

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 186118
Contractor PayIt, LLC	CORE Encumbrance Number MA EGBA 2024*2008
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 KM21-47 with the State of Utah that yielded Cooperative Contract #AR3761 with NASPO ValuePoint.	Contract Performance Beginning Date The later of the Effective Date or October 10, 2023
Initial Contract Expiration Date September 14, 2026	
Contract Purpose The Contractor shall provide a Citizen Engagement Platform 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 B – Pricing 3. Exhibit C – Sample Option Letter 4. Exhibit D – Information Technology Provisions 5. Exhibit E – Form of Task Order 6. Exhibit F – Personally Identifiable Information Certificate 7. Exhibit G – Safeguarding Requirements for Federal Tax Information 8. 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 2. Colorado Special Provisions in §19 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. Exhibit A, 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).	
Principal Representatives For the State: Alex Monts, CFO 1575 Sherman St., Fourth Floor Denver, CO 80203 OIT_Contracts@state.co.us For Contractor: Jack Laskowitz PayIt, LLC 1100 Main St., Ste. 700 Kansas City, MO 64105 JLaskowitz@payitgov.com	

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 PayIt, LLC DocuSigned by:  By: <u>9014DBE7060B4FA...</u> *Signature Printed Name: <u>Jerod Sands</u> Title: <u>Chief Financial Officer</u> Date: <u>8/17/2023</u>	STATE OF COLORADO Jared S. Polis, GOVERNOR Governor's Office of Information Technology Anthony Neal-Graves, Chief Information Officer and Executive Director DocuSigned by:  By: <u>4235987998F1488...</u> *Signature Printed Name: <u>Alexis Monts</u> Title: <u>CFO</u> Date: <u>8/17/2023</u>
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 DocuSigned by:  By: <u>2A9C40DF49BF4D5...</u> *Signature Printed Name: <u>Amanda Carroll</u> Title: <u>Central Contracts Specialist</u> Contract Effective Date: <u>8/17/2023</u>	

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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.

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 AR3761. Unless this Agency-Specific Participating Addendum Main Task Order Contract is terminated earlier, as described herein, or the State cancels its participation as described 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 described 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 or less at the same rates and under the same terms specified in the Contract (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract or any Task Order ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract or that Task Order in whole or in part. 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 §14.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract or a Task Order, and shall include, to the extent practicable, the public interest justification for the termination. A termination of all or a part of a Task Order shall not be interpreted to terminate this Contract or any other Task Order.

ii. **Obligations and Rights**

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

iii. **Payments**

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

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.
- G. **“Contract Maximum Amount”** means an amount equal to the total of Contract Funds for all Task Orders issued pursuant to this Contract.
- H. **“Contractor Confidential Information”** means all non-public proprietary information of Contractor that is marked confidential, restricted, proprietary, or with a similar designation; provided that Contractor Confidential Information excludes: (a) State Confidential Information; (b) information that may be subject to disclosure under Colorado Open Records Act, (CORA) C.R.S. § 24-72-201 to 206; and (c) the terms of this Agreement, regardless of whether marked with a confidential designation or not.
- I. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- J. **“Deliverable”** means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor.
- K. **“End of Term Extension”** means the time period defined in §2.D.
- L. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- M. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- N. **“Extension Term”** means the time period defined in §2.C.
- O. **“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.
- P. **“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.

- Q. **“Initial Term”** means the time period defined in §2.B.
- R. **“Master Agreement”** means the NASPO ValuePoint Master Agreement led by the State of Utah based upon the Solicitation noted on the Cover Page.
- S. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- T. **“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.
- U. **“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 24-73-101, C.R.S.
- V. **“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.
- W. **“Project”** means a specific portion of the Work that is included in a Task Order.
- X. **“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.
- Y. **“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.
- Z. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- AA. **“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.
- BB. **“State Records”** means any and all State data, information, and records, regardless of

physical form.

