

**STATE OF COLORADO  
DEPARTMENT OF STATE  
CONTRACT  
with  
(Name of Contractor)**

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## **1. PARTIES**

This Contract is entered into by and between "Insert Name of Contractor" (hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of State (hereinafter called the "Department" or "CDOS").

## **2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or its designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

## **3. AUTHORITY, APPROPRIATION, APPROVAL, AND PURPOSE**

Authority exists in the law under CRS §24-1-111 and §24-21-101 and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment, and required approvals, clearances, and coordination have been accomplished from and with appropriate agencies. An appropriation was made to procure and implement a Campaign Finance System per the requirements of RFP CDOS-CF-08-01. CDOS desires to have independent verification and validation of some aspects of the project.

## **4. DEFINITIONS**

The following terms as used herein shall be used, construed, and interpreted as follows:

### **A. Breach of Data Security**

"Breach of Data Security" means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of information used or maintained by Contractor in conjunction with this Contract.

### **B. Change Control Board**

"Change Control Board" means the group of appointed individuals selected by the State to serve on the Change Control Board for the purpose of approving change control requests initiated in accordance with the purpose of the Campaign Finance System project.

### **C. Compensation**

"Compensation" means the funds payable to Contractor by the State related to performance of Contractor's obligations, including, but not limited to, providing any required Products and/or Services, as described in **Exhibit A**.

### **D. Contract**

"Contract" means this Contract for Goods and Services, its provisions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated pursuant to State Fiscal Rules and Policies.

### **E. Exhibits**

The following exhibits are attached hereto and incorporated by reference herein: **Exhibit A (Statement of Work) -List other Exhibits** .

### **F. Final Campaign Finance System Acceptance**

"Final Campaign Finance System Acceptance" means confirmation by the State that the Campaign Finance System Contractor has provided a system to the State that conforms to System Acceptance Criteria.

### **G. Fiscal Rules**

"Fiscal Rules" means rules promulgated by the State Controller that regulate the financial affairs of the State, including the form, use, execution and approval of contracts, leases, interagency agreements, purchase orders, and other commitment vouchers.

### **H. Fiscal Year**

"Fiscal Year" means the period for which funds are appropriated and money is made available for commitment and expenditure. The State's fiscal year is July 1st through June 30th.

**I. Goods**

“Goods” means any physical item used, produced, or manufactured either separately or in conjunction with performance of Contractor’s obligations hereunder.

**J. Intellectual Property**

“Intellectual Property” means any and all know-how, inventions, patents, copyrights, models, designs, diagrams, specifications, service marks, trademarks, trade dress, trade secrets, test results, knowledge, research, techniques, discoveries, regulatory filings, data, source codes, object codes, production methods, technology, specification of materials, formulae, methods of formulation, processes or other information (in tangible or intangible form), other industrial or proprietary rights, and all present and future title, interest and rights pertaining thereto, any documentation relating thereto, and any and all applications for any of the foregoing, whether or not patented, patentable or registered as of the effective date of this Contract or at any later date.

**K. Key Personnel**

“Key Personnel” means those individuals identified in **Exhibit A** who are essential to the satisfactory performance of Contractor’s obligations hereunder.

**L. Metropolitan Area**

“Metropolitan Area” means the region including a city and the densely populated surrounding areas that are socially and economically integrated with it.

**M. Parties**

“Party” or “Parties” means one or both of the State and Contractor.

**N. Project**

“Project” means the Campaign Finance System project.

**O. Project Manager**

“Project Manager or PM” means a person designated by the State who has authority to make relevant day-to-day decisions in regard to the Project.

**P. Services**

“Services” means services performed or tangible material produced either separately or in conjunction with the Work performed and Goods and Products provided hereunder.

**Q. Software**

“Software” means the executable code version of software Product(s) comprising the Campaign Finance System.

**R. Subcontractor**

“Subcontractor” means a third-party vendor(s) of equipment, goods, products, or services, if any.

**S. System**

“System” means the Campaign Finance System.

**T. Work**

“Work” means the tasks Contractor is required to perform in order to fulfill its obligations hereunder.

**U. Work Product**

“Work Product” means any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract.

**5. TERM AND EARLY TERMINATION**

**A. Initial Term-Work Commencement**

The initial term of this Contract shall commence on the later of either the Effective Date the or the 1st day of February, 2009 and terminate on the 30th day of June, 2009, unless sooner terminated as provided for below herein.

**B. Unilateral Option to Extend**

The State in its sole discretion and upon written notice to Contractor, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties are negotiating a replacement contract (and not merely seeking a term extension) at or near the end of any initial term or an extension thereof.

The provisions of the Contract in effect when said notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during said two month extension. However, the two-month extension shall immediately terminate when and if a replacement contract becomes effective following the Colorado State Controller's approval and signature.

**C. Early Termination**

This Contract is subject to early termination in accordance with the provisions hereof.

**6. STATEMENT OF WORK (SOW)**

**A. Performance**

Performance of Contractor's obligations under this Contract shall begin as soon as practicable following commencement of the initial term, and shall be undertaken and performed as set forth in **Exhibit A**. Contractor shall strictly follow the sequence and manner of performance set forth in **Exhibit A** and shall comply with the descriptions of and representations (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) set forth in **Exhibit A** and elsewhere in this Contract.

