with the provisions of this Agreement. The State shall have no liability to compensate the Provider for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. **PAYMENTS TO PROVIDER**

A. Maximum Amount

Payments to Provider are limited to the unpaid, obligated balance of the Agreement Funds. The State shall not pay Provider any amount under this Agreement that exceeds the Agreement Maximum for that State Fiscal Year in this Agreement.

B. Payment Procedures

1. Invoices and Payment

a. The State shall pay Provider in the amounts and in accordance with the schedule and other conditions set forth in the Agreement.

b. Provider 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 Work completed by Provider and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then the Provider shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

1. Interest

Amounts not paid by the State within 45 days after 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 disputes in writing. Provider shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

1. Payment Disputes

If Provider disputes any calculation, determination or amount of any payment, Provider shall notify the State in writing of its dispute within 30 days following the earlier to occur of Provider’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 the Provider 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.

1. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Provider beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds the State’s obligation to pay Provider shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State’s liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.

**6. REPORTING - NOTIFICATION**

A. Quarterly Reports.

In addition to any reports required pursuant to **§16** or pursuant to any other Exhibit, for any Agreement having a term longer than three months, Provider shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress reports shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Provider 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 Agreement or may affect Provider’s ability to perform its obligations under this Agreement, Provider 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 signature page for this Agreement.

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

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Provider shall provide written notice to the State, in accordance with **§14** and in a form designated by the State, within 20 days following the earlier to occur of Provider’s decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by the Provider to provide notice to the State under this section shall constitute a breach of this Agreement. This sectionshall not apply if the Agreement Funds include any federal funds.

7. **PROVIDER RECORDS**

A. Maintenance

Provider shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the “Provider Records”). Provider Records shall include all documents, records, communications, notes and other materials maintained by Provider that relate to any Work performed by Subcontractors, and Provider shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Provider shall maintain Provider Records until the last to occur of: **(i)** the date three years after the date this Agreement expires or is terminated, **(ii)** final payment under this Agreement is made, **(iii)** the resolution of any pending Agreement matters, or **(iv)** if an audit is occurring, or Provider has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “Record Retention Period”).

B. Inspection

Provider shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Provider Records during the Record Retention Period. Provider shall make Provider Records available during normal business hours at Provider’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. Monitoring

The State, in its discretion, may monitor Provider’s performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Provider’s performance in a manner that does not unduly interfere with Provider’s performance of the Work.

D. Final Audit Report

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

8. **CONFIDENTIAL INFORMATION-STATE RECORDS**

A. Confidentiality

Provider shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Provider 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 Agreement, permitted by law or approved in Writing by the State. Provider shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Provider or any of its Subcontractors will or may receive the following types of data, Provider or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Agreement as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** 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, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, if applicable. Provider shall immediately forward any request or demand for State Records to the State’s principal representative.

B. Other Entity Access and Nondisclosure Agreements

Provider 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 Agreement. Provider shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Provider shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Provider shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Provider shall provide the State with access, subject to Provider’s reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Provider shall return State Records provided to Provider or destroy such State Records and certify to the State that it has done so, as directed by the State. If Provider is prevented by law or regulation from returning or destroying State Confidential Information, Provider warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If the Provider becomes aware of any Incident, it 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 Provider can establish that none of Provider or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Provider shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Provider shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Provider’s sole expense, require Provider to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Provider shall provide the State with the results of such audit and evidence of Provider’s planned remediation in response to any negative findings.

E. Data Protection and Handling

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

F. FERPA

Provider agrees to comply with the Family Educational Rights and Privacy Act (FERPA), if applicable, and any other federal and state data privacy laws that govern education records in the provider’s possession.

G. Safeguarding PII

If Provider or any of its Subcontractors will or may receive PII under this Agreement, Provider shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Provider 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. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Provider, including, but not limited to, Provider’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Provider is given direct access to any State databases containing PII, Provider shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit C on an annual basis Provider’s duty and obligation to certify as set forth in Exhibit C shall continue as long as Provider has direct access to any State databases containing PII. If Provider uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Provider shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

9. **CONFLICTS OF INTEREST**

A. Actual Conflicts of Interest

Provider 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 Provider under this Agreement. Such a conflict of interest would arise when a Provider 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 Agreement.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

D. Provider acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Provider further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Agreement.

10.  **INSURANCE**

Provider 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 Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Provider Insurance

The Provider is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the “GIA”) and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Provider shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor’s obligations under the GIA. Provider shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

1. Workers’ Compensation

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

1. 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:

* 1. $1,000,000 each occurrence;
	2. $1,000,000 general aggregate;
	3. $1,000,000 products and completed operations aggregate; and
	4. $50,000 any one fire.
1. 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.

1. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

1. $1,000,000 each occurrence; and
2. $2,000,000 general aggregate.
3. Professional Liability Insurance

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

1. $1,000,000 each occurrence; and
2. $1,000,000 general aggregate.
3. Crime Insurance

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

1. $1,000,000 each occurrence; and
2. $1,000,000 general aggregate.

C. 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 Provider and Subcontractors.

D. Primacy of Coverage

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

E. Cancellation

All commercial 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 Provider and Provider shall forward such notice to the State in accordance with **§14** within seven days of Provider’s receipt of such notice.

F. Subrogation Waiver

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

G. Certificates

For each commercial insurance plan provided by Provider under this Agreement, Provider shall provide to the State certificates evidencing Provider’s insurance coverage required in this Agreement within seven Business Days following the Effective Date. Provider shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Provider’s subcontract is not in effect as of the Effective Date, Provider shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Provider’s execution of the subcontract. No later than 15 days before the expiration date of Provider’s or any Subcontractor’s coverage, Provider shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Provider 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 **§10**.

