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PARTICIPATING ADDENDUM
to NASPO ValuePoint
Cloud and Software Solutions
Administered by the State of Utah
with SHI International Corp
Master Agreement No. LS5021
And
The State of Colorado
Contract # 209140

1. **PARTIES AND SCOPE**

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the "Participating Addendum"), is entered into by and between **SHI International Corp** (the "Contractor"), and the State of Colorado (the "State"). This Participating Addendum covers participation in the **Cloud and Software Solutions** Master Agreement led by the State of **Utah** (the "Master Agreement"), for use by State agencies and other entities located in Colorado which are authorized by law to utilize State contracts with the prior approval of the State Purchasing Director. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit C, Products and Price List** of this agreement.

2. **COOPERATIVE PURCHASING / STATE PRICE AGREEMENT**

This Participating Addendum is established under 1 CCR 101-9 R-24-102-202-01 as a State Price Agreement. Agencies, political subdivisions and other entities (including cooperatives) authorized by the State's statutes and rules to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. **STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY**

To the extent not modified by this Participating Addendum and all its exhibits, the Master Agreement and all its terms and conditions shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master

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Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.

4. **RESERVED**

5. **PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES**

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum. The Contractor's primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

Primary Contact for the State:	**Primary Contact for the Contractor:**
Melissa Vorenberg Colorado State Purchasing & Contracts Office 1525 Sherman Street, 7th Floor Denver, CO 80203 Melissa.Vorenberg@state.co.us	Katelyn Rispoli SHI International Corp 290 Davidson Ave Somerset, NJ 08873 (732) 584-8425 Katelyn_Rispoli@shi.com

Each individual identified in this **§5** of the Participating Addendum shall be the primary contact of the designating Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's primary contact at the address set forth above or **(C)** as an email with read receipt requested to the primary contact at the email address, if any, set forth above. 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 primary contact at the address set forth above. Unless otherwise provided

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in this Participating Addendum, notices shall be effective upon delivery of the written notice.

In addition to the primary contact in this section, the Contractor shall also provide an individual who is ultimately responsible for the creation and submission of the quarterly volume report described in **Exhibit A** of this Participating Addendum. This individual, as named in this section, shall ensure that all required quarterly volume reports are accurate and delivered by the appropriate due date for that quarterly volume report. The Contractor may change this individual or their contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum.

Individual Responsible for Quarterly Volume Report Creation and Submission:

Katelyn Rispoli
SHI International Corp
290 Davidson Ave
Somerset, NJ 08873
(732) 584-8425
Katelyn_Rispoli@shi.com

6. **SUBCONTRACTORS**

The Contractor may only use Subcontractors, as defined in **Exhibit A. §4**, under this Participating Addendum if the State has provided written approval for the Contractor to use that Subcontractor. All such approved Subcontractors authorized in the State of Colorado, as shown on the dedicated Contractor website, are approved to provide sales and service support to the State and any Purchasing Entity in the State. The Contractor's Subcontractor's participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum, as appropriate.

7. **ORDERS**

Any Order placed by a Purchasing Entity in the State of Colorado for a Good or Service available under this Participating Addendum shall be deemed to be a sale (and governed by the prices and other terms and conditions) under the Master Agreement and this Participating Addendum unless the parties to the Order agree in writing that another contract or agreement applies to such Order or the terms of that Order control

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to the extent that they conflict with the terms of the Master Agreement or this Participating Addendum.

8. **HIPAA BUSINESS ASSOCIATE AGREEMENT**

The HIPAA Business Associate Agreement, attached as Exhibit E, is provided for reference purposes only. Individual Purchasing Entities may require Contractor, Subcontractor, or Third-Party Provider to sign a HIPAA Business Associate Agreement when applicable to their Order. Contractor is required to make affirmative efforts to assist the Purchasing Entity in the event that the Purchasing Entity seeks to execute a HIPAA BAA with a Subcontractor or Third-Party Provider relating to an Order placed under this Participating Addendum.

9. **ORDER OF PRECEDENCE AND ATTACHED EXHIBITS**

All of the exhibits listed in this section are attached to this Participating Addendum and are incorporated herein by reference. In the event of a conflict or inconsistency between this Participating Addendum and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

A. **Colorado Special Provisions in §20 of Exhibit A, State Specific Terms**
B. **A Purchasing Entity's Order with Contractor**
C. **Exhibit D, Information Technology Provisions**
D. **The provisions of this Participating Addendum**
E. **All other sections of Exhibit A, State Specific Terms**
F. **Exhibit B, Statement of Work**
G. **Exhibit C, Products and Price List**
H. **The terms and conditions of Contractor's Master Agreement, including all Attachments, except Attachment E, End User Agreements of the Master Agreement, which is specifically excluded from this Participating Addendum**
I. **Exhibit E, Sample HIPAA Business Associate Agreement, included for reference purposes only**

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's, Subcontractor's, or Third-Party Provider's website, any provisions

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incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement issued pursuant to and Order placed under this Participating Addendum that **(i)** requires a Purchasing Entity to indemnify or hold harmless Contractor or any other party, **(ii)** is in violation of State law as, regulations, rules, fiscal rules, policies, or other State, or Purchasing Entity requirements as deemed solely by the State or the applicable Purchasing Entity or **(iii)** is contrary to any of the provisions incorporated into **Exhibit A**, **§19** or the main body of this Participating Addendum.

