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STATE OF COLORADO
INFORMATION TECHNOLOGY
AGENCY-SPECIFIC PARTICIPATING ADDENDUM
MAIN TASK ORDER CONTRACT

COVER PAGE

State Agency Governor's Office of Information Technology	**Contract Number** 179211
Contractor Ensono, LLC	**CORE Encumbrance Number** MA 2023-2068
	Contract Performance Beginning Date The later of the Effective Date or February 1, 2023
Contract Authority Authority to enter into this Contract exists in CRS § 24-37.5-105 and funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance, and coordination have been accomplished from and with appropriate agencies. The Contractor was selected in accordance with State law as a result of Solicitation SK18008 with the State of Utah that yielded Cooperative Contract #AR3099 with NASPO ValuePoint.	**Initial Contract Expiration Date** September 15, 2026

Contract Purpose
The Contractor shall provide Cloud Solutions as identified in Exhibit A – Scope of Services.

Exhibits and Order of Precedence
The following Exhibits and attachments are included with this Contract:

1. Exhibit A – Scope of Services
2. Exhibit A-1 – Infrastructure as a Service
3. Exhibit B – Pricing
4. Exhibit C – Sample Option Letter
5. Exhibit D – Information Technology Provisions
6. Exhibit E – Form of Task Order
7. Exhibit F – Personally Identifiable Information Certificate
8. Exhibit G – Safeguarding Requirements for Federal Tax Information
9. Exhibit H – HIPAA Business Associate Agreement

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

1. Exhibit H, HIPAA Business Associate Agreement (except for Section 7 which has been amended by Section 12 of the Contract)
2. Colorado Special Provisions in **§20** of the main body of this Contract.
3. Exhibit D, Information Technology Provisions.
4. The provisions of the other sections of the main body of this Contract.
5. Exhibits A and A-1, Scope of Services
6. Exhibit B, Pricing
7. Exhibit F, Personally Identifiable Information Certificate
8. Exhibit G, Safeguarding Requirements for Federal Tax Information
9. Executed Option Letters (if any).
10. Executed Task Orders (if any).
11. Contract #AR3099

Principal Representatives

For the State:
Alex Monts, CFO
601 E 18th Avenue
Suite 180
Denver, CO 80203
OIT_Contracts@state.co.us

For Contractor:
Chief Legal Officer
Ensono, LLC
3333 Finley Rd.
Downers Grove, IL 60515

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

CONTRACTOR
Ensono, LLC

By: DocuSigned by: Chris Garcia A8CFACA4CAB7451... *Signature

Printed Name: Chris Garcia

Title: VP, Deputy General Counsel

Date: 2/12/2023

STATE OF COLORADO
Jared S. Polis, GOVERNOR
Governor's Office of Information Technology
Anthony Neal-Graves, Chief Information Officer and Executive Director

By: DocuSigned by: Alexis Monts 4235987998F1488... *Signature

Printed Name: Alexis Monts

Title: CFO

Date: 2/13/2023

STATE OFFICE OF RISK MANAGEMENT
Julie Mileham, Director

By: DocuSigned by: Julie Mileham FBB7F60CBD11442... *Signature

Printed Name: Julie Mileham

Title: Director

Date: 2/13/2023

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: DocuSigned by: Amanda Cortney Carroll 2A9C40DF49BF4D5... *Signature

Printed Name: Amanda Cortney Carroll

Title: Central Contracts Specialist

Contract Effective Date: 2/13/2023

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1. PARTIES AND PARTICIPATION

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

This Agency-Specific Participating Addendum Main Task Order Agreement covers participation in the NASPO ValuePoint Master Agreement led by the State of Utah (the "Master Agreement"). The State agency named on the Cover Page is the only entity authorized to make purchases under this Contract as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

2. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

To the extent not modified by this Agency-Specific Participating Addendum Main Task Order Agreement and all its exhibits, the NASPO ValuePoint Master Agreement and all its terms and conditions shall apply to this Agency-Specific Participating Addendum Main Task Order Agreement. If any term of this Agency-Specific Participating Addendum Main Task Order Agreement conflicts with the NASPO ValuePoint Master Agreement, then this Agency-Specific Participating Addendum Main Task Order Agreement shall control for all transactions between the State and the Contractor under this Agency-Specific Participating Addendum Main Task Order Agreement. All terms defined in the NASPO ValuePoint Master Agreement shall have the meaning given to them in the NASPO ValuePoint Master Agreement, except for those terms specifically defined differently in this Agency-Specific Participating Addendum Main Task Order Agreement**.**

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3. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

The Parties' respective performances under this Contract shall commence on the Contract Performance Beginning Date and shall be co-terminus with NASPO ValuePoint Master Agreement AR3099. Unless this Agency-Specific Participating Addendum Main Task Order Contract is terminated earlier, as decribed herein, or the State cancels its participation as decribed in the Master Agreement (the "Term"), the term of the Agency-Specific Participation Addendum Main Task Order Contract shall follow the Master Agreement initial term and will be extended as decribed in this **§3.C.**