**B. Modifications to SOW**

System enhancements supporting legislative changes to programs or meeting requirements not identified herein may be necessary during the term of this Contract. If such enhancements require changes within the scope of work under this Contract as defined in **Exhibit A**, such changes may be made only in accordance with §24.G below.

**C. Procuring Goods, Products, and Services**

Contractor shall procure goods, products and services necessary to perform its obligations pursuant to the provisions of **Exhibit A** without extra charge to the State (unless specifically otherwise provided for in this Contract.)

**7. DATA and DOCUMENTS DELIVERABLES**

**A. Delivery and Standards**

Contractor shall deliver the data and documents required in **Exhibit A** by the dates specified therein. Unless otherwise specified, documentation delivered pursuant to this Contract shall meet the following standards:

- i. Documentation shall be in electronic readable format.
- ii. Microsoft Office applications shall be used to prepare documentation, unless prior written approval is received from the State to use other applications.
- iii. Contractor shall maintain a read-only library to store all approved documentation.

**8. COMPENSATION OF AND PAYMENTS TO CONTRACTOR**

Contractor shall be compensated and paid as follows:

**A. Basis and Maximum Amount**

The State shall pay Contractor for its performance in accordance with **Exhibit A**. The maximum amount payable to Contractor by the State hereunder shall be \$ \_\_\_\_\_ from available funds properly encumbered. The State shall not be liable to pay or reimburse Contractor for any performance hereunder prior to the Effective Date. Satisfactory performance of Contractor's obligations hereunder is a condition precedent to the State's obligation to compensate Contractor. The maximum amount payable includes all Contractor fees, costs, and expenses, including but not limited to, labor, rent, travel expenses, overhead, parts, repairs and replacements, mileage, supplies, mailing, testing, communications, reporting, debugging, deliveries, and other operation and contract expenses unless otherwise specified in this contract.

**B. Payment**

**i. Method and Time**

Contractor shall periodically submit invoices to the State in the form and manner approved by the State and shall attach timesheets and any required receipts. Contractor shall submit invoices within 60 days after the end of the period for which payment is requested, and final billings on this contract must be received by the State within 60 days after termination hereof. The State shall make payment in full with respect to each invoice acceptable to it within 45 days of receipt thereof, after which

uncontested unpaid amounts shall bear interest at a rate of one percent per month. Interest shall not arise if a good faith dispute exists as to the State's obligation to pay all or a portion of an invoice. Contractor shall invoice the State separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate.

**ii. Available Funds-Contingency-Remedies**

The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. Therefore, Contractor's compensation is contingent upon the continuing availability of state appropriations as provided in §2 of the Colorado Special Provisions, set forth below herein. If federal appropriations or Contracts fund this Contract in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this contract shall only be made from available funds encumbered for this Contract, and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If state or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may immediately terminate the Contract in whole or in part without further liability in accordance with the Termination for Cause subsection of the Remedies section of this Contract. All payments are subject to the general Remedies section of this Contract.

**iii. Return of Funds**

Any funds paid to Contractor hereunder which are not expended in connection with this Contract shall be refunded by Contractor within 15 days of termination hereof. Any funds not required to complete Contractor's obligations hereunder shall be de-obligated by the State. If Contractor receives overpayments hereunder, Contractor shall refund all excess funds to the State within 15 days of the later of (a) the receipt of such funds or (b) the determination of such overpayment. Unexpended or excess funds received by Contractor under this Contract shall not be refunded or paid to any party other than the State.

**iv. Erroneous Payments-Remedies**

Payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments due to omission, error, fraud, or defalcation may, at the State's sole discretion, be recovered from Contractor by deduction from subsequent payment under this Contract or other contracts between the State and Contractor, or by other appropriate methods.

**9. CONTRACTOR'S EMPLOYEES AND AGENTS**

**A. Not State Employees**

All persons hired by Contractor to perform its obligations hereunder are employees or agents of Contractor's or a subcontractor for all purposes and shall not be employees of the State for any purpose.

**B. Key Staff**

Contractor shall provide staff to complete its obligations under this Contract. Assignment of Key Staff identified in **Exhibit A** shall be continuous throughout the term hereof, unless such staff are unable to perform for a legitimate reason such as illness or termination of employment, and any changes in Key Staff shall be approved by the State. Since performance by Key Personnel under this Contract will be less than full-time and on an irregular basis, Contractor may assign Key Personnel to other projects without the State's prior written approval, so long as the assignment does not impede performance under this Contract.

**C. Staff Replacement**

The State is granted the right to request in writing that Contractor replace any of its staff whose qualifications or performance, or reasonably could, hinder successful and timely completion of Contractor's obligations hereunder. Contractor shall comply with such request within 10 days of receiving the request or take other corrective actions to which the State agrees.

**D. Background Checks**

Contractor shall perform criminal background checks on all Contractor employees and agents to ensure that they are fully qualified to perform Contractor's obligations hereunder, and if required by law or ordinance, are validly licensed and/or have obtained all requisite permits to perform such obligations.