In no event shall any terms and conditions on Contractor's, Subcontractor's, or Third-Party Provider's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement issued pursuant to any Order placed under this Participating Addendum diminish any security, privacy, or compliance obligations set forth in this Participating Addendum and/or Exhibit D.

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Signature Page

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

Contractor

SHI International Corp.

Signed by:
Paul Linhardt
1E59C13DA9B1490...

By: **Paul Linhardt**, Sr. Lead Contract Specialist

Date: 9/23/2026

State of Colorado

Jared S. Polis, Governor

Department of Personnel and Administration

State Purchasing and Contracts Office

Jana Locke, Executive Director

DocuSigned by:
John Chapman
EF45AFDEB51E414...

By: **Sherri Maxwell**, Chief Procurement Officer, or **John Chapman**, State Purchasing Manager

Date: 9/23/2026

In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.

State Chief Information Officer

Sarah Tuneberg, Chief Information Officer and Executive Director

DocuSigned by:
Jim Walker
BD7D01D03088400...

By: **Sarah Tuneberg** or CIO Delegate

Date: 9/23/2026

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

State Controller

Robert Jaros, CPA, MBA, JD

Signed by:
Stacey Song
9EA7748BA64F45E...

By: **Robert Jaros** or Controller Delegate

Effective Date: 9/23/2026

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PARTICIPATING ADDENDUM
EXHIBIT A
STATE SPECIFIC TERMS

1. **AUTHORITY**

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01., and its associated rules.

2. **PURPOSE**

The Parties are entering into this Participating Addendum for the Contractor to provide **CLOUD AND SOFTWARE SOLUTIONS** to Purchasing Entities. The Contractor was selected through **the State of Utah's NASPO ValuePoint Solicitation #BP24-1**.

3. **TERM**

A. **Initial Term - Work Commencement**

The Parties' respective performances under this Participating Addendum shall commence on or after the Effective Date or September 16, 2026, whichever is later, and shall be co-terminus with NASPO ValuePoint **Master Agreement #LS5021.** Unless this Participating Addendum is terminated earlier, as described herein, or the State cancels its participation as described in the Master Agreement (the "Term"), the term of the Participating Addendum shall follow the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended (See Section 3.B.).

B. **Extension of Term**

If the term of NASPO ValuePoint Master Agreement is extended for any reason, the Term of this Participating Addendum shall be automatically modified to account for that extension, so long as such extension complies with the Colorado Procurement Code.

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C. **End of Term Extension**

If this Participating Addendum approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor's primary contact listed in **§5** of the Participating Addendum and in accordance with **§5** of this Participating Addendum**,** may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Participating Addendum in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Participating Addendum.

D. **Order Term**

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

E. **Early Termination in the Public Interest**

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract 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 Participating Addendum by the State for breach by Contractor, which shall be governed by **§14.A.i**.

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i. **Method and Content**

The State shall notify Contractor of such termination in accordance with §5 of this Participating Addendum**.** The notice shall specify the effective date of the termination and whether it affects all or a portion of this Participating Addendum, and shall include, to the extent practicable, the public interest justification for the termination.

ii. **Obligations and Rights**

Upon receipt of notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§14.A.ii**.

iii. **Payments**

If the State terminates this Participating Addendum in the public interest, the Purchasing Entities shall pay Contractor according to their orders with the Contractor. The sum of any and all payments shall not exceed the maximum amount payable to Contractor under each order.

4. **DEFINITIONS**

The following terms shall be construed and interpreted as follows:

A. **"Administration Fee"** means the fee that is due to the State for the administration of this Participating Addendum, as described in **§7. A.** of this **Exhibit A**.

B. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.

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C. "**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.

D. **"Ceiling Price"** means the maximum price a Contractor or a Subcontractor may charge for a Good or Service under this Participating Addendum.

E. "**Chief Procurement Officer**" means the individual to whom the Executive Director of the Department of Personnel & Administration 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.

F. "**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.

G. **"Confidential Information"** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S. ("CORA").

H. "**Contract**" means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

I. "**Contract Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Participating Addendum.

J. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.

K. "**Deliverable**" means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Contractor's Work that is intended to be delivered to the State by Contractor.

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L. **"Effective Date"** means the date on which this Contract is approved and signed by the Colorado State Controller or designee., as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State's Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.

M. **"End of Term Extension"** means the time period defined in **§3. C.** of this Exhibit A.

N. **"Environmentally Preferable Products"** means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.

"Exhibits" means the exhibits and attachments included with Contract.

O. **"Extension Term"** means the time period defined in **§3. B.**

P. **"Goods"** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services. Additionally, it means collectively third-party software, and computer hardware resold by Contractor pursuant to an Order.

Q. **"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., or the discovery or reasonable suspicion that there is or may be an imminent threat or vulnerability that jeopardizes the Information Technology that may result in exploitation or exposure, or any defect or vulnerability with the potential to impact the ongoing resilience, security, and/or integrity of systems accessing State Records or the State's Information

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Technology. Incidents include, without limitation, any events impacting the State's Information Technology or State Records regardless of where such information is located, such as: unauthorized access or modification, denial of service, malware, spyware, worms, trojans, rootkits, man-in-the-middle, SQL injection, cross site scripting, ransomware, dns tunneling, password attack, email events, including business email compromise, phishing (spear or otherwise), whaling, brute force attacks, insider threats, web attacks, session hijacking, or URL interpretation.