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of one year and under the same terms specified in the Contract (each such period an "Extension Term"). Any Extension Term(s) may be subject to an adjustment in rates in accordance with Exhibit B (Pricing) and any terms in the applicable Task Order. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

Reserved.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract or any Task Order ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract or that Task Order in whole or in part. A determination that this Contract or any Task Order should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract or any Task Order by the State for Breach of Contract by Contractor, which shall be governed by **§13**.

i. Method and Content

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

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ii. Obligations and Rights

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

iii. Payments

If the State terminates this Contract or a Task Order in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract (if the entire Contract is being terminated) or the Task Order (if only a Task Order is being terminated) that corresponds to the percentage of Work satisfactorily completed and accepted under all terminated Task Orders (if the entire Contract is being terminated) or the percentage of Work satisfactorily completed and accepted under the Task Order being terminated (if applicable), as determined by the State, less payments previously made. Additionally, if this Contract or Task Order is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract or Task Order, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations, provided that the sum of any and all reimbursement shall not exceed the Contract Maximum Amount payable to Contractor hereunder.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**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 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.

B. "**Business Day**" means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.

C. "**Chief Procurement Officer**" means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202, C.R.S., to procure or supervise the procurement of all supplies and services needed by the State.

D. "**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.

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

F. "**Contract Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract and all Task Orders.

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G. "**Contract Maximum Amount**" means an amount equal to the total of Contract Funds for all Task Orders issued pursuant to this Contract.

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

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

J. "**End of Term Extension**" means the time period defined in **§2.D.**

K. "**Effective Date**" means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature 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.

L. "**Exhibits**" means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.

M. "**Extension Term**" means the time period defined in **§2.C.**

N. "**Goods**" means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract or in Task Orders and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.

O. "**Incident**" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.,* C.R.S. Incidents include, without limitation, **(i)** successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; **(ii)** unwanted disruption or denial of service; **(iii)** the unauthorized use of a State system for the processing or storage of data; or **(iv)** changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

P. "**Initial Term**" means the time period defined in **§2.B.**

Q. **"Master Agreement"** means the NASPO ValuePoint Master Agreement led by the State of Utah based upon the Solicitation noted on the Cover Page.

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

S. "**PCI**" means payment card information including any data related to credit card holders' names, credit card numbers, or other credit card information as may be protected by state or federal law.

T. "**PII**" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and

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24-73-101, C.R.S.

U. "**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.

V. **"Project"** means a specific portion of the Work that is included in a Task Order.

W. "**Services**" means the services to be performed by Contractor as set forth in this Contract or in Task Orders, and shall include any services to be rendered by Contractor in connection with the Goods.

X. "**State Confidential Information**" means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

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

Z. "**State Fiscal Year**" means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

AA. "**State Records**" means any and all State data, information, and records, regardless of physical form.

BB. "**Subcontractor**" means any third party engaged by Contractor to aid in performance of the Work. For avoidance of doubt, third party software and hardware providers are not Subcontractors.

CC. "**Task Order**" means a document issued in accordance with **§4.B** of this Contract that specifically describes the Work to be performed on a Project.

DD. "**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.

EE. "**Work**" means the Goods delivered and Services performed pursuant to this Contract.

A. "**Work Product**" means the tangible and intangible results of the Work, whether

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finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any (i) material that was developed by Contractor prior to the Effective Date and (ii) material that is developed by Contractor independently of the Work or Services under this Contract.

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

5. STATEMENT OF WORK AND TASK ORDERS

A. General Statement of Work

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

B. Task Orders

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

i. Task Order Development

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

a. The Deliverables and other end results of the Project that the State will use to determine if the Project is complete and the dates on which those Deliverables and other end results will be complete.

b. All activities necessary for Contractor to complete the Project. This description may be in the form of a work breakdown structure if requested or approved by the State.

c. All timelines and milestones that the State will use to determine if Contractor is on schedule to complete the Project. This description may be in the form of a project plan if requested or approved by the State.

d. The total price of the Project, including a breakdown of any applicable materials costs, labor costs and other cost components as requested by the State as described in this Contract. The total price of a Project shall be determined based on the rates described in this Contract, and Contractor shall not include any work in a Task Order for which an applicable rate is not provided in this Contract.

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e. Contractor may complete a Project in phases, so long as all other requirements of this paragraph **5.B.i** are included for each phase of the Project.

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

ii. Task Order Issuance

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

iii. Task Order Completion

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

iv. Task Order Modifications

When the Parties desire to modify a Task Order, Contractor shall update its proposal that was included in the Task Order to account for the modification the Parties desire to make. If both Parties agree to the updated proposal, they may modify the Task Order by executing an amendment to the Task Order that includes the updated proposal. No modified requirement of a Task Order shall be enforceable prior to the execution of the amendment to the Task Order that includes that modification. This paragraph **5.B.iv** shall not apply to any modification to a Task Order that only modifies timelines within a Project without changing the due date of any Deliverable or other end result, or only modifies the breakdown of costs within a Project without changing the total maximum amount for any State Fiscal Year, which may be made if the State approves of the modification in writing.

v. Task Order Termination

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

6. PAYMENTS TO CONTRACTOR

A. Contract Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The Contract Maximum Amount for each State Fiscal Year shall be equal to the total maximum amount of all Contract Funds for Task Orders for that State Fiscal Year.

