

PARTICIPATING ADDENDUM
to NASPO ValuePoint
Computer Equipment, Peripherals & Related Services
Administered by the State of Minnesota
with Hewlett Packard Enterprise Company
Master Agreement No. 23008
And
The State of Colorado
Contract # 186959

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the “Participating Addendum”), is entered into by and between **Hewlett Packard Enterprise Company** (the “Contractor” or “HPE”), and the State of Colorado (the “State”). This Participating Addendum covers participation in the **Computer Equipment, Peripherals & Related Services NASPO ValuePoint Master Agreement No. 23008** led by the State of **Minnesota** (the “Master Agreement”), for use by State agencies and other entities located in Colorado which are authorized by law to utilize State contracts with the prior approval of the State Purchasing Director. The specific Goods and Services provided under the Master Agreement are listed in Exhibit C Products and Price List of this agreement.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State’s statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

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

4. RESERVED

5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing promptly following the date on which the change occurs, without a formal amendment to this Participating Addendum. The Contractor’s primary contact

shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

Primary Contact for the State:

Theresa Fraijo
State Procurement Administrator
Colorado State Purchasing & Contracts Office
1525 Sherman Street, 3rd Floor
Denver, CO 80203
(303) 866-4552
theresa.fraijo@state.co.us

Primary Contact for the Contractor:

Stacey Pierce
SLED, US Route to Market Manager
Hewlett Packard Enterprise Company
1701 East Mossy Oaks Road
Spring, TX 77389
(501) 205-6277
stacey.pierce@hpe.com

Each individual identified in this §5 of the Participating Addendum shall be the primary contact of the designating Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's primary contact at the address set forth above or **(C)** as an email with read receipt requested to the primary contact at the email address, if any, set forth above. If a Party delivers a notice to another through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Notices shall be effective upon verifiable delivery of the written notice.

In addition to the primary contact in this section, the Contractor shall also provide an individual who is ultimately responsible for the creation and submission of the quarterly volume report described in **Exhibit A** of this Participating Addendum. This individual, as named in this section, shall ensure that all required quarterly volume reports are accurate and delivered by the appropriate due date for that quarterly volume report. The Contractor may change this individual or their contact information by notice submitted to the other party in writing promptly following the date on which the change occurs, without a formal amendment to this Participating Addendum.

Individual Responsible for Quarterly Volume Report Creation and Submission:

Stacey Pierce, SLEP, US Route to Market Manager
Hewlett Packard Enterprise Company
1701 East Mossy Oaks Road
Spring, TX 77389
(501) 205-6277
stacey.pierce@hpe.com

6. SUBCONTRACTORS

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

7. ORDERS

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

8. ORDER OF PRECEDENCE AND ATTACHED EXHIBITS

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

- A. Colorado Special Provisions in **§21 of Exhibit A**, State Specific Terms
- B. **Exhibit E**, Information Technology Provisions
- C. **Exhibit G**, Safeguarding Requirements for Federal Tax Information, as applicable
- D. **Exhibit D**, HIPAA Business Associate Agreement, as applicable
- E. The provisions of this Participating Addendum
- F. All other sections of **Exhibit A**, State Specific Terms
- G. **Exhibit H**, HPE Data Privacy and Security Agreement Schedule (DPSA)
- H. **Exhibit B**, Statement of Work
- I. **Exhibit C**, Products and Price List
- J. **Exhibit F**, PII Certification, as applicable

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that (i) requires the State to indemnify or hold harmless Contractor or any other party, (ii) is in violation of State law as, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State or (iii) is contrary to any of the provisions incorporated into **Exhibit A, §20** or the main body of this Participating Addendum.

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM**CONTRACTOR****Hewlett Packard Enterprise Company**

Name: Debra A. Laird

Title: Manager, Contract Negotiations

DocuSigned by:

By: Debra A. Laird

04D7E6C30F7A485...