## 10. REPORTING-NOTIFICATION

The content and format of the following reports and analysis shall be as prescribed by the State.

### A. General

Notwithstanding anything herein to the contrary, including without limitation the priority provisions set forth in §24.H, specific reporting requirements set forth in any **Exhibits** to this Contract shall take precedence over this general reporting provision. The content and format of all reports shall be determined by the State. Contractor shall provide the State with such documentation and other information as may be reasonably requested by the State from time to time to verify that Contractor is performing its obligations in compliance with the provisions of this Contract, including, but not limited to the following:

#### i. Project Status

Project status reports shall be submitted on a monthly basis and upon termination or completion of work and shall include, without limitation, the following:

- a) activities performed in the prior period;
- b) deliverables and/or milestones achieved;
- c) progress relative to project plan;
- d) key issues and factors impacting the support effort;
- e) corrective actions, if needed;
- f) recommendations related to the System project; and
- g) planned activities for the upcoming period.

### B. Litigation

Within 10 days after being served with any pleading in a legal action at a court or administrative agency related to this Contract, Contractor shall notify the State of such action and deliver copies of such pleadings to the State's principal representative in accordance with the Notice section of this Contract.

### C. Remedies

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this section may result in the delay of payment of funds and/or termination under the Remedies sections of this Contract.

## 11. CONTRACTOR RECORDS

Contractor shall make, keep, maintain and allow inspection and monitoring of the following records:

### A. Maintenance

Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials, electronic media files or communications, pertaining in any manner to delivery of Goods, Products, and Services hereunder. Contractor shall maintain such records for:

- i. Three years after the date this Contract is completed or terminated or final payment hereunder, whichever is later, or
- ii. For such further period as may be necessary to resolve any pending matters, or
- iii. Until an audit has been completed and its findings have been resolved.

### B. Inspection

Contractor shall permit the State, the federal government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract and for a period of three years following termination hereof or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Contractor's performance hereunder.

### C. Monitoring

Contractor also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by Contractor pursuant to this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, and formal audit examinations.

## **12. CONFIDENTIAL INFORMATION-STATE RECORDS**

Contractor acknowledges that it may become privy to confidential information in connection with its performance hereunder, including, but not limited to state records, personnel records, and information concerning individuals.

### **A. Confidentiality**

It shall be Contractor's responsibility to keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of Contractor made by any third party shall be immediately forwarded to the State's principal representative for resolution.

### **B. Notification**

Contractor shall notify its agent, employees, sub-contractors and assigns who may come into contact with confidential information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access information. Prior to performing work under this Contract, each agent, employee, sub-contractor, and/or assign who may come into contact with confidential information shall sign a Non-Disclosure Agreement, the form of which is included herein as **Exhibit B**.

### **C. Use, Security, and Retention**

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the Contract and as approved by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in this Contract and approved by the State.

### **D. Protection**

If Contractor provides physical or logical storage, processing or transmission of confidential or sensitive State data, Contractor shall provide physical and logical protection for State hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in this Contract. Contractor shall provide the State with access, subject to Contractor's reasonable access security requirements, seven days a week, 24 hours a day, for the purpose of inspecting and monitoring access and use of State data, maintaining State systems, and evaluating physical and logical security control effectiveness.

### **E. Security-Notice**

Contractor is responsible for the security of all information provided to it by the State. If Contractor becomes aware of a data security breach, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Contractor shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State. Contractor shall be responsible for performing an analysis to determine the cause of the breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present such analysis and remediation plan to the State within 10 days of notifying the State of the data security breach. The State, in its sole discretion, reserves the right to adjust this plan. If Contractor cannot produce the required analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, at Contractor's cost.

### **F. Disclosure-Liability-Damages**

Disclosure of State records or other confidential information for any reason may be cause for legal action against Contractor or its agents by third parties, and defense of any such action shall be Contractor's sole responsibility. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all consequential and incidental damages arising from a data security breach.

## **13. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Work Product shall be the exclusive property of the State and Contractor shall deliver all such Work Product to the State upon completion, termination, or cancellation of this Contract. The rights of the State in Work

Product shall include, but is not limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use Work Product. The Parties acknowledge that any Work Product developed from federal funds may be the property of the federal government, in which case the State reserves a royalty-free, non-exclusive, irrevocable license to reproduce, publish and otherwise use, and authorize others to use, Work Product for the purposes of the State and the federal government. Contractor shall not use, allow, cause, or permit Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the State's prior written consent.

#### **A. Intellectual Property-Ownership of Materials and Information**

During the term of this Contract Contractor may generate ideas, invention, suggestions, copyrightable materials or other information ("Intellectual Property") as a result of its performance under this Contract.