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

B. Payment Procedures

i. Invoices and Payment

a. The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A and the terms of each Task Order.

b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of

the Contract Funds, the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in **§2.E**.

7. REPORTING - NOTIFICATION

A. Quarterly Reports

Reserved.

B. Litigation Reporting

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

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

i. Performance Outside the State of Colorado

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

Notwithstanding the foregoing and for avoidance of doubt, the Parties hereby acknowledge and agree that Contractor is permitted to and will be providing Services outside of the State of Colorado. The Parties further agree that this notice is sufficient to meet the requirements of this section.

ii. Performance Outside of the United States

Contractor shall request written approval from the State, acting through the Office of Information Technology, for Contractor to perform, or subcontract to perform, Services outside the United States. The State may approve or deny such request within the State's sole discretion, whether or not services outside the United States are prohibited or restricted by any Exhibit attached to this Contract or any Task Order executed hereunder. Following written approval from the State,

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Contractor shall comply with the notice provisions for performance outside the State of Colorado. Any notice provided to the State by Contractor regarding performance outside the United States shall be deemed ineffective if the State has not granted prior written approval for such performance.

8. CONTRACTOR RECORDS

A. Maintenance

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

B. Inspection

Contractor shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than five 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. Any Contractor Records inspected, examined, copied, etc. pursuant to this section shall be subject to reasonable confidentiality obligations, as permitted by Colorado law, specifically 24-106-107, C.R.S., Colorado Open Records Act (CORA).

C. Monitoring

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

D. Final Audit Report

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

9. 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 Contract, permitted by law, or approved in writing by the State. Contractor

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shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(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 for Contractor owned and controlled systems; **(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 in accordance with the HIPAA Business Associate Agreement attached to this Contract as an Exhibit if applicable. Contractor shall immediately forward any request or demand for State Records to the State's Principal Representative identified on the Cover Page of this Contract.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns, and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors have signed agreements in place containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any State Confidential Information. Upon written request, Contractor shall attest and certify to the State that Contractor is in fully compliance with this section 9(B) or make all reasonable efforts to provide the State with requested information.

C. Use, Security, and Retention

Contractor shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Unless otherwise required by law or regulatory authorities, not more than once per calendar year and upon 14 days prior written notice, 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 Contract, 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, Contractor shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that Contractor and its agents, employees, and Subcontractors are not the cause or source of the Incident: (i) Contractor shall be responsible for the cost of

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notifying each person who may have been impacted by the Incident; (ii)after the 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 limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State, the State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State; (iii) 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; (iv) 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 and 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.

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.

10. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State

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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 Contract.

D. Contractor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S., with regard to this Contract. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Contractor employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Contractor shall provide a disclosure statement as described in **§9.C.** no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Contract. Contractor may also be subject to such penalties as are allowed by law.

11. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract.

A. Workers' Compensation

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

B. General Liability

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

i. $1,000,000 each occurrence;

ii. $1,000,000 general aggregate; and

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

C. Automobile Liability

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

D. Cyber/Network Security and Privacy Liability

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

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

ii. $2,000,000 general aggregate.

E. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PCI, PHI, Tax Information, and CJI, and claims based on alleged violations of privacy rights

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through improper use or disclosure of protected information with minimum limits as follows:

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

ii. $2,000,000 general aggregate.

F. Professional Liability Insurance

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

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

ii. $1,000,000 general aggregate.

G. Crime Insurance

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

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

ii. $1,000,000 general aggregate.

H. 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, applies only in the event of a loss due to Contractor's negligent acts.

I. 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.

J. Cancellation

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

K. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors stated in **§11(A), (B), and (C)** of this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

L. Public Entities

Intentionally omitted.

M. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 30 days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the

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

12. LIMITATION OF CONTRACTOR'S LIABILITY TO STATE

A. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOST OR IMPUTED PROFITS OR REVENUES, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, AND REGARDLESS OF WHETHER A PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY.

B. THE TOTAL AGGREGATE LIABILITY OF EACH PARTY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE GREATER OF (i) THIRTY-SIX (36) TIMES THE MONTHLY RECURRING CHARGE PAID OR PAYABLE IN THE MONTH IMMEDIATELY PRECEDING THE DATE IN WHICH THE CLAIM ARISES OR (ii) $1,000,000.00.

   i. This limitation under 12(B) shall not apply to Contractor's liability to the State for:

      a. Contractor's indemnification obligations to the State under **§19(T)** of this Contract; except for any claims that were caused by the State's actions or the State's direction to Contractor;

      b. Third party claims or damages arising out of bodily injury, including death, or damage to tangible property of the State; or

      c. Third party claims or damages resulting from the bad faith, or intentional misconduct of Contractor or its Subcontractors.