Date: 2/5/2024**STATE OF COLORADO****Jared Polis, Governor**

Department of Personnel and Administration

State Purchasing and Contracts Office

Tony Gherardini, Executive Director

DocuSigned by:

By: John Chapman

B515AED6B61E4114

Sherril Maxwell, Chief Procurement Officer, or**John Chapman, State Purchasing Manager**Date: 2/5/2024**STATE OF COLORADO**

Governor's Office of Information Technology

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

STATE CHIEF INFORMATION OFFICER**David Edinger, Chief Information Officer and Executive Director**

DocuSigned by:

By: Alexis Monts

4235987998F1488...

Name & Title: Alexis Monts CFODate: 2/6/2024**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

In accordance with §24-30-202, C.R.S., this Participating Addendum 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: Nathan Manley

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Name & Title: Nathan Manley Central Contracts Specialist
Controller DelegateEffective Date: 2/6/2024

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3. TERM

A. Initial Term - Work Commencement

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall be co-terminus with NASPO ValuePoint Master Agreement No. 23008. Unless this Participating Addendum is terminated earlier, as described herein, or the State cancels its participation as described in the Master Agreement (the "Term"), the term of the Participating Addendum shall align with the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended (See Section 3.B.).

B. Extension of Term

If the term of NASPO ValuePoint Master Agreement No. 23008 is extended for any reason, the Term of this Participating Addendum shall be automatically modified to align with that extension, so long as such extension complies with the Colorado Procurement Code.

C. Order Term

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

D. Early Termination in the Public Interest

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Participating Addendum by the State for breach by Contractor, which shall be governed by §15.A.i.

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Administration Fee”** means the fee that is due to the State for the administration of this Participating Addendum, as described in §7. A. of this **Exhibit A**.
- B. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- C. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- D. **“Ceiling Price”** means the maximum price a Contractor or a Subcontractor may charge for a Good or Service under this Participating Addendum.
- E. **“Chief Procurement Officer”** means the individual to whom the Executive Director of the Department of Personnel & Administration has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- F. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- G. **“Confidential Information”** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S. (“CORA”).
- H. **“Contract”** means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- I. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Participating Addendum.
- J. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- K. **“Deliverable”** means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor, and specified as a Deliverable in a Statement of Work.
- L. **“Effective Date”** means the date Contract is signed by the State Controller or their designee.
- M. **“End of Term Extension”** means the time period defined in §3. C. of this Exhibit A.

- N. **“Environmentally Preferable Products”** means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.
- O. **“Exhibits”** means the following exhibits attached to this Contract:
- i. **Exhibit A**, State Specific Terms.
 - ii. **Exhibit B**, Statement of Work.
 - iii. **Exhibit C**, Products and Price List
 - iv. **Exhibit D**, HIPAA Business Associate Agreement, as applicable
 - v. **Exhibit E**, Information Technology Provisions
 - vi. **Exhibit F**, PII Certification, as applicable
 - vii. **Exhibit G**, Safeguarding Requirements for Federal Tax Information, as applicable
- P. **“Extension Term”** means the time period defined in §3. B.
- Q. **“Fulfillment Partner”** is used interchangeably with “Subcontractor.” See “Subcontractor” for definition.
- R. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- S. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- T. **“Initial Term”** means the time period defined in §3.A of this **Exhibit A**.
- U. **“Order”** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Participating Addendum from the Contractor, and shall include any modification to such a document.
- V. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- W. **“Purchasing Entity”** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, government supported institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.
- X. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- Y. **“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.

- Z. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- AA. **“Services”** means the services to be performed by Contractor as set forth in this Participating Addendum, and shall include any services to be rendered by Contractor in connection with the Goods.
- BB. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already 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.
- CC. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- DD. **“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.
- EE. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- FF. **“Subcontractor”** means third-parties, if any, engaged by Contractor pursuant to §20.B. to aid in performance of the Work. The term “Subcontractor” includes, without limitation, any dealers, distributors, partners, Fulfillment Partners, or resellers engaged by the Contractor to perform the Work.
- GG. **“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.

- HH. **“Total Value of the Contract”** means the total amount spent under all Orders by all Purchasing Entities through use of this Participating Addendum, either through issuance of an additional Contract or Purchase Order.
- II. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- JJ. **“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. “Work Product” does not include any Goods purchased by Contractor in connection with Deliverables that have not been delivered to or accepted and paid for by the State.