R. **"Initial Term"** means the time period defined in **§3.A** of this **Exhibit A**.

S. **"Information Technology"** means:

i. Any technology and equipment described in §24-37.5-102(12), C.R.S. and any related Work or Deliverable(s);

ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; or

iii. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in information technology

T. **"Order"** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Participating Addendum from the Contractor, and shall include any modification to such a document.

U. **"Party"** means the State or Contractor, and **"Parties"** means both the State and Contractor.

V. **"Purchasing Entity"** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, government supported institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.

W. **"PCI"** means payment card information including any data related to credit card holders' names, credit card numbers, the account number, the security code,

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data stored on the card's chip or magnetic strip, or other credit card information as may be protected by state or federal law.

X. "**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

Y. "**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.

Z. "**Services**" means the services to be performed by Contractor as set forth in this Participating Addendum, and shall include any services to be rendered by Contractor as further described in an Order and/or a Scope of Work in connections with the Goods.

AA. **"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, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already

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known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

BB. **"State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.

CC. **"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.

DD. **"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.

EE. "**Subcontractor**" means third-parties, if any, engaged by Contractor pursuant to §19.B. to aid in performance of the Work. The term "Subcontractor" includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.

FF. "**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.

GG. "**Work**" means the Goods and/or Deliverables delivered and Services performed pursuant to this Contract.

HH. "**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,

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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 Participating Addendum that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

5. **STATEMENT OF WORK**

Contractor shall complete the Work as described in this Participating Addendum and in accordance with the provisions of all Exhibits attached hereto, and with any Purchasing Entity's Order. Contractor personnel shall work cooperatively with St

ate and Purchasing Entity staff to ensure the completion of the Work.

A. **Ordering and Order Fulfillment**

i. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.

ii. Any quote issued by the Contractor, any Subcontractor, or any Third-Party Provider pursuant to this Participating Addendum shall remain firm and valid for a minimum of thirty (30) calendar days from the date the quote is provided to the applicable Purchasing Entity.

iii. Any quote provided by the Contractor, Subcontractor, or any Third-Party Provider made under this Participating Addendum must include any additional required terms and conditions, including End User License Agreements. Any such additional terms not included with the quote shall be void per Section 19.K of this agreement.

iv. Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.

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v. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity's Orders.

vi. Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this Exhibit A.

vii. If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.

viii. Contractor's internet-based portal and electronic catalogs shall clearly designate that they are part of this Participating Addendum and shall have a link to the State's designated web location, as determined by the State. Contractor shall ensure that all Environmentally Preferable Products are clearly listed on internet-based portal and electronic catalogs.

ix. If Contractor provides an internet-based portal or electronic catalog, Contractor shall also provide paper catalogs or catalogs on other digital media upon request by a Purchasing Entity.

x. If Contractor's catalog will be either hosted on or accessed through the State's eCommerce system, when available, then Contractor shall comply with all policies, procedures and directions from the State in relation to hosting its catalog on or making its catalog accessible through that system. Contractor shall ensure that all information made available through the State's eCommerce system is accurate and complies with this Participating Addendum.

6. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

i. Contractor shall allow the State and Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the State or Purchasing Entity.

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ii. The State shall not pay any amount to Contractor under this Participating Addendum unless the State issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity that is not the State, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by a Purchasing Entity that is not the State.

B. **Payment Procedures**

i. **Invoices**

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity's Order. Contractor shall not invoice the State under any Order unless the State issued that Order. Contractor shall allow 45 days for the State and Purchasing Entities to pay an invoice following the receipt of the invoice, unless the State or a Purchasing Entity specifically agrees to a shorter time in an Order. State law and regulations provide that State payments made within 45 days are not considered delinquent, and unless otherwise agreed, State Purchasing Entities will pay interest on any unpaid balance beginning on the 45th day at the rate of 1% per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Contractor shall invoice State Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest rate. (§ 24-30-202(24), C.R.S., as amended.)

ii. **Payment Disputes**

Unless different procedures are specified in an Order, if Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the Purchasing Entity issuing the Order in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment

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or notification of the determination or calculation of the payment by that Purchasing Entity. The Purchasing Entity will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the Purchasing Entity's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the Purchasing Entity has concluded its review, and the Purchasing Entity shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iii. **Available Funds-Contingency-Termination of Order**

Purchasing Entities, except for authorized non-profit entities, are prohibited by law from making commitments beyond the term of the current Purchasing Entity's Fiscal Year. Payment to Contractor beyond the current Purchasing Entity's Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (See Colorado Special Provision). If federal funds, non-State funds or funds from any other source constitute all or some of the Contract Funds, the Purchasing Entity's obligation to pay Contractor shall be contingent upon such funding continuing to be made available for payment. Orders under this Participating Addendum shall be made only from Contract Funds, and the Purchasing Entity's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other Purchasing Entity funds are not appropriated, or otherwise become unavailable to fund an Order under this Participating Addendum, the Purchasing Entity may, upon written notice, terminate the Order, in whole or in part, without incurring further liability. The Purchasing Entity shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination of Order. A State Purchasing Entity Order termination shall otherwise be treated as if the Order was terminated in the public interest as described in §3. E. of this Exhibit A.