C. NOTWITHSTANDING ANYTHING TO THE CONTRARY AND FOR AVOIDANCE OF DOUBT THE PARTIES HEREBY AGREE TO AMEND SECTION 7 OF EXHIBIT H TO STATE THAT CONTRACTOR'S LIABILITY FOR EXHIBIT H IS LIMITED TO TWO (2) TIMES THE TOTAL CONTRACT VALUE.

D. NOTHING IN THIS AGREEMENT SHALL BE USED AS A PRECEDENT FOR FUTURE AGREEMENTS WITH THE STATE OF COLORADO.

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 **§13** for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice

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or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

14. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract, Statement of Work, or any Task Order and fails to cure such breach, the State, following the notice and cure period set forth in **§13** and the dispute resolution process in **§15 when applicable,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach of Contract

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from

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Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

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

d. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State, in its reasonable opinion, deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

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

iii. Notwithstanding anything to the contrary and for avoidance of doubt, the State does not retain a right to terminate for convenience.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract or a Task Order and does not cure such breach, Contractor, following the notice and cure period in **§13** and the dispute resolution process in **§15**, shall have all of the remedies listed in this section in

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addition to all remedies available at law and equity. Contractor may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach of Contract

In the event of the State's uncured breach, Contractor may terminate this Contract or the applicable Task Order, which is the subject of the breach, in whole.

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in **§15.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract, Statement of Work, or a Task Order by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S., for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

16. NOTICES AND REPRESENTATIVES

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

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

i. Copyrights

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Reserved.

ii. Patents

Reserved.

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. The Parties intend the Work Product to be works 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 or a Task Order, 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 Contract without the prior written consent of the State. Upon termination of this Contract 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 Task Order, or a State approved license agreement: **(i)** entered into as exhibits to this Contract or a Task Order; **(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.

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 §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S., regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract and all executed Task Orders, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

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19. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

Except as otherwise provided in **§19.A**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

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signatory signed shall be incorporated into this Contract by reference.

I. Modification

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

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

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

K. External Terms and Conditions

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

L. Severability

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

M. Survival of Certain Contract Terms

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

N. Taxes

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§19.A,** this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

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P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations

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

ii. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain prior to the Effective Date and maintain at all times during the term of this Contract, at its sole expense, a certificate of authority to transact business in the State of Colorado and designate a registered agent in Colorado to accept service of process.

T. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (collectively, the "Indemnified Parties"), from any and all suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of third-party claims for (i) personal injuries, death or damage to tangible personal or real property caused by Contractor's breach of this Participating Addendum or (ii) the fraud, negligence or willful misconduct of Contractor.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of **§9** may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all third party claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any negligent act or willful misconduct by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **§9** which results in

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an actual unauthorized access or use of State Confidential Information.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any third party claim that any Contractor-branded Deliverable or 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)** reasonably expected to be used in combination with the IP Deliverables.

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), C.R.S., then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not**

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entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. **COMPLIANCE WITH LAW.**

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

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

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

G. **PROHIBITED TERMS.**

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

H. **SOFTWARE PIRACY PROHIBITION.**

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that

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would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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

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

21. ACCESSIBILITY

To the extent applicable to the Contractor and the in-scope Services it is providing under a Task Order:

A. Contractor and its Work Product shall comply with all applicable provisions of §§24-85-101, *et seq.*, C.R.S.,[1] and the *Accessibility Standards for Individuals with a Disability,* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5). Vendor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

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

C. The State may require Contractor's compliance to be determined by a third party vendor acceptable to the State that shall attest that the Contractor's Work Product is in compliance with §§24-85-101, et seq., C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5).

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[1] Provisions of *§§24-85-101, et seq*., apply as of July 1, 2024.

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EXHIBIT A, SCOPE OF SERVICES

The Parties agree that the final scope of Services and Work may include portions of the below but will be agreed to by the Parties in the final executed Statement of Work or Task Order.

IDENTIFICATION OF SERVICE MODELS FOR CLOUD SOLUTIONS

1.1 Service Model(s)

Contractor provides the following Service Model(s):

- Infrastructure as a Service (IaaS)

1.2 Risk Categorization

Contractor's offered solutions offer the ability to store and secure data under the following risk categories:

Service Model	Low Risk Data	Moderate Risk Data	High Risk Data	Deployment Models Offered
IaaS	X	X	X	See Below

2.1 Deployment Models
Contractor may provide cloud based services through the following deployment methods:

Private cloud. The cloud infrastructure is provisioned for exclusive use by a single organization comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organization, a third party, or some combination of them, and it may exist on or off premises.

Community cloud. The cloud infrastructure is provisioned for exclusive use by a specific community of consumers from organizations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organizations in the community, a third party, or some combination of them, and it may exist on or off premises.

Public cloud. The cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organization, or some combination of them. It exists on the premises of the cloud provider.

Hybrid cloud. The cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardized or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds).

In addition to (meaning, as a stand-alone service offering), or in connection with, the foregoing, Contractor may provide (and the Scope of Services shall be deemed to include) other available value-added Services as described in the Contractor's response to the Solicitation including, without limitation, Mainframe or Distributed Systems-related service offerings, professional services, consulting and advisory services, and security-enabling services.