- CC. **“Subcontractor”** means any third party engaged by Contractor to aid in performance of the Work.
- DD. **“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.
- EE. **“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.
- FF. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- GG. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

The State may direct Contractor to make changes to any proposal Contractor submits to the State. 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 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 **4.B.iv** shall not apply to any modification to a Task Order that only modifies timelines within a Project without changing the due date of any Deliverable or other end result, or only modifies the breakdown of costs within a Project without changing the total maximum amount

for any State Fiscal Year, which may be made if the State approves of the modification in writing.

v. Task Order Termination

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

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. 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 §3.E.

7. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §17 or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

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 §15 and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado, or its

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

ii. Performance Outside of the United States

Contractor shall request written approval from the State, acting through the Office of Information Technology, for Contractor to perform, or subcontract to perform, Services outside the United States. The State may approve or deny such request within the State's sole discretion, whether or not services outside the United States are prohibited or restricted by any Exhibit attached to this Contract or any Task Order executed hereunder. Following written approval from the State, Contractor shall comply with the notice provisions for performance 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 two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, 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 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; **(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 sign agreements 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. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

C. Use, Security, and Retention

Contractor shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. 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, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not 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. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. 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 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. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Cyber/Network Security and Privacy Liability

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

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

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

- \$1,000,000 each occurrence; and
- \$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.

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 in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its

agencies, institutions, organizations, officers, agents, employees, and volunteers.

L. Public Entities

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

M. Certificates

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

12. LIMITATION OF CONTRACTOR’S LIABILITY TO STATE

The liability of Contractor, its Subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss of State Records or unauthorized disclosure of State Confidential Information, not to exceed three (3) times the Maximum Amount payable by the State under this Contract per Incident.

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

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

13. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of

the remedies as described in §14 for that Party. Notwithstanding any provision of this 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 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 or any Task Order and fails to cure such breach, the State, following the notice and cure period set forth in §13, shall have all of the remedies listed in this section in addition to all other remedies set forth in this 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, Contractor 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

Notwithstanding anything to the contrary, 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 §3.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 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 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 determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State **(i)** secure that right to use such Work for the State and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

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

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

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

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the

Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

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

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.

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. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract.

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

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

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

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

K. External Terms and Conditions

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

L. Severability

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

M. Survival of Certain Contract Terms

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

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-

730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations

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

costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. **Confidential Information Indemnification**

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

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract,

including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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

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

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

21. ACCESSIBILITY

- 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 and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility*

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

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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EXHIBIT A, SCOPE OF SERVICES

I. Awarded Scope / Executive Summary

The scope of this contract award includes the following category:

Category 4 – Customer Engagement - A software solution that provides a centralized platform to manage multiple interactions (financial or non-financial) with customers. Provides a platform for studying customer behavior through all channels and touchpoints of interaction such as phone, in-person, or online.

Additional Value Add Items / Services may be offered by Contractor within the Award Category listed above. Such value-added solutions may include, but are not limited to, solutions as - identity management, referrals engine, user behavior analytics, digital wallets, web hosting, Website & web app development, eCommerce services and payment processing.

When deployed as part of a complete eGovernment solution – including a modern, comprehensive web presence – the PayIt Platform will deliver reduced walk-in traffic, reduce the time dedicated to managing physically mailed checks, and empower agency staff to spend more time serving constituents than managing web payment and ecommerce services.

Services are centralized on a user’s dashboard, and PayIt offers the payment services users and agencies demand, including ready access to receipts and payment methods (user wallet); automatic, partial, and equal bill payments; and eBilling, notifications, and email reminders.

II. Value Add Solutions
a. Value Add Items

Value Added Item #1: Secure Payment Services

How will this add value? Interactions which require a payment are frequently challenging for agencies and constituents alike. Compliance with payment security measures such as PCI and NACHA are extremely costly, card brand rules are complex and ever-changing, and requirements for security protocols change rapidly. The cost of a non-compliance - or to mitigate a data breach incident - begin in the tens of thousands of dollars, and can erode a constituent’s trust in an agency.