##### **i. Categories.**

Any such Intellectual Property falling into one of the following two categories shall be treated as follows:

**a) Specifically Related.** Intellectual Property specifically related to the subject matter of Contractor's performance and directly related to, or incorporated into, the Work Product Contractor produces and delivers to the State. The State shall at all times have title to Intellectual Property described in this subsection that is developed solely by Contractor, or jointly by Contractor and the State. Contractor agrees to disclose and assign to the State, in a form satisfactory to the State (including all source code, object code and/or binary code), all such Intellectual Property, whether made alone or in conjunction with others, and to render such assistance as the State may reasonably require to perfect such assignments and to protect such Intellectual Property. The Parties understand and agree that any such property, if developed from federal funds, may be the property of the Federal Government, in which event, the State reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use and to authorize others to use for the State's and for the Federal Government's purposes, any such Intellectual Property; or

**b) General Applicability.** Intellectual Property of general applicability, whether or not related to, or incorporated into, the Work Product Contractor produces and delivers to the State. Contractor shall retain title to Intellectual Property described in this subsection, including any Intellectual Property developed by Contractor prior to or outside of this Contract. To the extent such Intellectual Property is incorporated in the Work Product Contractor produces and delivers to the State, Contractor grants and CDOS accepts, a royalty-free, non-exclusive license to use all such Intellectual Property within CDOS for use by the Colorado Department of State for operation of the Campaign Finance System from the "Effective Date" forward and until no longer needed by the State for such operation. Such Intellectual Property may be used by the State and its agents, providing that such agents execute a separate no cost license agreement with the Contractor for use of such Intellectual Property for use in connection with the Campaign Finance System by the Department of State.

##### **ii. List**

Contractor shall provide the State a written list of the Intellectual Property it has supplied and/or intends to supply hereunder that is included in foregoing subsections. Contractor shall provide such lists as follows:

**a) Term.** Quarterly during the term of hereof. The State shall, to the extent allowed by law, keep such list confidential.

**b) Termination.** Upon termination hereof for any reason. For any such Intellectual Property, the list shall also provide specific facts proving that such Intellectual Property was developed by the Contractor prior to or outside of this Contract.

#### **B. State Use Grant to Contractor**

The State grants the Contractor, to the extent authorized by law, rights to royalty-free use of Contractor's Work Product produced and delivered under this Contract, and the non-client data derived from its use by the State, for bidding and performance of other government system transfer or development projects, provided such use does not result in any additional cost to the State, compromise the performance of this

or any other State project, or disclose any restricted state or personal data obtained by the Contractor in performance of this contract.

#### **14. CONFLICT OF INTEREST**

##### **A. Definition and Appearance**

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. Contractor shall comply with the provisions of CRS §18-8-308 and §24-18-101-109.

##### **B. Specific Prohibitions**

Contractor's and sub-Contractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements. Contractor's employees, officers, and agents or any permitted sub-Contractor shall not participate in the selection, award, or administration of this Contract or sub-Contract if a conflict of interest or the appearance thereof would occur. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award, to-wit:

- i.** an employee, officer or agent;
- ii.** any member of the employee's immediate family;
- iii.** an employee's partner; or
- iv.** an organization, which employs, or is about to employ, any of the aforementioned.

##### **C. Determination by State-Default**

If Contractor is uncertain whether the appearance of a conflict of interest exists, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be considered a material default of this Contract.

##### **D. Code of Performance**

Contractor and sub-contractors, if any, shall maintain a written code of standards governing the performance of their respective employees, agents, and contractors engaged in the award and administration of this Contract. Contractor shall provide a copy of such code to the State within 10 days of the State's written request therefore.

#### **15. WARRANTIES**

The warranties set forth in this section and such other warranties as may be set forth in this Contract are a part of the minimum work requirements of this Contract and all remediation or other actions required by such warranties shall be performed or delivered without additional cost to the State.

##### **A. Goods, Products, and Services**

During the term of this Contract and for a period of one year following the State's final acceptance under this Contract, Contractor, warrants, the following:

###### **i. Specifications**

All Services provided shall meet the specifications set forth in this Contract and be acceptable to the State.

###### **ii. Suits, Claims, and Actions**

There are not nor are there any known pending or threatened suits, claims, or actions of any type with respect to the Services provided.

###### **iii. Liens and Encumbrances**

All Services provided are and shall remain free and clear of any liens, encumbrances, or claims arising by or through Contractor or any party related to Contractor.

## **B. Contractor's Performance**

Contractor warrants that it will perform all its obligations and provide all Services required under this Contract in accordance with the highest standard of care, skill and diligence. Contractor further warrants the following:

### **i. Time of the Essence**

Time is of the essence in performance of this Contract. Contractor's failure to complete its obligations as specified in this Contract shall be grounds for the State to assess liquidated damages and/or terminate this Contract for default, subject to extensions of performance time to which the State, in its sole discretion, may agree.

### **ii. Legal Compliance**

Contractor's performance shall conform to and not violate any applicable law, rule or regulation, and Contractor shall obtain all permits and licenses required to comply with such laws and regulations.

### **iii. Infringement-Rights**

Contractor's performance shall not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any intellectual property rights. Contractor is the lawful owner or licensee of all Software, hardware, methods, methodologies and any pre-existing intellectual property used in the performance of the Services and has the right to grant to the State access to or use of such Software, hardware, methods, methodologies and Intellectual Property.

### **iv. Specifications-Compatibility-Quality**

All Services and Work Product Contractor provides shall meet the specifications set forth in **Exhibit**

**A.** In addition, all Services and Work Product and ancillary consumables, materials, and supplies

Contractor provides or uses in performance of its obligations hereunder shall:

- a) conform to the highest applicable industry standards, and
- b) be in good working order, free from defects in materials or workmanship.
- c) function properly without failure.