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Exhibit A-1 to the Main Agreement: Infrastructure-as-a-Service

1. Data Ownership: The State of Colorado will own all right, title and interest in its data that is related to the Services provided by this Main Agreement. The Contractor shall not access State of Colorado user accounts or State of Colorado data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Main Agreement, SLA, and/or other contract documents, or (4) at the State of Colorado's written request.

Contractor shall not collect, access, or use user-specific State of Colorado Data except as strictly necessary to provide Service to the State of Colorado. No information regarding a State of Colorado's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Main Agreement.

2. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State of Colorado information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State of Colorado information and comply with the following conditions:

a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.

b. All data obtained by the Contractor in the performance of the Main Agreement shall become and remain the property of the State of Colorado.

c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Main Agreement.

d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The State of Colorado shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.

e. At no time shall any data or processes — that either belong to or are intended for the use of a State of Colorado or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State of Colorado.

f. The Contractor shall not use any information collected in connection with the Services issued from this Main Agreement for any purpose other than fulfilling the Services.

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3. Data Location: The Contractor shall provide its services to the State of Colorado and its end users solely from data centers in the U.S. Storage of State of Colorado data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store State of Colorado data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access State of Colorado data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model.

4. Security Incident or Data Breach Notification: The Contractor shall inform the State of Colorado of any security incident or data breach related to State of Colorado's Data within the possession or control of the Contractor and related to the service provided under the Main Agreement or SLA. Such notice shall include, to the best of Contractor's knowledge at that time, the persons affected, their identities, and the Confidential Information and Data disclosed, or shall include if this information is unknown.

a. Security Incident Reporting Requirements: The Contractor shall report a security incident to the State of Colorado identified contact immediately as soon as possible or promptly without out reasonable delay, or as defined in the SLA.

b. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State of Colorado's content that is subject to applicable data breach notification law, the Contractor shall (1) as soon as possible or promptly without out reasonable delay notify the State of Colorado, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

5. Breach Responsibilities: This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor and related to the service provided under the Main Agreement or SLA.

a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate State of Colorado identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate State of Colorado identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the State of Colorado as reasonably requested by the State of Colorado to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2)

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notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently $217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

6. Notification of Legal Requests: The Contractor shall contact the State of Colorado upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State of Colorado's data under the Main Agreement, or which in any way might reasonably require access to the data of the State of Colorado. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the State of Colorado without first notifying and obtaining the approval of the State of Colorado, unless prohibited by law from providing such notice.

7. Termination and Suspension of Service:

a. In the event of an early termination of the Main Agreement, Participating or SLA, Contractor shall allow for the State of Colorado to retrieve its digital content and provide for the subsequent secure disposal of the State of Colorado's digital content.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the State of Colorado's data.

c. In the event of early termination of any Services or agreement in entirety, the Contractor shall not take any action to intentionally erase any State of Colorado's data for a period of 1) 45 days after the effective date of termination; or 2) 60 days after the effective date of termination, if the termination is for cause. After such day period, the Contractor shall have no obligation to maintain or provide any State of Colorado data and shall thereafter, unless legally prohibited, delete all State of Colorado data in its systems or otherwise in its possession or under its control. In the event of either termination for cause, the Contractor will impose no fees for access and retrieval of digital content to the State of Colorado.

d. The State of Colorado shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all State of Colorado's data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the State of Colorado. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the State of Colorado.

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8. Background Checks:

a. Upon the request of the State of Colorado, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Main Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the State of Colorado's information among the Contractor's employees and agents.

b. The Contractor and the State of Colorado recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The State of Colorado is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

c. If any of the stated personnel providing services under this Main Agreement is not acceptable to the State of Colorado in its sole opinion as a result of the background or criminal history investigation, the State of Colorado, in its' sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Main Agreement and any related service agreement.

9. Access to Security Logs and Reports:

a. The Contractor shall provide reports on a schedule specified in the SLA to the Contractor directly related to the infrastructure that the Contractor controls upon which the State of Colorado's account resides. Unless otherwise agreed to in the SLA, the Contractor shall provide the public jurisdiction a history or all API calls for the State of Colorado account that includes the identity of the API caller, the time of the API call, the source IP address of the API caller, the request parameters and the response elements returned by the Contractor. The report will be sufficient to enable the State of Colorado to perform security analysis, resource change tracking and compliance auditing

b. The Contractor and the State of Colorado recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The State of Colorado is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

10. Contract Audit: The Contractor shall allow the State of Colorado to audit conformance to the Main Agreement terms. The State of Colorado may perform this audit or contract with a third party at its discretion and at the State of Colorado's expense.

11. Data Center Audit: The Contractor shall perform an independent audit of its data centers at least annually and at its own expense, and provide an unredacted version of the audit report upon request. The Contractor may remove its proprietary information from the unredacted version. For example, a Service Organization Control (SOC) 2 audit report would be sufficient.

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12. Change Control and Advance Notice: The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a State of Colorado and included in the SLA) to the State of Colorado of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

Contractor will make updates and upgrades available to State of Colorado at no additional costs when Contractor makes such updates and upgrades generally available to its users.