Documented Performance: Agencies who shift payment processing and compliance to PayIt have seen internal savings ranging from hundreds of thousands of dollars in processing fees (Wyandotte County, KS; Jackson County, MO), to millions of dollars in internal overhead for management and provisioning of payment services (North Carolina).

Cost Impact (%): No Impact Schedule Impact (%): No Impact

A. Value Added Item #2: Implementation with Unisys

How will this add value? State organizations and large City or County agencies frequently have complex back-office system architectures, with multiple disparate databases and financial systems which must interact with a solution such as PayIt to offer optimal context during interactions. Implementations and integrations at scale require deep knowledge of these systems, demanding a consultative approach to delivering an optimal solution. Unisys prides itself on our 150-year history of providing solutions across the Globe. Unisys has a large Public Sector footprint providing Datacenter and technology services and is a premier provider for public cloud services including Azure, AWS, Oracle and Google. Unisys understands the complexities of government programs and has the expertise to deliver PayIt in a successful and efficient manner.

Documented Performance: Our repeatable implementation framework (Discover, Analyze, Strategize, Plan, Deliver) has been highly effective removing cost and risk for complex public sector solutions for Citizen Experience services like PayIt.

Cost Impact (%): \$202.43/hr. Schedule Impact (%): No Impact

B. Value Added Item #3: Client Success

How will this add value? The ongoing health of our relationship with our clients is critical at PayIt. Every client works closely with a Client Success Manager who is tasked with driving ongoing client success, ensuring that requests from staff or platform issues are addressed rapidly, and acting as a thought leader throughout the duration of the relationship.

Documented Performance: Agencies who align and engage with their Client Success Manager see the greatest revenue capture improvements - 89% on average over a previous provider, with a cross-platform online revenue capture growth of over 35% YoY.

Cost Impact (%): No Impact Schedule Impact (%): No Impact

C. Value Added Item #4: Marketing Support

How will this add value? Marketing is complex and can be time-consuming for agencies who do not have a dedicated marketing and communications team. PayIt's Marketing team is deeply experienced in deploying campaigns which drive adoption, improve awareness, and result in significant revenue capture increases for agencies. Standard marketing support (digital, social, and email campaigns and printed assets) are included in base transaction or subscription fees.

Premium marketing packages are available to further accelerate success.

Documented Performance: Clients see an average of 89% increase in digital adoption over previous solution providers when they leverage PayIt's Marketing support.

Cost Impact (%): No Impact Schedule Impact (%): No Impact

D. Value Added Item #5: Citizen-facing Platform Support

How will this add value? Not only is platform support provided to our clients, but is extended to our citizen users as well. PayIt Customer Care staff are available by phone during standard business hours, and email is accepted 24/7. FAQs are also available in every PayIt Profile.

Shifting customer support from agencies to PayIt is just another way that overhead is shifted from agency staff to PayIt, further driving ROI and improving adoption outcomes.

Documented Performance: Across the platform, less than 2% of interactions result in a call to support, and those calls that are submitted to PayIt Support are overwhelmingly resolved over the phone or within 4 hours. Premium support, including chat, extended phone hours, and accelerated response times for agency support requests are available at an additional cost.

Cost Impact (%): No Impact Schedule Impact (%): No Impact

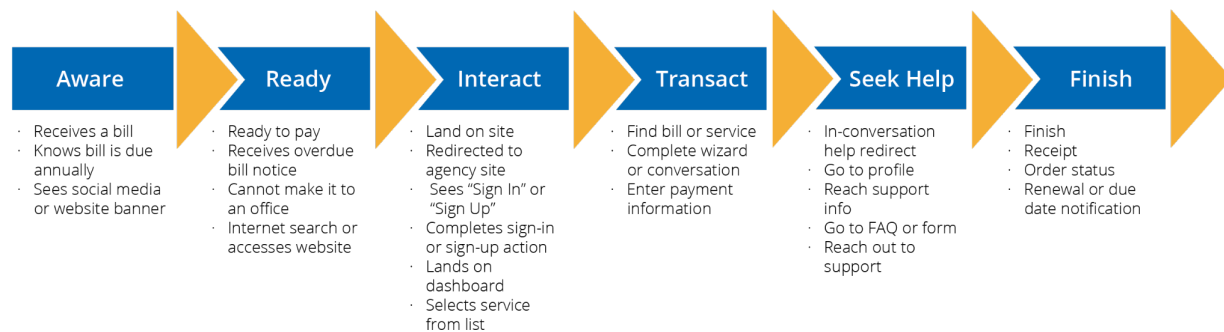
b. Value Add Solutions That Involve Third-Party Software Solutions