## **C. Inspection and Acceptance**

### **i. Right of Inspection**

The State shall have the right to inspect all Deliverables and all Services and Work Product Contractor provides or uses in the performance of its obligations hereunder, at all reasonable times and places, to verify that they conform to the requirements of this Contract before accepting them.

### **ii. Notice**

The State shall provide written notice to Contractor, in accordance with the **Notice section** of this Contract, of the acceptance or rejection of a Deliverable within 5 days of the delivery of such Deliverable.

## **D. Remedies**

The remedies set forth in this section shall not limit the remedies available to the State elsewhere in this Contract or that are otherwise available in equity or at law, all of which may be exercised by the State, at its option, cumulatively or separately. Any reduction, delay or denial of payment hereunder shall not constitute a breach of contract or default by the State.

### **i. Cure**

If any Deliverable does not conform to Contract requirements, or if the Contractor breaches any of its warranties, the State may require Contractor to promptly cure the nonconformance or breach in conformance with Contract requirements, without additional cost to the State. Such cure shall occur within 10 days of Contractor receiving notice from the State of such nonconformance or breach.

### **ii. Failure to Cure**

If defects in a Deliverable or a breach of warranty cannot be or are not cured by Contractor within the specified period, the State, may require Contractor to:

- a) Take necessary action to ensure that future performance conforms to the provisions hereof;
- b) Equitably reduce the payment due to Contractor to reflect the reduced value of the Deliverable;
- c) Invoke the liquidated damages clause of this Contract; and/or
- d) Delay the workplan schedule without incurring additional costs.

## **16. INDEMNIFICATION-INTELLECTUAL PROPERTY**

### **A. Indemnity**

Contractor shall indemnify, hold harmless and defend, at Contractor's sole expense, the State, its employees and agents, against any and all loss, cost, expense or liability, including but not limited to attorney's fees, court costs and other legal expenses and damages arising out of a claim that a Service or Work Product provided by Contractor hereunder, or its use, infringes a patent, copyright, trademark, trade secret or other intellectual property right. Contractor's obligation shall not extend to any Service or Work Product provided by Contractor hereunder or system or method, unless the Service or Work Product provided by Contractor hereunder or system or method is:

- i.** Provided by Contractor or Contractor's subsidiaries or affiliates;
- ii.** Specified by the Contractor for work with the Service or Work Product provided by Contractor hereunder; or
- iii.** Reasonably expected to be used in combination with such other product, system or method.

### **B. Notice-Defense**

The State shall notify Contractor within a reasonable time after receiving notice of a claim of infringement and Contractor shall have the sole authority to defend or settle such claim; provided that any settlement for be for money damages only. The State shall furnish, at Contractor's reasonable request and expense, information and assistance necessary for the defense of such claim. Contractor shall consult the State regarding the defense of such claim and the State, at its discretion and expense, may participate in such defense. Should the State choose not to participate, Contractor shall keep the State advised of any settlement or defense. If Contractor shall fail to vigorously and timely pursue the defense or settlement of such claim, the State may assume such defense and settlement and Contractor shall be liable for all costs and expenses incurred by the State with respect thereto.

### **C. Remedy**

If an infringement action arises, the State shall have the right to require Contractor to take one of the following actions at Contractor's sole expense, to-wit:

- i.** Obtain the right for the State to continue using the Service or Work Product provided by Contractor hereunder,
- ii.** Replace the Service or Work Product provided by Contractor hereunder with a non-infringing Service or Work Product provided by Contractor hereunder that has equivalent functionality,
- iii.** Modify the Service or Work Product provided by Contractor hereunder so that it retains equivalent functionality, but is non-infringing, or
- iv.** Reimburse the State for the removal and replacement of the Service or Work Product provided by Contractor hereunder.

## **17. REPRESENTATIONS**

### **A. Licenses, Permits, Etc.**

Contractor represents that as of the Effective Date it has, and that all times during the term hereof it will have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform the Services specified herein. Additionally, Contractor shall ensure that its employees, agents, and subcontractors hold any licenses or certification required to perform their duties. Contractor, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform this Contract, shall be deemed to be a default by Contractor and grounds for termination for cause of this Contract.

### **B. Compliance with Law and Policies**

Contractor represents that it will require compliance with the provisions of this section by all of Contractor's agents and subcontractors performing Contractor's obligations under this Contract.

- i. General**

Contractor represents that it will at all times strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract.

**ii. Information Technology Specific**

Contractor represents that it will at all times comply with all State Cyber Security Policies and all confidentiality and non-disclosure agreements, security controls, and reporting requirements. Software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the United States of America (“USA”) or other country. Contractor represents that it will comply with all export and re-export laws and regulations, including without limitation,

- a) local license or permit requirements,
- b) export, import and customs laws and regulations (such as the export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the USA or any other country) which may apply to certain equipment, Software and technical data provided hereunder, and
- c) all applicable foreign corrupt practices acts.

**C. Legal Authority**

Contractor represents that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind Contractor to its terms. The person signing and executing this Contract on behalf of Contractor hereby represents, warrants, and, guarantees that he/she has full authorization to do so.