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The Purchasing Entity may initiate such termination by giving Contractor a written notice of termination, to the Contractor's primary contact in accordance with **§5** of the Participating Addendum, and by paying to Contractor any amounts which are due and have not been paid through the last day of the Fiscal Year for which appropriated funds are available. The Purchasing Entity shall endeavor to give notice of such termination not less than 30 days prior to the day of non-availability of funds, and shall notify Contractor of any anticipated termination.

iv. **Discount and Delinquency Period**

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

7. **PAYMENTS TO STATE**

A. **Administrative Fees**

i. Each State Fiscal Year quarter, Contractor shall, using a form as directed by the State, calculate an Administrative Fee equal to 1% of the total sales made under Orders during that State Fiscal Year quarter. Contractor shall pay the State the Administrative Fee for each State Fiscal Year quarter within 45 days following the end of that State Fiscal Year quarter.

ii. Contractor shall remit all administrative fees to the State's primary contact identified in §5 of the Participating Addendum and with the payee as "State of Colorado."

8. **REPORTING – NOTIFICATION**

A. **Volume Reporting**

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State's primary contact identified in **§5** of this Participating Addendum within 30 calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report

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shall be submitted in a form as directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:

   a. The total spent by each type of Purchasing Entity under this Participating Addendum.

   b. The total of the list price of all items purchased by each type of Purchasing Entity under this Participating Addendum.

   c. The total estimated price savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list price of all items purchased by each type of Purchasing Entity minus the total spent for that type of Purchasing Entity.

   d. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Participating Addendum.

   e. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.

   f. The amount of the total administrative fee due to the State.

   g. Any additional summary information as requested by the State.

ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:

   a. The name of the Purchasing Entity who the sale was made to.

   b. The date of the sale.

   c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended price for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list

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price for the item calculated by multiplying the quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list price.

d. Any other detail information as requested by the State.

B. **Additional Operational Reporting**

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Participating Entities as requested by the State. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

C. **Environmentally Preferable Product Reporting**

Upon request by the State, the Contractor shall provide detailed reporting on environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, that are purchased or made available under this Participating Addendum. The scope and detail of such reports shall be agreed upon by the State and the Contractor. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

D. **Litigation Reporting**

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact identified in **§5** of the Participating Addendum.

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

i. **Performance Outside the State of Colorado**

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact in accordance with **§5** of the Participating Addendum and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds.

ii. **Performance outside of the United States**

Contractor shall request written approval from the applicable Purchasing Entity, prior to the Effective Date of any Order placed under this Participating addendum, for Contractor to perform, or subcontract to perform, Services outside the United States, including accessing State Records or the State' Information Technology. The Purchasing Entity may approve or deny such request within the Purchasing Entity's sole discretion, whether or not services outside the United States are prohibited or restricted by any Exhibit attached to this Contract. Following written approval from the Purchasing Entity, Contractor shall comply with the notice provisions for performance outside the United States, as set forth in §24-102-206, C.R.S. Any notice provided to the Purchasing Entity by Contractor regarding performance outside the United States shall be

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deemed ineffective if the Purchasing Entity has not granted prior written approval for such performance.

a. Notwithstanding anything to the contrary in this Contract, Contractor shall not access or process Federal Tax Information ("FTI") or Criminal Justice Information ("CJI"), or the State's Information Technology that connects to such information, from outside the United States, including accessing or processing by Contractor's employees, agents, or Subcontractors.

iii. **SOC 1 Type II Annual Report**

If any Order placed by a Purchasing Entity requires Contractor to perform Work for any of the State's Information Technology systems that impact the State's Comprehensive Annual Financial Report as determined by the Colorado Office of the State Controller, Contractor, on an annual basis, shall deliver to the Purchasing Entity, at Contractor's sole cost and expense, Contractor's System and Organization Controls 1 Type II Report ("SOC 1 Type II Report") for each fiscal year prepared by a qualified independent audit firm with respect to the Statement on Standards for Attestation Engagements, Reporting on Controls at a Service Organization (SSAE) as promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants, as amended, from time to time.

9. CONTRACTOR RECORDS

A. Maintenance

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

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

B. **Inspection**

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than ten (10) 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 Contractor's performance of its obligations under this Participating Addendum using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. **Final Audit Report**

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

E. **Periodic Business Reviews**

i. The State may schedule periodic business reviews to review Contractor's performance under this Participating Addendum.

ii. Contractor shall ensure personnel assigned to the Participating Addendum are available for these meetings with the State as scheduled by the State.

iii. Contractor's primary contact designated in this the Participating Addendum shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

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10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(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 Contract 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 Contract , if applicable. Contractor shall immediately forward any request or demand for State Records to the State's primary contact as identified in the Participating Addendum.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Participating Addendum. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions

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at least as protective as those in this Participating Addendum, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

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

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

D. **Incident Notice and Remediation**

If Contractor becomes aware of any Incident, it shall notify the State within 24 hours of discovery and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. The Contractor shall provide regular, as reasonably requested, no less than weekly, videoconference, telephone, or email updates, during this collaborative investigation. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor 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

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limited to, developing and implementing a remediation plan at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Where an independent assessment is necessary to evaluate the impact of such Security Incident on State Data, Contractor shall engage a qualified independent third-party, selected by Contractor and subject to the State's approval, which shall not be withheld, conditioned, or delayed without justification from the State. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. **Data Protection and Handling**

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

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F. **Safeguarding PII**

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form 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. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor'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 Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, a PII Certification, provided by the Purchasing Entity, when applicable to their Order, on an annual basis. Contractor's duty and obligation to certify shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor 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.