No update, upgrade or other charge to the Service may decrease the Service's functionality, adversely affect State of Colorado's use of or access to the Service, or increase the cost of the Service to the State of Colorado.

Contractor will notify the State of Colorado at least sixty (60) days in advance prior to any major update or upgrade.

13. Security: As requested by a State of Colorado, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the State of Colorado such that adequate protection and flexibility can be attained between the State of Colorado and the Contractor. For example: virus checking and port sniffing — the State of Colorado and the Contractor shall understand each other's roles and responsibilities.

14. Non-disclosure and Separation of Duties: The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State of Colorado data to that which is absolutely necessary to perform job duties.

15. Import and Export of Data: The State of Colorado shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the State of Colorado. This includes the ability for the State of Colorado to import or export data to/from other Contractors. Contractor shall specify if State of Colorado is required to provide its' own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

16. Responsibilities and Uptime Guarantee: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

17. Subcontractor Disclosure: Contractor shall identify all of its strategic business partners related to services provided under this Main Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

18. Business Continuity and Disaster Recovery: The Contractor shall provide a business continuity

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and disaster recovery plan upon request and ensure that the State of Colorado's recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the State of Colorado.) Contractor must work with the State of Colorado to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the State of Colorado.

19. Subscription Terms: Contractor grants to a State of Colorado a license to: (i) access and use the Service for its business purposes; (ii) for IaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to the State unless such terms are included in this Main Agreement.

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EXHIBIT B, PRICING

The products and price list is located on the Contractor's dedicated State website, hosted and maintained by the Contractor, and is incorporated into this Main Agreement by reference. Changes in product and pricing must be approved by the State of Utah as the NASPO lead state and shall be effective when published on the following dedicated website:

https://www.naspovaluepoint.org/portfolio/cloud-solutions-2016-2026/ensono/

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EXHIBIT C, SAMPLE OPTION LETTER

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

1. OPTIONS:

Option to extend for an Extension Term or End of Term Extension

2. REQUIRED PROVISIONS:

For use with Option: In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term/end of term extension, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

3. OPTION EFFECTIVE DATE:

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

CONTRACTOR	STATE OF COLORADO
INSERT-Legal Name of Grantee	**Governor's Office of Information Technology** **Anthony Neal-Graves** **Chief Information Officer & Executive Director**
_____ By: Name & Title of Person Signing for Contractor	By:_____ Chief Financial Officer
Date: _____	Date: _____

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Office of the State Controller, Controller Delegate

Task Order Effective Date:_____

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EXHIBIT D, INFORMATION TECHNOLOGY PROVISIONS

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

1. PROTECTION OF SYSTEM DATA

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

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

i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;

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

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

C. If applicable to the in-scope Services under an applicable Task Order, Contractor shall, and shall cause its Subcontractors who have access to State Information Technology resources or State Records to meet the following:

i. Provide physical and logical protection for all hardware, software, applications, and data that meets the requirements of this Contract.

iv. Maintain network, system, and application security, which may include, network firewalls, intrusion detection (host and network), and annual security testing if applicable to the Services being provided under a Task Order.

v. Comply with applicable State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing as such may relate to the applicable Services under a Task Order.

vi. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.

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

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

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

E. Contractor shall perform current background checks in accordance with Contractor's standard background screens (information relating to which is available upon request) and to provide the applicable associates' full legal names, work phone numbers and work e-mail addresses and cause agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors to do the same. 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 deemed to be current.

i. Upon request, Contractor shall confirm to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.

ii. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information (attached hereto as Exhibit G) and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

2. DATA HANDLING

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

B. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance

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Representative for the State. The State shall have sole discretion to grant or deny any such request.

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

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 and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format.

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

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

3. DELIVERY AND ACCEPTANCE

A. Contractor shall provide and maintain a quality assurance system that is reasonable 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 Task Order or applicable solicitation, bid, offer, or proposal from which this Contract results.

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. The State will be deemed to have accepted all Services (including any applicable billing milestones) and documents provided in connection with this SOW that materially conform to the specifications set forth herein, unless Client provides

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Ensono with written notice describing any failure to conform in reasonable detail promptly, but in any event not later than six (6) business days following Client's receipt thereof. In the event of any such failure to conform, Ensono shall have a reasonable period of time, based on the severity and complexity of the non-conformance, to deliver a conforming Service or document.

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 Contractor-branded 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 Contractor-branded 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 90 days following delivery of any Contractor-branded Work or Deliverable. Notwithstanding the foregoing, Contractor's warranty does not extend to any third-party branded products or goods.

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 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 limited to:

   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 of the corrected or replacement Work or Deliverable.