**D. Tax Exempt Status**

The State represents that it is not liable for any sales, use, excise, property or other taxes imposed by any federal, state or local governmental authority, nor for any Contractor franchise or income related tax. Taxes of any kind shall not be charged to the State. The State’s FEIN # is 84-0644739 and its tax exempt # is 98-02565.

**18. INSURANCE**

Contractor shall obtain and maintain insurance as specified below herein at all times prior to the termination or expiration of this Contract, to wit:

**A. Worker’s Compensation**

Worker’s Compensation Insurance as required by state statute, and Employer’s Liability Insurance covering all of the Contractor’s employees acting within the course and scope of their employment.

**B. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

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

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

**C. Automobile Liability**

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

**D. Additional Insured**

The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies.

**E. Primacy**

Coverage required of the Contract shall be primary over any insurance or self-insurance program carried by the State.

**F. Cancellation**

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

**G. Subrogation Waiver**

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

**H. Satisfactory Insurers**

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

**I. Certificates**

Contractor shall provide certificates evidencing insurance coverage required hereunder to the State within (7) seven business days of the Effective Date or before commencement of Contractor's performance hereunder, whichever occurs first. No later than 15 days prior to the expiration date of any such coverage, Contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term hereof, the State may request in writing, and the Contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

**J. Public Entity**

Notwithstanding subsection A, above, if Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §CRS 24-10-101, et seq., as amended ("Act"), Contractor may at all times during the term of this Contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, Contractor shall show proof of such insurance satisfactory to the State.

**19. DEFAULT-BREACH**

**A. Defined**

In addition to any breaches or defaults specified in other sections of this Contract, including, but not limited to the Colorado Special Provisions, the failure of either Party to perform any of its obligations hereunder entirely, partially, or in satisfactory manner, including, but not limited to, performing them in a timely manner, constitutes a default or breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar legislation, by or against the Contractor, or the appointment of a receiver or similar officer for the Contractor or any of its property, and such proceedings or appointments are not vacated or fully stayed within 20 days after the institution or occurrence thereof; shall also constitute a default.

**B. Notice and Cure Period**

In the event of a default or breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in the Notice section of this Contract. If such default or breach is not cured within 15 days of receipt of written notice or cure of the default or breach has not begun within said period or has not been pursued with due diligence, the aggrieved Party may terminate this Contract by providing written notice thereof, given in the manner provided for in the Notice section of this Contract, effective 15 days from the date the notice of termination was received.

**20. REMEDIES**

If Contractor is in default under any provision of this Contract including, but not limited to the Special Provisions, the State shall have all of the remedies listed in this section in addition to all other remedies set forth in other sections of this Contract and as available at law or in equity. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. Liquidated Damages**

If Contractor is given notice of delay or nonperformance and fails to cure such non-performance or delay in the time specified, in addition to any other damages that are applicable hereunder or at law or in equity, Contractor, at the option of the State, shall be liable for liquidated damages in as set forth in in the amount of \$1,000 per calendar day from date set for cure until either the State reasonably obtains similar performance, if the Contractor is terminated for default, or until Contractor provides performance, if Contractor is not terminated for default. If Contractor's delay or nonperformance is excused by subsection **20.B** (Termination for Cause and/or Default) of this contract, liquidated damages shall not be due to the State. The Parties agree that the damages from breach of this contract are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the State from late performance, including costs of additional inspection and oversight, and lost opportunity for additional efficiencies that would have attended on-time completion of performance. Assessment of liquidated damages shall not be exclusive or in any way limit remedies available to the State at law or equity for any default or breach by Contractor. The State may require Contractor to make direct payment of such liquidated damages.

**B. Termination for Cause and/or Default**

If Contractor fails to perform any its obligations hereunder with such diligence as is required to ensure their completion in a timely manner and such non-performance continues following notice, the State may notify Contractor in writing of such non-performance which specifies a cure period. If Contractor thereafter fails to promptly cure such non-performance within such time, the State, may, at its option, terminate this entire Contract or such part of this Contract as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.

**i. Method and Content**

The State shall give written notice of termination to Contractor in accordance with the notice provisions hereof specifying the effective date of termination and whether it affects all or a portion of this Contract.

**ii. Obligations and Rights**

To the extent specified in the termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall also terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Services Work Product not cancelled by the termination notice and may incur obligations as are necessary to do so within the Contract terms. In the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. In the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this Contract shall, at the option of the State, be delivered by Contractor to the State and shall become the State's property.

**iii. Payments**

The State shall only reimburse Contractor for accepted Services and Work Product received up to the date of termination. If, after termination, it is determined that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated for public interest, as described below herein.

**iv. Damages and Withholding**

Notwithstanding any other remedial action by the State, Contractor also shall remain liable to the State for any damages sustained by the State by virtue of any default under this section by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. Further, the State may withhold amounts due to Contractor as the State deems necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to

reimburse the State for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Services or substitute Goods as cover.

**C. Early Termination for the Public Interest**

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not be deemed a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or default by Contractor, which shall be governed by the Termination for Cause and/or Default subsection of this Remedies section.