Contractor must be the original software publisher of the solutions offered within its Awarded Scope. Contractor may nonetheless submit value added solutions that involve third-party software solutions. As Contractor chooses to offer third-party software solutions as part of its value-added offerings any third-party end user licensing agreements (distributed with such software) are included in this Master Agreement through Attachment E. supplemental documents with its proposal.

The third-party end user license agreements will be at the discretion of each Participating State or Participating Entity to review, negotiate and/or utilize these documents within their Participating Addendum. Purchasing Entities that acquire third-party software solutions shall be subject to the end user licensing agreements distributed with such software, unless otherwise stated in a Participating Addendum or as negotiated between the Purchasing Entity and third-party software provider.

III. Service Approach.

Citizen engagement solutions must be designed to ensure that the user experience is based on known user behaviors, and that information presented is contextual to the citizen's interaction. In support of this, PayIt takes a user-centered approach to the design and deployment of its services in tandem with an iterative development process that incorporates an agency's business rules and workflows.



First, the user journey is identified and understood based on PayIt historical information in addition to input from the agency. This includes current interaction channels, and any applicable business rules which apply to the interaction itself (for example, a user must have passed a driver test administered by a State-sponsored instructor in-person to apply for a driver license online). These business rules drive the information that is presented to the citizen user, based on configurable workflows that dictate how a user proceeds through the interaction.

After the user journey has been established based on the use case ("research" in the below graphic), PayIt employs an iterative launch process that is designed to carefully identify and record business requirements and dependencies ("discover" in the below graphic), then build those rules into the interaction workflow. This is known at PayIt as the "Rapid Launch Process."



During the latter stages of the Rapid Launch process, the research compiled and business rules discovered drive solution configuration. At each step of the configuration process, key stakeholders across the agency provide feedback and input, which is integrated into the solution configuration using sprints. After all feedback has been captured and stakeholders sign off on the solution, PayIt launches the application on Web and Mobile (if applicable) platforms.

Throughout the launch process, and in the first 30 to 60 days following launch, PayIt escalates all interactions, bugs, and configuration changes to ensure that solution rollout is smooth.

This iterative approach - which focuses on configuration of low-code workflows and modules as opposed to custom-coded builds - means that PayIt solutions can be deployed in as few as 12 weeks for low- to moderate-complexity solutions (e.g., property taxes or citations with

documented business requirements and readily available data access). More complex solutions, such as business or professional licensing or motor vehicle solutions (driver license and vehicle registrations) may take slightly longer - but on average, a PayIt client has a solution up and running in less than 6 months from contract signature to launch. This is far shorter than a typical implementation cycle for custom-coded, COTS solutions which last from 12 to 18 months, on average.

As a solution provider solely focused on government entities, PayIt's Rapid Launch approach to solution development is designed to be very low resource intensive for agencies both during and after solution launch. This means that not only can the PayIt Platform drive improved citizen experiences, but throughout the process it allows agency staff to continue focusing on serving constituents throughout the configuration and deployment process. Following the implementation, the PayIt solution is fully maintained by PayIt engineers, client and end-user support teams, and an assigned client success manager to drive ongoing solution success.

IV. Service Assumptions

The PayIt Platform is strictly a citizen customer-facing solution designed to simplify interactions between citizens and agencies.

PayIt requires integration into a back-office solution or database. PayIt does not house citizen data such as property tax assessment amounts, monthly water or solid waste bills, or outstanding balances for citations or court fees. The assumption is that the Participating Entity has a back-office financial system which houses this data (in addition to business rules surrounding late fees or fines) in place. PayIt has many options for integrating or interfacing with these systems to present this data at the point of purchase.