11. **CONFLICTS OF INTEREST**

A. **Actual Conflicts of Interest**

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

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related to the award of, entry into or management or oversight of this Participating Addendum.

B. **Apparent Conflicts of Interest**

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

C. **Disclosure to the State**

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

12. **INSURANCE**

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for goods or Services or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. All insurance policies required by this Participating Addendum shall be issued by insurance companies as approved by the State.

A. **Workers' Compensation**

Workers' Compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment. Insurance must stay in place and in effect even if the contract term expires, until all product or terms of the contract are completed and satisfied up to 120 days after contract term expires.

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B. **General Liability**

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

i. $1,000,000 each occurrence;

ii. $2,000,000 general aggregate;

iii. $1,000,000 products and completed operations aggregate; and

iv. $50,000 any one fire.

C. **Automobile Liability**

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

D. **Cyber/Network Security and Privacy Liability**

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

i. $5,000,000 each claim; and

E. $5,000,000 general aggregate. **Professional Liability Insurance**

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

a. $1,000,000 each claim;

b. $1,000,000 general aggregate.

F. **Crime Insurance**

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

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i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

G. **Additional Insured**

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

H. **Primacy of Coverage**

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

I. **Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§5** of the Participating Addendum within 7 days of Contractor's receipt of such notice.

J. **Subrogation Waiver**

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

K. **Public Entities**

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

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terms of this Participating Addendum, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. **Certificates**

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Participating Addendum within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following Contractor's execution of the subcontract. No later than seven (7)days after the renewal date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§12**.

13. **BREACH OF CONTRACT**

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

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remedy in this Contract as of the date that the debarment or suspension takes effect.

14. **REMEDIES**

A. **State's Remedies**

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

i. **Termination for Breach**

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

If after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest under **§3. E.**

ii. **Remedies Not Involving Termination**

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

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's

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directive, and neither the State nor any Purchasing Entity shall be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

Demand immediate removal of any of Contractor'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 Participating Addendum is deemed by the State to be contrary to the public interest or the State's best interest.

c. Intellectual Property

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

B. **Contractor's Remedies**

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in **§13** and the dispute resolution process in **§15** shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

C. **Purchasing Entity's Remedies**

i. If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that

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Order, all remedies listed in §14. A. ii above, all remedies listed here in §14.C and all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

ii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

iii. Payments and Damages

a. Notwithstanding anything to the contrary, Purchasing Entities shall only pay Contractor for accepted Work received as of the date of termination. A Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary until Contractor corrects its Work or to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the Purchasing Entity in procuring from third parties replacement Work as cover.

b. Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages.

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

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15. **DISPUTE RESOLUTION**

A. **Order Disputes, Termination and Resolution**

i. If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with **§5** of the Participating Addendum. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contract of any Order.

ii. A Purchasing Entity may terminate an Order if it determines that Contractor was in breach of that Order. Termination of an Order shall not terminate any other Order or this Participating Addendum.

iii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

B. **Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum which cannot be resolved by the designated Participating Addendum primary contacts, as identified in **§5** of the Participating Addendum, or through a dispute on an Order shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

C. **Resolution of Controversies arising under this Participating Addendum**

If the initial resolution described in **§15.B**. fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office as described in in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-

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505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

D. **Resolution of Disputes between Purchasing Entity and Subcontractors or Third-Party Providers**

Contractor is required to make affirmative efforts to assist in the resolution of any dispute that arises between a Purchasing Entity and a Subcontractor or Third-Party provider relating to any order placed pursuant to this Participating Addendum.

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

A. **Work Product**

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

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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 Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the Purchasing Entity 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 Purchasing Entity may assign and license its rights under this license.

ii. Patents

In addition, Contractor grants to the Purchasing Entity (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 Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the Purchasing Entity.

iii. Assignments and Assistance

Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under

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17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire. Contractor 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.

B. **Exclusive Property of the State**

Except to the extent specifically provided elsewhere in this Contract, 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 Contractor are the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Participating Addendum without the prior written consent of the State. Upon termination of this Participating Addendum for any reason, Contractor 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 Contractor**

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(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.

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17. **OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT**

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

18. **STATEWIDE CONTRACT MANAGEMENT SYSTEM**

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

19. **GENERAL PROVISIONS**

A. **Assignment**

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

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approved by the State shall be subject to the provisions of this Participating Addendum.

B. **Subcontracts**

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

C. **Binding Effect**

Except as otherwise provided otherwise within, all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. **Authority**

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

E. **Captions and References**

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

F. **Counterparts**

This Participating Addendum 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.

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G. **Entire Understanding**

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

H. **Digital Signatures**

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

I. **Modification**

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

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

Any reference in this Participating Addendum 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 Participating Addendum.

K. **External Terms and Conditions**

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor’s, Subcontractor’s, or Third-Party Provider’s website or any provision

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incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

Notwithstanding the foregoing, a Purchasing Entity may negotiate an end user license agreement, terms of service, subscription agreement, a Business Associate Agreement (BAA), or similar document ("Supplemental Agreement") that governs the use, licensing, compliance, and service delivery of an applicable product or service. Once negotiated by the Purchasing Entity and Contractor, Subcontractor, or Third-Party Provider, the Supplemental Agreement shall apply to the applicable Order and therefore subject to the Order of Precedence in Section 9 of this Contract.