11. **BREACH OF AGREEMENT**

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Agreement, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§12** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Provider is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. **REMEDIES**

A. State’s Remedies

If Provider is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§11,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

1. Termination for Breach

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

a. Obligations and Rights

To the extent specified in any termination notice, Provider 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, Provider shall complete and deliver to the State all Work not canceled by the termination notice, and may incur obligations as necessary to do so within this Agreement’s terms. At the request of the State, Provider shall assign to the State all of Provider's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Provider shall take timely, reasonable and necessary action to protect and preserve property in the possession of Provider but in which the State has an interest. At the State’s request, Provider shall return materials owned by the State in Provider’s possession at the time of any termination. Provider shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State’s request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Provider for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Provider was not in breach or that Provider'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 Agreement had been terminated in the public interest under **§2.C.**

c. Damages and Withholding

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

1. Remedies Not Involving Termination

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

a. Suspend Performance

Suspend Provider’s performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Provider to an adjustment in price or cost or an adjustment in the performance schedule. Provider 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 Provider after the suspension of performance.

b. Withhold Payment

Withhold payment to Provider until Provider corrects its Work.

c. Deny Payment

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

d. Removal

Demand immediate removal of any of Provider’s employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State’s best interest.

e. 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, Provider shall, as approved by the State **(i)** secure that right to use such Work for the State and Provider; **(ii)** replace the Work with non infringing 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. Provider’s Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Provider, following the notice and cure period in **§11** and the dispute resolution process in **§13** shall have all remedies available at law and equity.

**13. DISPUTE RESOLUTION**

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in **§13.A** fails to resolve the dispute within 10 Business Days, Provider shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named in this Agreement as described in §24-102-202(3), 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., (the “Resolution Statutes”), except that if Provider wishes to challenge any decision rendered by the Procurement Official, Provider’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 Provider 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.

**14. NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative in this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement 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 below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, in this Agreement. 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 inr this Agreement. 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 Agreement.

**15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

A. Work Product

Provider assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Provider is under Agreement with the State at the time, Provider shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Provider hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Provider cannot make any of the assignments required by this section, Provider hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Provider grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Provider that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, “State Materials”). Provider shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Provider’s obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Provider shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Provider

Provider retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Provider including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Provider under the Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Provider Property”). Provider Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: **(i)** entered into as exhibits to this Agreement; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

**16. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Provider under this Agreement is $100,000 or greater, either on the Effective Date or at any time thereafter, this **§16** shall apply. Provider 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 Agreement performance information in the State’s Agreement management system (“Contract Management System” or “CMS”). Provider’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

**17. GENERAL PROVISIONS**

1. Assignment

Provider’s rights and obligations under this Agreement 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 Provider’s rights and obligations approved by the State shall be subject to the provisions of this Agreement.

1. Subcontracts

Provider shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Provider shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Provider in connection with this Agreement 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 Agreement.

1. Binding Effect

Except as otherwise provided in **§17.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.

1. Authority

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

1. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement 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.

1. Counterparts

This Agreement 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.

1. Entire Understanding

This Agreement 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 Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

1. Digital Signatures

If any signatory signs this agreement 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 Agreement by reference.

1. Modification

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

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

Any reference in this Agreement 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 Agreement.

1. Severability

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

1. Survival of Certain Agreement Terms

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

1. 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 Provider. Provider shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Provider may wish to have in place in connection with this Agreement.

1. Third Party Beneficiaries

Except for the Parties’ respective successors and assigns described in **§17.A**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement 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 Agreement are incidental to this Agreement, and do not create any rights for such third parties.

1. Waiver

A Party’s failure or delay in exercising any right, power, or privilege under this Agreement, 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.

1. CORA Disclosure

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

1. Standard and Manner of Performance

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

1. Licenses, Permits, and Other Authorizations.

Provider shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, 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 Agreement.

1. Indemnification
2. General Indemnification

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

1. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Provider in violation of **§8** may be cause for legal action by third parties against Provider, the State, or their respective agents. Provider 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 Provider, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

1. Intellectual Property Indemnification

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

1. Accessibility Indemnification

Provider shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to Provider’s failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

1. Accessibility
2. Provider shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Provider shall also 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.
3. The State may require Provider’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Provider’s Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

**18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics. For this section “contract’ or “Contract” shall mean “Agreement.”

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

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

Provider shall perform its duties hereunder as an Independent Contractor and not as an employee. Neither Provider nor any agent or employee of Provider shall be deemed to be an agent or employee of the State. Provider shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Provider 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 Provider or any of its agents or employees. Provider shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Provider 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.**

Provider 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 Agreement. 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 Agreement 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 Agreement that requires the State to indemnify or hold Provider harmless; requires the State to agree to binding arbitration; limits Provider’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 Agreement 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 Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Provider hereby certifies and warrants that, during the term of this Agreement and any extensions, Provider has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Provider is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement 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 Agreement. Provider has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Provider’s services and Provider shall not employ any person having such known interests.

**EXHIBIT C-PII CERTIFICATION**

**STATE OF COLORADO**

**Third Party INDIVIDUAL Certification for Access TO PII through a Database or Automated Network**

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT C-PII CERTIFICATION**

**STATE OF COLORADO**

**Third Party ENTITY / ORGANIZATION Certification for Access TO PII through a Database or Automated Network**

Pursuant to § 24-74-105, C.R.S., I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (legal name of entity / organization) (the “Organization”), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_