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

5. STATEMENT OF WORK

Contractor shall complete the Work as described in this Participating Addendum and in accordance with the provisions of Exhibits B and C, and with any Purchasing Entity’s Order. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.

A. Ordering and Order Fulfillment

i. Ordering

- a. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.
- b. Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.
- c. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity’s Orders.
- d. Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this Exhibit A.
- e. If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor’s necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.
- f. Contractor’s internet-based portal and electronic catalogs shall clearly designate that they are part of this Participating Addendum and shall have a link to the State’s designated web location, as determined by the State. Contractor shall ensure that all Environmentally Preferable Products are clearly listed on internet-based portal and electronic catalogs.

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

6. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

- i. Contractor shall allow the State and Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the State or Purchasing Entity.
- ii. The State shall not pay any amount to Contractor under this Participating Addendum unless the State issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity that is not the State, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by a Purchasing Entity that is not the State.

B. Payment Procedures

i. Invoices

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

ii. Payment Disputes

Unless different procedures are specified in an Order, if Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the Purchasing Entity issuing the Order in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by that Purchasing Entity. The Purchasing Entity will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the Purchasing Entity's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the Purchasing Entity has concluded its review, and

the Purchasing Entity shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iii. Available Funds-Contingency-Termination of Order

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

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

iv. Discount and Delinquency Period

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

7. PAYMENTS TO STATE

Administrative Fees

- A. Each State Fiscal Year quarter, Contractor shall, using a form as directed by the State, calculate an Administrative Fee equal to 1% of the total sales made under Orders during that State Fiscal Year quarter. Contractor shall pay the State the Administrative Fee for each State Fiscal Year quarter within 45 days following the end of that State Fiscal Year quarter.
- B. Contractor shall remit all administrative fees to the State's primary contact identified in §5 of the Participating Addendum and with the payee as "State of Colorado".

8. REPORTING – NOTIFICATION

A. Volume Reporting

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State's primary contact identified in §5 of this Participating Addendum within 30 calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form as directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

- i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
 - a. The total spent by each type of Purchasing Entity under this Participating Addendum.
 - b. The total of the list price of all items purchased by each type of Purchasing Entity under this Participating Addendum.
 - c. The total estimated price savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list price of all items purchased by each type of Purchasing Entity minus the total spent for that type of Purchasing Entity.
 - d. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Participating Addendum.
 - e. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.
 - f. The amount of the total administrative fee due to the State.
 - g. Any additional summary information as reasonably requested by the State and subject to Contractor's prior agreement and existing system capabilities. Such information shall not be unreasonably withheld.
- ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
 - a. The name of the Purchasing Entity who the sale was made to.
 - b. The date of the sale.
 - c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended price for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list price for the item calculated by multiplying the quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list price.
 - d. Any other detail information as reasonably requested by the State and subject to Contractor's existing system capabilities. Such information shall not be unreasonably withheld.

B. Additional Operational Reporting

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Purchasing Entities as requested by the State. The Contractor shall provide all

such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

C. Environmentally Preferable Product Reporting

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

D. Litigation Reporting

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

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

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

Notwithstanding the above, the Contractor is permitted and shall permit its personnel to provide remote technical support, and general Order administration. The Contractor may provide technical user support on a 24/7 basis using a follow the sun model.

9. CONTRACTOR RECORDS

A. Maintenance

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

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records, pertaining to this agreement and any Orders and invoices associated with this agreement, 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 5 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Participating Addendum using reasonable procedures as determined by the State and agreed to by the Contractor. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Upon request by the State, Contractor shall promptly submit to the State a copy of any non-proprietary final audit report of an audit performed on Contractor's records that relates to or affects this Participating Addendum or the Work, whether the audit is conducted by Contractor or a third party. Any third-party auditor must sign a non-disclosure agreement prior to receiving access to any Contractor data.