L. **Severability**

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

M. **Survival of Certain Contract Terms**

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

N. **Taxes**

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any

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exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Contractor shall honor any tax exemption that any Purchasing Entity has, and shall not charge any Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

O. **Third Party Beneficiaries**

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in **§19.A,** this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Participating Addendum 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 Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

P. **Waiver**

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

Q. **CORA Disclosure**

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

R. **Standard and Manner of Performance**

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

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S. **Licenses, Permits, and Other Authorizations**

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

T. **Indemnification**

i. **General Indemnification**

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

ii. **Confidential Information Indemnification**

Disclosure or use of State Confidential Information by Contractor in violation of **§8** may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

iii. **Intellectual Property Indemnification**

Contractor shall indemnify, save, 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

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Parties in relation to any claim that any Deliverable, Service, or Work Product provided by Contractor under this Contract (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor's obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or Contractor's subsidiaries or affiliates; **(b)** specified by Contractor 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.

iv. **Accessibility Indemnification**

Contractor shall indemnify, save, hold harmless, and assume liability on behalf of the State, its officers, employees, agents and assignees (collectively the "Indemnified Parties") for any and all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and other amounts incurred by any of the Indemnified Parties in relation to Contractor's noncompliance 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, C.R.S. State employees are considered third parties for the purposes of this section.

U. **Accessibility**

i. Contractor shall comply with the *Accessibility Standards for Individuals with a Disability,* as adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S.

ii. The State may require that the Contractor's compliance with the *Accessibility Standards for Individuals with a Disability* adopted by the

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Office of Information Technology pursuant to §24-85-103 C.R.S. is determined and tested by a qualified third party selected by the State. The State may ask the Contractor to review the selection of the third party. Contractor shall be responsible for all costs associated with the third-party vendor's assessment. If Contractor is not in compliance as determined by the third-party vendor, at the State's request and at the State's direction, Contractor shall promptly take all necessary actions to come into compliance using a State-approved vendor, at no additional cost to the State.

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

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

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

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

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

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

C. **GOVERNMENTAL IMMUNITY**

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

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D. **INDEPENDENT CONTRACTOR**

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

E. **COMPLIANCE WITH LAW**

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

F. **CHOICE OF LAW, JURISDICTION, AND VENUE**

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

G. **PROHIBITED TERMS**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor’s liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void

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ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. **SOFTWARE PIRACY PROHIBITION**

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

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

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

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

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

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

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EXHIBIT B STATEMENT OF WORK

1. **GOODS AND/OR SERVICES**

   For a description of what the Participating Addendum will provide, see "ATTACHMENT B: Scope of Work" and "ATTACHMENT C: Pricing Catalog" of the Master Agreement #LS5021.

2. **OTHER PROJECT REQUIREMENTS**

   A. **Delivery of Goods and Performance of Services**

      i. Contractor shall provide all Goods and perform all Services described in each Order.

      ii. Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. All Goods shall be free on board ("F.O.B.") destination to the location specified in the Order.

      iii. If a good in an Order is out of stock, Contractor may only provide a substitute good if it has notified the Purchasing Entity for that Order, in writing, that the good is out of stock and has received the Purchasing Entity's approval to provide the substitute good. Purchasing Entities may request additional information comparing the substitute good with the original good in the Purchasing Entity's sole discretion.

   B. **Additional Terms**

      Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form, including, without limitation, terms regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Participating Addendum or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish receipt of Goods or completion of Services and shall not make any term of that form enforceable.

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EXHIBIT C PRODUCTS AND PRICE LIST

1. **CONTRACTOR HAS BEEN AWARDED THE FOLLOWING CATEGORIES:**
    1. Value-Added Reseller: SaaS
    2. Value-Added Reseller: IaaS
    3. Value-Added Reseller: PaaS
    4. Value-Added Reseller: On-Premise
    5. Value-Added Reseller: Value Added Services

The products and price list is located on the Contractor's dedicated NASPO website, hosted and maintained by the NASPO, and is incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the lead state and shall be effective when published on the dedicated NASPO website.

Contractor's NASPO website address:

https://www.naspovaluepoint.org/portfolio/cloud-and-software-solutions-2026-2036/shi-international-corp/

2. **PRICING**

A. **Price Lists**

The State may publish any pricing information under this Participating Addendum, including, without limitation the pricing information shown in this Exhibit C, Products and Price List, on the State's website and any other website as the State determines is necessary or efficient to facilitate the use of this Participating Addendum by Purchasing Entities.

B. **Price Decreases and Ceiling Prices**

The prices listed in this Exhibit C are Ceiling Prices, and Contractor may offer lower prices to Purchasing Entities, and Purchasing Entities may negotiate lower prices with Contractor, without the review or approval of the State. Contractor shall not allow a Subcontractor to charge an amount greater than the Ceiling Price for any Order.

C. **Environmentally Preferable Purchasing**

i. Contractor shall provide training regarding the environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing

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Policy, that are purchased or made available under this Participating Addendum. This training shall be provided at no additional cost, unless otherwise agreed upon by the Parties, and shall be presented at a time and in a manner as agreed upon by the Parties.

ii. The State reserves the right to request additional provisions and requirements to ensure this Participating Addendum is in compliance with all State regulations and policies, including all sustainable purchasing and environmentally preferable purchasing policies or executive orders.