5. COMPLIANCE

A. In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with the following solely to the extent applicable to Contractor and the in-scope Services it is providing under an applicable Task Order:

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i. All OIS policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S., and 8 CCR §1501-5 and posted at oit.colorado.gov/standards-policies-guides/technical-standards-policies.

iii. All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance for in scope Services under the Contract. Such obligations may arise from:

a. Health Information Portability and Accountability Act (HIPAA)

b. IRS Publication 1075

c. Payment Card Industry Data Security Standard (PCI-DSS) (for systems owned and controlled by Contractor)

d. FBI Criminal Justice Information Service Security Addendum

e. CMS Minimum Acceptable Risk Standards for Exchanges

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

iv. Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, *et seq*., C.R.S. Contractor shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at https://www.w3.org/TR/WCAG21/.

E. 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.

F. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. To the extent relevant to the Services and Contractor's obligations under the Contract, such access and information shall include:

i. An annual SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability; or

ii. The performance of security audit and penetration tests, as requested by OIS.

G. To the extent Contractor controls or maintains management information systems used in connection with State Records, Contractor will provide OIS with the results of all security assessment activities which includes executive summaries of Contractor's most recent Security/Compliance audits or penetration tests. 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

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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 prior to expiration or earlier termination of this Contract, any Task Order or any Services provided in this Contract or any Task Order, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services ("Transition Services"). Contractor shall reasonably cooperate with the State or any successor provider and shall promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All Transition Services shall be subject to mutual agreement by the parties, including but not limited to final scope, term, and cost to be added to the Task Order via Amendment..

7. LICENSE OR USE AUDIT RIGHTS

A. To the extent that Contractor, through this Contract, a Task Order 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 State 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 as 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 software, use of programs, or any other use 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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EXHIBIT E, FORM OF TASK ORDER

State Agency Insert Department's or IHE's Full Legal Name	**Task Order Number** Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	**Main Task Order Contract Number** Insert CMS number or Other Contract Number of the Main Task Order Contract
Task Order Maximum Amount State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 State Fiscal Year 20xx $0.00 Total for All State Fiscal Years $0.00	**Task Order Contract Number** Insert CMS number or Other Contract Number of this Task Order **Task Order Performance Beginning Date** The later of the Task Order Effective Date or Month Day, Year **Task Order Expiration Date** Month Day, Year

In accordance with **§4.B** of the Main Task Order Contract referenced above, Contractor shall complete the following Project:

1. **PROJECT DESCRIPTION**

Contractor shall complete the Project described in Contractor's proposal that is attached hereto and incorporated herein (the "Proposal"). All terminology used in this Task Order and the Proposal shall be interpreted in accordance with the Main Task Order Contract unless specifically defined differently in this Task Order.

2. **PAYMENT**

The State shall pay Contractor the amounts shown in the Proposal in accordance with the requirements of that Proposal and the Main Task Order Contract. The State shall not make any payment for a State Fiscal Year that exceeds the Task Order Maximum Amount shown above for that State Fiscal Year.

3. **PERFORMANCE PERIOD**

Contractor shall complete all Work on the Project described in this Task Order by the Task Order Expiration Date stated above. Contractor shall not perform any Work on the Project described in the Proposal prior to the Task Order Performance Beginning Date or after the Task Order Expiration Date stated above.

4. **TASK ORDER EFFECTIVE DATE:**

The effective date of this Task Order is upon approval of the State Controller.

CONTRACTOR INSERT-Legal Name of Grantee	**STATE OF COLORADO** **Governor's Office of Information Technology** **Anthony Neal-Graves, Chief Information Officer & Executive Director**
_____ By: Name & Title of Person Signing for Contractor	By:_____ Chief Financial Officer
Date: _____	Date: _____

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Office of the State Controller, Controller Delegate

Task Order Effective Date:_____

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Exhibit F
STATE OF COLORADO
THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

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

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

Signature: _____
Printed Name: _____
Title: _____
Date: _____

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EXHIBIT G, SAFEGUARDING REQUIREMENTS FOR FEDERAL TAX INFORMATION

This Exhibit regarding Safeguarding Requirements for Federal Tax Information ("Exhibit") is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to "Contract" shall include this Exhibit.

The language of this Exhibit is, in part, derived from Internal Revenue Service (IRS) Publication 1075, *Tax Information Security Guidelines For Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information (Rev. 11-2021)*, Exhibit 7 – Safeguarding Contract Language. This Exhibit is not exhaustive of all requirements contained in IRS Publication 1075. By agreeing to this Exhibit, Contractor also agrees to comply with all applicable requirements in IRS Publication 1075 or described on the website of the IRS Safeguards Program, located at www.irs.gov/privacy-disclosure/safeguards-program.

1. PERFORMANCE

In performance of the Contract, Contractor agrees to comply with and assume responsibility for compliance by Contractor's officers or employees with the following requirements:

A. All Work will be performed under the supervision of Contractor.

B. Contractor and Contractor's officers or employees to be authorized to access FTI must meet background check requirements defined in Internal Revenue Services (IRS) Publication 1075 and §24-50-1002, C.R.S. Contractor will maintain a list of officers or employees authorized to access FTI. Such list will be provided to the State and, upon request, to the IRS.

C. FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection or disclosure of FTI to anyone other than Contractor or Contractor's authorized officers or employees is prohibited.