Agencies who wish for live data integrations should have a web services or open API available to back office systems, or acquire such an API in order to deliver a real-time integration. PayIt is responsible only for writing its API to connect to an agency system, if there is an API available to the system.

PayIt's web interface is provided only for secure transaction processing and workflow-based applications such as business licenses or social services. PayIt is not a web developer, and does not provide customer-facing web interfaces for agencies outside of the PayIt Platform.

V. Roles, Responsibilities, & Exceptions

Participating Entity Responsibilities

Deployment: Provide a single point of contract for the configuration process and provide adequate access to staff and resources to support the goal of being live quickly post kickoff.

Integration: Provide timely access to data required for the services in the Participating Addendum. For example: bi-directional access to customer account detail, payable detail, payable balance, subtotals with descriptions, and total with any fees or fee type descriptions. Data can be provided via web services API (preferred) or delivered on a recurring basis via secure FTP.

E. Go-Live:

- Launch the Application, in coordination with PayIt, when configuration of services is complete, including the redirect of any and all web addresses for applicable services to the web Application.
- Provide marketing support, in coordination with PayIt, adequate to drive customer/constituent adoption of the Applications. For this purpose, marketing support provided by Participating Entity may include:
 - Place online notifications and mobile intercept screens prominently on Participating Entity website and department landing pages, as well as any e-newsletters or emails
 - Place notification(s) on all billing communications (including citations, etc.)
 - Include notification(s) information in any printed signage, newsletters, and blogs

F. PayIt Roles and Responsibilities**Configuration:**

- Provide the services in the subsequent Participating Addendum; deploy, configure, host, and manage the PayIt Platform.
- Provide a single point of contact for the configuration process, with a dedicated project team and a goal to launch service in production quickly post kickoff.
- Provide training to Participating Entity personnel.

G. Integration:

- Configure necessary systems to integrate the PayIt Platform with Client systems using existing data, APIs, or web services components provided by the Client. If additional data, APIs, or web services components are required, PayIt will discuss options, scope, and required costs to develop these with Client and gain approval prior to commencing work.

H. Management After Go-Live:

- Provide ongoing support to both Participating Entity and Constituents.
- Meet regularly to review performance, track against shared goals, and share upcoming platform enhancements as well as identify opportunities for service-level improvements.

I. Settlement & Disbursement:

- Collect payment from Constituent Users and deposit collected funds into designated Participating Entity accounts, based on settlement rules and disbursement schedules established during the implementation process.
- Handle NSF, refunds, and chargebacks based on Client business rules and specifications.

VI. Risk Management Plan

Risk #1 Description: Availability of API

Solution: Working with 3rd party systems of record can pose a risk in terms of data availability to optimize the user experience. When data is unavailable, or 3rd party partners are unwilling to collaborate, the implementation can be blocked and progress can stall. We will work with the agency to minimize the risk by connecting with a client's technical point of contact during the Kickoff to determine the best method to integrate, and to provide resources if needed. We further mitigate this risk by having integration options - including Flat File, API, or even direct database connection if other options are unavailable. By establishing a work plan to gain access to the data early on in the process with the pertinent stakeholder, delays and risk to the project timeline will be mitigated.

J. Risk #2 Description: Inadequate Participating Entity Staff

Solution: Adequate resources available from the Participating Entity to provide PayIt with enough information to implement properly is a risk. We mitigate this risk by providing abundant resources on our side - project management, implementation and platform specialists, integration specialists, QA, etc. We further mitigate this risk by providing a detailed overview of our implementation approach during initial conversations, and a detailed schedule at the kick off meeting to ensure resource allocation is well understood and any concerns can be raised early and mitigated properly.

K. Risk #3 Description: Agency Team Engagement

Solution: To ensure that we receive buy-in from the agency team during the implementation, we will ensure our project champion outlines success for the agency team, to align working teams on mission and intended outcomes. The working teams will hold weekly check-ins to get frequent approval and acknowledgement of project progress and goals so the champion and any other stakeholders are informed on any needs for a successful launch.