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EXHIBIT D INFORMATION TECHNOLOGY PROVISIONS

This exhibit regarding **Information Technology Provisions** ("IT Exhibit") is an essential part of the agreement between the State and Contractor as described in the Contract to which this IT Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this IT Exhibit, all references to "Contract" shall include this IT Exhibit. If there is language in the main body of this Contract or any other Exhibit referencing "Force Majeure," or anything substantially similar to Force Majeure, this IT Exhibit shall not be subject to the "Force Majeure" language. The provisions of this IT Exhibit are of vital importance to the State and the security of the State.

1. PROTECTION OF SYSTEM DATA

A. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor accesses the State's Information Technology (defined below) or State Records by the State or its agents in connection with Contractor's performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this IT Exhibit. All provisions of this IT Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.

B. The terms of this IT Exhibit shall apply to the extent that Contractor's obligations under this Contract include the provision of Information Technology goods or services to the State. "Information Technology" is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:

i. Any technology and equipment described in §24-37.5-102(2), C.R.S.,and any related Work or Deliverable(s);

ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and

iii. Other existing or emerging technology, equipment, or related services that may require knowledge the supervisory authority and expertise in Information Technology.

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C. Contractor shall, and shall require its Subcontractors to meet all of the following:

i. Comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology ("OIT"), including change management, project lifecycle methodology and governance, technical standards, accessibility, documentation, and other requirements posted at https://oit.colorado.gov/standards-policies-guides/technical-standards-policies.

ii. Comply with State and federal laws, rules, and regulations related to security, privacy, confidentiality, integrity, availability, auditing and Incident Reporting.

iii. Provide that security is not compromised by unauthorized access, including but not limited to: workspaces, computers, networks, software, databases, or other physical or electronic environments.

iv. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State's Information Security Office ("ISO").

D. Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining or accessing the State's Information Technology systems, and evaluating physical and logical security control effectiveness.

E. Contractor shall perform current background checks in on all of its respective employees and agents performing services or having to access State Records provided under this Contract, including any Subcontractors or employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be considered current.

i. Upon request, Contractor shall provide written notice to a designated representative for the State indicating that background checks have been performed. Such written notice shall inform the State of any action taken in

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response to such background checks, including any decisions not to take action in response to information revealed by a background check.

ii. If Contractor will have access to Federal Tax Information ("FTI") on behalf of the State under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the prohibitions on offshore access and the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

2. **DATA HANDLING**

A. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery, without the prior written consent of the State. Contractor shall not maintain or store State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of ISO.

B. Contractor agrees to not disclose State Records except only to its employees, or Subcontractors, who have a need to know the information for the purpose of satisfying the requirements of the Contract. Contractor shall not disclose State Records to any third parties, or allow any third parties to access State Record, without the prior written authorization of the State.

C. Contractor shall not access or process Federal Tax Information or Criminal Justice Information, or systems that connect to such data, from outside the United States, including accessing or processing by Contractor's employees, agents, or Subcontractors.

D. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State Records.

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i. This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system schema as well as transformation definitions, or delimited text files with documents, and detailed schema definitions along with attachments in their native format.

ii. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided to Contractor by the State or its agents, and the copies thereof, to the State or destroy all such State Records and certify to the State that Contractor has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided to Contractor by the State or its agents, Contractor shall provide written notice to the State and guarantee the confidentiality of all State Records provided to Contractor by the State or its agents, and shall not access or actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.

E. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State the federal government or the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this IT Exhibit in accordance with the terms of this Contract.

3. **DELIVERY AND ACCEPTANCE**

A. Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.

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B. Contractor's delivery of any Work or Deliverables to the State shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.

C. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. Such communication shall be provided within a reasonable time period after the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor's gross negligence or willful misconduct.

4. **WARRANTY**

A. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 90days following delivery of any Work or Deliverable.

B. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 Business Days of the notice one or more recommendations for corrective action with sufficient

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documentation for the State to ascertain the feasibility, risks, and impacts of each recommendation. The State's remedy for such defect or material non-conformity shall be either:

i. Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or

ii. Contractor shall refund to the State all amounts paid for such Work or Deliverable, as well as pay to the State any additional amounts reasonably necessary for the State to procure alternative goods or services of substantially equivalent capability, function, and performance.

C. Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date that the State accepts, in writing, the corrected or replacement Work or Deliverable.

D. Contractor shall pass through to the State any warranties given by its third-party suppliers in connection with Goods sold by Contractor to the State under this Participating Addendum, to the extent permitted by the terms and conditions of such warranties.

5. **COMPLIANCE**

In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:

A. All ISO policies and procedures that ISO has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5. These policies and procedures are posted at https://oit.colorado.gov/standards-policies-guides/technical-standards-policies

B. All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as

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applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:

i. Health Information Portability and Accountability Act

ii. IRS Publication 1075

iii. Payment Card Industry Data Security Standard

iv. Federal Bureau of Investigation's Criminal Justice Information Service Security Addendum

v. Centers for Medicare & Medicaid Services Minimum Acceptable Risk Standards for Exchanges

vi. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration

C. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.

D. Contractor shall allow the State access and shall provide the State with information required to assess Contractor's compliance, at the Contractor's sole cost and expense. Such access and information shall include, at the State's sole discretion:

i. An annual fiscal year SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by ISO, including the performance of security audit and penetration tests, as requested by ISO.