D. FTI shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.

E. By signing the Contract, which includes this Exhibit, Contractor certifies that FTI processed during the performance of this Contract will be completely purged from all physical and electronic data storage with no output to be retained by Contractor at the time the Work is completed. If immediate purging of physical and electronic data storage is not possible, Contractor certifies that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.

F. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI shall be given to the State. When this is not possible, Contractor shall be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the State with a statement containing the date of destruction, description of material destroyed, and the destruction method.

G. All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

H. No Work involving FTI furnished under this Contract will be subcontracted without the prior written approval of the State and the Governor's Office of Information Technology, and the IRS.[2]

[2] *see* IRS Publication 1075, Exhibit 6 Contractor 45-Day Notification Procedures.

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I. Contractor will ensure that the terms of FTI safeguards described in this Exhibit are included, without modification, in any approved subcontract for Work involving FTI.

J. To the extent the terms, provisions, duties, requirements, and obligations of the Contract apply to performing Work with FTI, Contractor shall assume toward each Subcontractor all obligations, duties and responsibilities that the State under the Contract assumes toward Contractor, and each Subcontractor shall assume toward Contractor all the same obligations, duties and responsibilities which Contractor assumes toward the State under the Contract.

K. In addition to the Subcontractor's obligations and duties under an approved subcontract, the terms and conditions of the Contract apply to the Subcontractor, and the Subcontractor is bound and obligated to the Contractor hereunder by the same terms and conditions by which Contractor is bound and obligated to the State under this Contract.

L. For purposes of this Contract, the term "Contractor" includes any officer or employee of Contractor with access to or who uses FTI, and the term "Subcontractor" includes any officer or employee of the Subcontractor with access to or who uses FTI.

M. Contractor will not utilize a cloud computing model that receives processes, stores, or transmits FTI without express written authorization from the State.[3]

N. Contractor will maintain the confidentiality of all Tax Information provided by the State or learned in the course of Contractor's duties under the Contract in accordance with safeguards set forth under §39-21-113(4), C.R.S., as amended.

O. Contractor agrees to comply with the following additional requirements in performance of this Contract:

None

P. The State will have the right to void the Contract if Contractor fails to meet the terms of FTI safeguards described in this Exhibit.

2. CRIMINAL/CIVIL SANCTIONS

A. Each officer or employee of Contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized in this Exhibit, and that further disclosure of any FTI for a purpose not authorized in this Exhibit constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

B. Each officer or employee of Contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized in this Exhibit, and that access/inspection of FTI without an official need-to-know for a purpose not authorized in this Exhibit constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

C. Each officer or employee of Contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection, or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of $1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access, inspection, or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by Internal Revenue Code (IRC)§§7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

[3] *see* IRS Publication 1075, Section 2.0 Physical Security Requirements, subsections 2.E.6.1 Cloud Computing and 2.E.6.4 Live Data Testing.

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D. Additionally, Contractor shall inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractor by 5 U.S.C. 552a(m)(1), provides that any officer or employee of Contractor, who (i) by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and (ii) knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

E. Granting Contractor access to FTI must be preceded by certifying that each officer or employee understands the State's security policy and procedures for safeguarding FTI. Contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the State's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractor and each officer and employee must be advised of the provisions of IRC §§7213, and 7213A, and 7431 (see *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure* of IRS Publication 1075). The training on the State's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches.[4] For the initial certification and the annual certifications, Contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. INSPECTION

The IRS and the State, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of Contractor to inspect facilities and operations performing any Work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process, or transmit FTI. Based on the inspection, corrective actions may be required in cases where Contractor is found to be noncompliant with FTI safeguard requirements.

[4] *see* IRS Publication 1075, Section 1.0 Federal Tax Information, Reviews and Other Requirements, subsection 1.8 Reporting Improper Inspections or Disclosures and www.irs.gov/privacy-disclosure/reporting-improper-inspections-or-disclosures.

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EXHIBIT H - HIPAA BUSINESS ASSOCIATE AGREEMENT

THE PARTIES AGREE THAT THIS EXHIBIT H ONLY APPLIES TO THE EXTENT APPLICABLE TO CONTRACTOR AND THE IN-SCOPE SERVICES BEING PROVIDED.

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:

a. 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.

b. 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.

c. 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.

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

i. 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

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with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.

ii. 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:

A. 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;

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

iii. 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.

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.

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

ii. 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.

i. 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.

ii. 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.

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

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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 at http://oit.state.co.us/about/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.

   i. 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.

   ii. 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.

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

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

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

   ii. 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.

   iii. 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.

   i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity,

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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.

ii. 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 Rules. If, 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.

i. 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.

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

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

iv. 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.

i. 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.

ii. 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.

i. 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.

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ii. 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.

iii. 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.

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

o. Business Associate's Insurance and Notification Costs.

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

A. loss of PHI data;

B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and

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

ii. 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).

iii. 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.

iv. 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.

i. 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.

ii. 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.

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

ii. 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.

i. 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.

ii. 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**

a. Breach.

i. 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.

ii. 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.

i. 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.

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ii. 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.

iii. 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, 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.

i. 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.

ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and

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

iii. 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.

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

A. 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

B. 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 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.