**i. Method and Content.**

The State shall give written notice of termination to Contractor in accordance with the notice provisions of §21 below, specifying the effective date of termination and whether it affects all or a portion of this Contract.

**ii. Obligations and Rights.**

To the extent specified in the termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall also terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Services Work Product not terminated by the termination notice and may incur obligations as are necessary to do so within the Contract terms. In the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this Contract or materials owned by the State in the possession of Contractor shall, at the option of the State, be delivered by Contractor to the State and shall become the State's property. Contractor shall complete and deliver to the State all Services and Goods not terminated by the termination notice and may incur obligations as are necessary to do so within the Contract terms.

**iii. Payments.**

If this Contract is terminated by the State for public interest, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed bear to the total Services covered by this Contract, less payments previously made. Additionally, if the Contract is less than 60% completed, the State may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) it incurred that are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that reimbursement shall not exceed the maximum amount payable under this Contract to Contractor.

**D. Remedies Not Involving Termination**

The State, its sole discretion may exercise the following remedies in addition to its other remedies, to-wit:

**i. Suspend Performance**

Suspend Contractor's performance pending necessary corrective action as specified by the State without the entitling Contractor to adjustment in price/cost or schedule; and/or

**ii. Withhold Payment**

Withhold payment to the Contractor until corrections in services are satisfactorily completed and /or acceptable goods are provided; and/or

**iii. Deny Payment**

Deny payment for those services not performed and/or not provided and which due to circumstances caused by the Contractor cannot be performed, or if performed, would not be of value to the State; provided any denial of payment must be reasonably related to the value of work or performance lost to the State; and/or

**iv. Removal**

Demand removal of Contractor's employees, agents, or subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or not in the State's best interest; and/or

**v. Deduction for Unsatisfactory Performance**

Contractor's failure to satisfactorily perform all or part of its obligations under **Exhibit A** in a timely manner shall give the State the right to perform such obligations itself or via third-party contractor, and deduct payment for such performance from compensation due to Contractor hereunder.

**21. NOTICE and REPRESENTATIVES**

**A. Notice**

All notices required to be given hereunder shall be hand delivered with receipt required, or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**B. Representatives**

The individuals listed below are the principal representatives of the respective Parties. With respect to the State's representative(s), they have authority to inspect and reject goods and services, approve invoices for payment, and act otherwise for the State, except with respect to the execution of modifications to or termination of this Contract. For the purposes of this Contract, the official representative(s) and addresses of the Parties are:

**i. State:**

Trevor Timmons, CIO  
1700 Broadway, Suite 300  
Denver, CO 80290  
303-894-2200, ext. 6602  
Trevor.timmons@sos.state.co.us

**ii. Contractor:**

**22. GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision to the contrary, nothing herein constitutes a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §CRS 24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

**23. MISCELLANEOUS**

**A. Assignment**

Except as otherwise specifically provided in **Exhibit A**, Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted, without the prior, written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All subcontracts/subcontractors approved by Contractor or the State shall be subject to the provisions hereof. Contractor shall be solely responsible for all subcontracting arrangements, directions, and performance, including, but not limited to, performance of Services. Contractor shall require and ensure that each subcontractor assents in writing to all the provisions hereof, including indemnifying the State as required under the Colorado Special Provisions, below herein.

**B. Binding Effect**

Unless otherwise provided herein, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

**C. Captions**

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

**D. Counterparts**

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**E. Dispute Resolution**

If the Parties are unable to resolve a dispute with respect to performance of this Contract, such dispute shall be submitted in writing to the CDOS Chief Information Officer (CIO) and Contractor's [redacted] for resolution; if the CDOS CIO and Contractor's [redacted] are unable to resolve the dispute to the satisfaction of both parties within ten (10) days, the dispute shall be submitted in writing to the Colorado Secretary of State (SOS) and the Contractor's Chief Executive Officer (CEO) for resolution. If the SOS and CEO are unable to resolve the dispute with 10 days, either Party may pursue any remedy available to it at law or in equity.

**F. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

**G. Jurisdiction and Venue**

All suits, actions, or proceedings related to this Contract shall be held in the State of Colorado and the Parties hereby agree that venue shall be proper in the City and County of Denver.

**H. Modification**

**i. By the Parties**

Except as specifically provided herein, modifications of this Contract shall not be effective unless agreed to by both Parties in a written amendment to this Contract, properly executed and approved in accordance with Colorado State Law and Colorado State Controller Fiscal Rules and Policies.

**ii. By Operation of Law**

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

**I. Order of Precedence**

The provisions of this Contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions;
- ii.** Remaining pages of the Contract;
- iii.** Exhibit A,
- iv.** Exhibit B

**J. Severability**

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

**K. Survival of Certain Contract Terms**

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

**L. Third Party Beneficiaries**

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

**M. Waiver**

Waiver of any breach of a term, provision, or requirement of this Contract, any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

**N. Work Environment, Equipment and Travel Expenses**

Unless otherwise agreed by the Parties, work performed by Contractor under this Contract will be performed at the CDOS office location at 1700 Broadway, Denver, Colorado.