L. Risk #4 Description: Misalignment on the Business Cycle with Client

Solution: PayIt provides a few methods to help counter the risk of misaligning implementation timeline with a busy cycle for the agency business cycle. A high-level project timeline is provided early on during initial discussions with the agency to ensure alignment with the timing of our implementation cycle. This allows the partnership to move

forward step in step with the client around upcoming deadlines that may alter our shared goals. Second, once a contract has been signed, our pre-kickoff and kickoff phases will include a timeline review to develop a critical path of work required in order to meet both timelines.

VII. Deliverables

Specific deliverables for the Participating Entity's solution are detailed in any Participating Addendum. Generally, deliverables will include the following:

A web or mobile application that allows constituent users to:

- Search for one or many payables OR complete a multi-step Application established by a Participating Entity
- Make payments for all required fees utilizing Visa, MasterCard, Discover, American Express, or ACH/eCheck (if required)
- Store tokenized payment methods in the User Wallet (if required)
- Receive confirmation of payment and/or completed Application via email and User Profile
- Review payment and transaction history and/or application status
- Receive notifications and reminders regarding upcoming payables and/or Application action items in the PayIt Solution and via email

The Participating Entity will be provided with:

- Reports requisite for financial reconciliation
- Daily transaction reports
- Access to administrative features for management of Applications and transactions
- Receive monies deposited into one or multiple Participating Entity bank accounts

VIII. Financial Summary

Any sum due Contractor (PayIt) for the services for which payment is not otherwise specified shall be due and payable forty-five (45) business days after receipt by the Participating Entity of an invoice from Contractor. Any Payment Processing Fees or Citizen Transaction fees specified in a Participating Addendum will be collected by the Contractor, with approval by the Participating Entity. Such approval is not to be unreasonably withheld by the Participating Entity.

Billing Procedures. Contractor shall collect all sums due pursuant to a Participating Addendum as outlined in the Participating Addendum.

Taxes. Contractor represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Contractor agrees that Participating Entity is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Contractor. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Master Agreement shall be paid or withheld by Contractor.

Non-Binding Terms. Any terms and conditions included in a Participating Addendum or invoice, as the case may be, shall be deemed to be solely for the convenience of the respective party, and no such term or condition shall be binding upon the parties.

Auditable Records. Contractor shall maintain accurate records of all fees billable to, and payments made by, Participating Entity in a format that will permit audit by Participating Entity for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of Contractor shall survive the termination of this agreement.

No Suspension of Services. Contractor shall not suspend any part of the Services where: (a) Participating Entity is reasonably disputing any amount due to Contractor; or (b) any unpaid but undisputed amount due to Contractor is less than ninety (90) business days in arrears.

IX. Contractor Contact List

Role	Name & Title	Email	Phone
Executive Sponsor	Michael S. Plunkett, Co-Founder & COO	mike@payitgov.com	(913) 314-3825
Sales Contact	James Ward Sales Lead	jward@payitgov.com	(843) 364-1201
Invoicing	Sarah Wells, Finance Manager	accounting@payitgov.com	
SOW Requests & Participating Addendum Support	Jack Laskowitz VP Revenue & Business Operations	jlaskowitz@payitgov.com	(314) 578-5425

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/citizen-engagement-platforms/payit/>