E. If applicable and to the extent Contractor maintains and owns websites for the State's or Purchasing Entity's use, Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. Contractor shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most

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current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at https://www.w3.org/TR/WCAG21/. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include:

i. An annual summary of Contractor's IT General Control Audit; or the performance of security audit, as requested by OIS.

F. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application-level risk assessments, and other security assessment activities as required by this Contract or reasonably requested by OIS. Contractor will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the State. The State will work with Contractor and OIS to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and OIS will consider such requests in accordance with their policies and procedures referenced herein.

6. **TRANSITION OF SERVICES**

Upon request by the State and prior to expiration or termination of this Contract or of any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services designated solely by the State. Contractor shall perform all services related to such transition at no additional cost.

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7. **LICENSE OR USE AUDIT RIGHTS**

A. To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.

B. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.

C. If upon receipt of the State's Audit Certification, the Parties reasonably determine that: (i) the State's use of licenses, use of Deliverables, use of Goods, or any other use of the Services during the audit period exceeded the use restrictions and limitations contained in this Contract ("Overuse"); and (ii) the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.

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SAMPLE - EXHIBIT E, HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("Agreement") between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as "Covered Entity" and the Contractor is referred to as "Business Associate". Unless the context clearly requires a distinction between the Contract and this Agreement, all references to "Contract" shall include this Agreement.

1. Purpose

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information ("PHI"). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") enacted under the American Recovery and Reinvestment Act of 2009 ("ARRA") Pub. L. No. 111–5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the "HIPAA Rules") and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and all other applicable laws and regulations, all as may be amended.

2. Definitions

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

Business Associate. "Business Associate" shall have the same meaning as the term "business associate" at 45 C.F.R. 160.103, and shall refer to Contractor.

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Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103, and shall refer to the State.

Information Technology and Information Security. "Information Technology" and "Information Security" shall have the same meanings as the terms "information technology" and "information security", respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

3. Obligations and Activities of Business Associate

A. Permitted Uses and Disclosures.

Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.

To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.

Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:

the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;

the person notifies Business Associate of any Breach involving PHI of which it is aware.

Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.

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B. Minimum Necessary.

Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).

C. Impermissible Uses and Disclosures.

Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.

Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.

D. Business Associate's Subcontractors.

Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.

Business Associate shall provide to Covered Entity, on Covered Entity’s request, a list of Subcontractors who have entered into any such agreement with Business Associate.

Business Associate shall provide to Covered Entity, on Covered Entity’s request, copies of any such agreements Business Associate has entered into with Subcontractors.

E. Access to System.

If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available

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at https://oit.colorado.gov/standards-policies-guides/technical-standards-policies.

F. Access to PHI.

Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.

G. Amendment of PHI.

Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.

H. Accounting Rights.

Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.

I. Restrictions and Confidential Communications.

Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:

a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or

a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.

Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.

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Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.

J. Governmental Access to Records.

Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.

K. Audit, Inspection and Enforcement.

Business Associate shall obtain and update at least annually a written assessment performed byan independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.

Business Associate, upon

the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA RulesIf, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

L. Appropriate Safeguards.

Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.

Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.

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Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.

Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

M. Safeguard During Transmission.

Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.

Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

N. Reporting of Improper Use or Disclosure and Notification of Breach.

Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.

Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.

Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.

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Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity delay.

O. Business Associate's Insurance and Notification Costs.

Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:

loss of PHI data;Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and

claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.

All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).

Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.

Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

P. Subcontractors and Breaches.

Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.

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Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.

Q. Data Ownership.

Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.

R. Retention of PHI.

Except upon termination of this Agreement as provided in Section 5, below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.H, above, for a period of six years.

4. Obligations of Covered Entity

A. Safeguards During Transmission.

Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.

B. Notice of Changes.

Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.

Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. Termination

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A. Breach.

In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.

Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

B. Effect of Termination.

Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.

If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. Injunctive Relief

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance,

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and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

7. Limitation of Liability

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement. , which shall not be limited.

8. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

9. Certification

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

10. Amendment

A. Amendment to Comply with Law.

The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.

In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.

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Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.

Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.

Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:

Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or

Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.

B. **Amendment of Appendix.**

The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

11. Assistance in Litigation or Administrative Proceedings

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its

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employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

12. Interpretation and Order of Precedence

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

13. Survival

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.

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APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

This Appendix ("Appendix") to the HIPAA Business Associate Agreement ("Agreement") is s an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to "Contract" or "Agreement" shall include this Appendix.

1. **PURPOSE**

This Appendix sets forth additional terms to the Agreement. Any sub-section of this Appendix marked as "Reserved" shall be construed as setting forth no additional terms.

2. **ADDITIONAL TERMS**

A. Additional Permitted Uses.

In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:

Reserved.

B. Additional Permitted Disclosures.

In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:

Reserved.

C. Approved Subcontractors.

Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:

Reserved.

D. Definition of Receipt of PHI.

Business Associate's receipt of PHI under this Contract shall be deemed to occur, and Business Associate's obligations under the Agreement shall commence, as follows:

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Reserved.

E. Additional Restrictions on Business Associate.
Business Associate agrees to comply with the following additional restrictions on Business Associate's use and disclosure of PHI under the Contract:

Reserved.

F. Additional Terms.
Business Associate agrees to comply with the following additional terms under the Agreement:

Reserved.