**i. Work Environment and Equipment**

At no cost to Contractor, if CDOS determines there is a need for Contractor to work on-site at the CDOS main office location, CDOS will provide to Contractor adequate work space for up to two persons to perform services as described in **Exhibit A**; use of telephones and office equipment; access to the building, office, and the Internet; access to the System as CDOS deems necessary for Contractor to evaluate the project. Contractor will provide its own laptop computers, software, cell phones or other such devices, as Contractor deems necessary to perform the Services under this Contract. Contractor is an independent contractor, however, Contractor agrees that, if working at the Denver location, Contractor personnel will adhere to policies, processes, and procedures required of CDOS Information Technology employees, including building/office access and computer security policies. Any state property afforded Contractor shall be returned in good working condition at the end of this Contract.

**ii. Travel Expenses**

Contractor is responsible for all travel-related expenses, including mileage, meals, and parking, to perform the obligations under this Contract at the CDOS office. In the event CDOS requests Contractor to perform services outside the Denver Metropolitan Area (such as a county location) while working on-site at the Denver location, Contractor will be reimbursed for allowable travel expenses as are paid for state employees and as defined in the State Fiscal Rules; such travel must be preapproved by the CIO or his designee to be reimbursed.

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## 24. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.** *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

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**25. SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p align="center"><b>CONTRACTOR</b> <b>Legal Name of Contractor</b></p> <p>By: Name of Authorized Individual Title: Official Title of Authorized Individual</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center"><b>STATE OF COLORADO</b> <b>Bill Ritter, Jr. GOVERNOR</b> <b>Department of State</b> Bernie Buescher, Secretary of State</p> <p>_____</p> <p align="center">By: Name and Person Signing for Department</p> <p>Date: _____</p>
<p align="center">(Second Contractor Signature, if Required)</p> <p>By: _____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____</p> <p align="center">Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.**

<p align="center"><b>STATE CONTROLLER</b> <b>David J. McDermott, CPA</b></p> <p>By: _____</p> <p align="center">Date: _____</p>
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**EXHIBIT A – STATEMENT OF WORK**

Contract Routing Number

In consideration of Quest Information Systems, Inc. (“Quest”) and the State of Colorado, acting by and through the Department of State (“CDOS”) disclosing to the undersigned certain confidential, proprietary, copyrighted, and/or trade-secret information of Quest and/or CDOS (“Confidential Information”), the undersigned agrees as follows:

1. Confidential Information means information in oral and/or written form that relates to past, present, and future research, development, business activities, products and services, including computer software, that have been identified by Quest or CDOS as confidential. Computer software means all sets of statements, instructions or programs, whether in human or machine readable form, that are expressed, fixed, embodied or stored in any manner and that can be used directly or indirectly in a computer (“computer programs”); any report format, design or drawing created or produced by such computer programs; and all documentation, design specifications and charts, and operating procedures which support the computer programs.
2. The undersigned will not disclose the Confidential Information in any manner to anyone other than persons within the undersigned’s organization and CDOS personnel who have a need to know for the purpose set forth in the agreement between CDOS and the undersigned. Under no circumstances will the undersigned disclose the Confidential Information to any third party.
3. The Confidential Information in whatever form is the property of either Quest or CDOS, shall remain so at all times, and may be used by the undersigned only for the purposes for which the CDOS or Quest disclosed the information. The undersigned may not copy the Confidential Information without the express prior written consent of Quest or CDOS. Any permitted copies or other written materials incorporating Confidential Information shall be the sole property of Quest or CDOS and must be returned to Quest or CDOS or destroyed upon the first to occur of (a) completion of the undersigned’s approved use or (b) at the request of Quest or CDOS.
4. The undersigned will have no interest in the Confidential Information, including, without limitation, no interest in know-how, copyright, trademarks or trade names, notwithstanding the fact that the undersigned may have created or contributed to the creation of the same. No license under any trade secrets, copyrights, or other rights of Quest or CDOS is granted by this agreement or any disclosure of Confidential Information hereunder.
5. The Confidential Information disclosed and/or made available to the undersigned is valuable to Quest and/or CDOS and any threatened or actual breach of this agreement would cause irreparable injury to Quest or CDOS, for which monetary damages would be inadequate. Quest or CDOS shall have the right to seek an immediate injunction enjoining any such breach or threatened breach of this agreement. The undersigned will be responsible for all costs, including but not limited to attorney fees incurred by Quest and/or CDOS in any action enforcing the terms of this agreement.
6. The undersigned shall promptly advise CDOS in writing of any unauthorized use or disclosure of Confidential Information of which the undersigned becomes aware and shall provide reasonable assistance to CDOS to bring about the cessation of such unauthorized use or disclosure.
7. Upon the request of CDOS or when the undersigned no longer needs the use of the Confidential Information, the undersigned will turn over to the State all documents, disks or other computer media, or other material in the possession or control of the undersigned that may contain or be derived from ideas, concepts, creations, or trade secrets and other proprietary and Confidential Information as defined in this agreement.

8. This agreement shall become effective on the date any Confidential Information is first made available to the undersigned.
9. The obligations to ensure and prevent the disclosure of the Confidential Information imposed on the undersigned will last indefinitely.

Agreed and Accepted:

Entity Name:

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)