Manufacturer	Description	Vendor Part No	Price
PayIt, LLC	Professional/Business Licensing: Payment for a license or certification issued by a government agency.	TRX-LIC-01	\$7.50 per Transaction
PayIt, LLC	DMV & Driver License Services: Payment for various DMV and driver license services.	TRX-REG-01	\$3.50 per Transaction
PayIt, LLC	Records Order: Payment for a record from a government agency.	TRX-RCD-01	\$10.00 per Transaction
PayIt, LLC	Tax Services: Payment of various agency tax types.	TRX-TAX-01	\$3.50 per Transaction
PayIt, LLC	Utility Account Services: Payment of city or county utilities such as water, solid waste, or electricity.	TRX-UTL-04	\$3.50 per Transaction
PayIt, LLC	Court Fees and Citations: Payment for various court fees and citations issued by a government agency.	TRX-CRT-06	\$5.00 per Transaction
PayIt, LLC	Subscription Service Level 1: Per-month subscription for agencies serving up to 250,000 population	PLT-SUB-01	\$5,000 per Month
PayIt, LLC	Subscription Service Level 2: Per-month subscription for agencies serving from 250,000 to 399,999 population	PLT-SUB-02	\$8,000 per Month
PayIt, LLC	Subscription Service Level 3: Per-month subscription for agencies serving from 400,000 to 999,999 population	PLT-SUB-03	\$10,000 per Month
PayIt, LLC	Subscription Service Level 4: Per-month subscription for agencies serving populations from 1,000,000 to 1,499,999	PLT-SUB-04	\$20,000 per Month
PayIt, LLC	Subscription Service Level 5: Additional \$5,000 per month per 250,000 citizens over 1,500,000 (PLT-SUB-XX + PLT-SUB-05)	PLT-SUB-05	\$5,000 per Month
PayIt, LLC	Payment Platform: Credit and Debit processing	PMT-TRX-CC	2.50% of Transaction
PayIt, LLC	Payment Platform: ACH processing	PMT-TRX-ACH	\$1.50 per Transaction
PayIt, LLC	Premium Implementation: Unisys consulting	IMP-UIS-01	\$202.43 per hour

EXHIBIT C, SAMPLE OPTION LETTER

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

EXHIBIT D, INFORMATION TECHNOLOGY PROVISIONS

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

1. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
- B. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. “Information Technology” is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
 - i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;
 - ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
 - iii. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
- C. Contractor shall, and shall cause its Subcontractors to meet all of the following:
 - i. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
 - iv. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - v. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - vi. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - 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 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 <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>.
- D. Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
- E. Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its respective employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors. 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 provide notice to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
 - ii. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

2. DATA HANDLING

- A. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- B. Contractor shall not allow remote access to State Records from outside the United States, 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 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, 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 acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any 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. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. Such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon

delivery, or Contractor's gross negligence or willful misconduct.

4. WARRANTY

- A. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
- B. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 Business Days of the notice one or more recommendations for corrective action with sufficient 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:
 - 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:
 - 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 <https://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 under the Contract. Such obligations may arise from:
 - a. Health Information Portability and Accountability Act (HIPAA)

- b. IRS Publication 1075
 - c. Payment Card Industry Data Security Standard (PCI-DSS)
 - d. FBI Criminal Justice Information Service Security Addendum
 - e. CMS Minimum Acceptable Risk Standards for Exchanges
 - f. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration
- 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/>.
- B. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include:
 - i. An annual SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by OIS; or
 - ii. The performance of security audit and penetration tests, as requested by OIS.
- D. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application level risk assessments, and other security assessment activities as required by this Contract or reasonably requested by OIS. Contractor will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the State. The State will work with Contractor and OIS to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and OIS will consider such requests in accordance with their policies and procedures referenced herein.

6. TRANSITION OF SERVICES

Upon request by the State prior to expiration or earlier termination of this Contract, any Task Order or any Services provided in this Contract or any Task Order, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State or any successor

provider and shall promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Contract.

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	Task Order Contract Number Insert CMS number or Other Contract Number of this Task Order
State Fiscal Year 20xx \$0.00	Task Order Performance Beginning Date The later of the Task Order Effective Date or Month Day, Year
State Fiscal Year 20xx \$0.00	
State Fiscal Year 20xx \$0.00	
State Fiscal Year 20xx \$0.00	
State Fiscal Year 20xx \$0.00	Task Order Expiration Date Month Day, Year
Total for All State Fiscal Years \$0.00	

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

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 PayIt, 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: _____

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.

- 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.

- 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.

EXHIBIT H - HIPAA BUSINESS ASSOCIATE AGREEMENT

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

1. Purpose

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

2. Definitions

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

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

- 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 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.
- 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, 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.
- 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.
 - 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.
 - 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 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.