E. Periodic Business Reviews

- i. The State may schedule periodic business reviews to review Contractor's performance under this Participating Addendum.
- ii. Contractor shall ensure personnel assigned to the Participating Addendum are available for these meetings with the State as scheduled by the State.
- iii. Contractor's primary contact designated in §5 of this the Participating Addendum shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJIS, and (iv) the federal Health Insurance Portability and Accountability Act

for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's primary contact as identified in §5 of the Participating Addendum.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Participating Addendum. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Participating Addendum, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. The Contractor and its Subcontractors may access Public Data remotely as required to provide technical support and general Order administration. The Contractor may provide technical user support on a 24/7 basis using a follow the sun model and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Participating Addendum, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

Unless otherwise agreed between the parties to an Order, Contractor Data Privacy and Security policies shall apply to Order(s) under this Addendum, as provided for in Exhibit H, HPE Data Privacy and Security Agreement Schedule, for HPE Support and Professional Services. Notwithstanding the previous sentence, the following shall apply. If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at 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.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

12. INSURANCE

Contractor shall maintain insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for Goods or Services or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. All insurance policies required by this Participating Addendum shall be issued by insurance companies satisfactory to Contractor and licensed to provide insurance in the State. Where any

subcontractor is retained by the Contractor, the Contractor shall require the Subcontractor to maintain insurance appropriate to such Subcontractor's activities under this Agreement.

A. Workers' Compensation

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

B. Commercial General Liability

Commercial general liability insurance covering premises operations, fire damage, products and completed operations, contractual liability, liability per the policy terms and conditions, personal injury, and advertising liability with limits as follows:

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

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a 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 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 limits as follows:

- i. \$1,000,000 per claim; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

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

- i. \$1,000,000 per claim; and
- ii. \$2,000,000 general aggregate.

It is agreed that the Contractor may satisfy the policy limits requirements for Professional and Cyber Liability coverages with one and the same insurance policy, provided that such policy has limits of \$1,000,000 per claim and \$2,000,000 in the aggregate.

F. Additional Insured

The State shall be included as additional insured on all commercial general liability policies required of Contractor and Subcontractors.

G. Primacy of Coverage

Commercial General Liability Coverage required of Contractor shall be primary and noncontributory over any insurance or self-insurance program carried by Contractor or the State.

H. Cancellation

Should any of the above-described policies be cancelled prior to the expiration dates thereof, notice of such will be provided in accordance with policy provisions, and documentation of replacement coverage with no lapse in coverage shall be provided.

I. Subrogation Waiver

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

J. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Participating Addendum within seven (7) Business Days following the Effective Date. No later than fifteen (15) Business days before the expiration date of Contractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. 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 direct damages, including but not limited to direct losses, loss of State Records or unauthorized disclosure of State Confidential Information, not to exceed the amount payable under the Order or \$1,000,000.00, whichever is greater.

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. Claims or damages arising out of bodily injury, including death, or damage to tangible property of the State; or
- C. Claims or damages resulting from the negligence, acts of fraud, or intentional misconduct of Contractor or its Subcontractors.

14. 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 §15 for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion in order to protect the public interest of the State, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in this Participating Addendum; or if Contractor is

debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

15. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum and fails to cure such breach, the State, following the notice and cure period set forth in §14, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

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

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Purchasing Entity shall be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

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

c. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, at the option of and as approved by the State or Purchasing Entity (i) secure that right to use such Work for the State,

Purchasing Entity and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the Purchasing Entity.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in §14 and the dispute resolution process in §16 shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity. Subject to the notice-and-cure period set forth in § 14 above, the Contractor may exercise any and all of the remedies available to it, in its discretion, concurrently or consecutively.

C. Purchasing Entity's Remedies

- i. If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that Order, all remedies listed in §15. A. ii above, all remedies listed here in §15.C and all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.
- ii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 10 Business Days following Contractor's receipt of that notice of breach or termination.
- iii. **Payments and Damages**
 - a. Notwithstanding anything to the contrary, Purchasing Entities shall only pay the Contractor for accepted Work received as of the date of termination. A Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary until Contractor corrects its Work or to protect itself against loss including, without limitation, loss as a result of outstanding liens and reasonable costs incurred by the Purchasing Entity in procuring from third parties replacement Work as cover.
 - b. Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the Purpose of mitigating the Purchasing Entity's damages..

A Purchasing Entity may deny payment to Contractor for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed, did not meet the requirements of the Contract; provided, that any denial of payment shall be equal to the value of the obligations not performed.

16. DISPUTE RESOLUTION

A. Order Disputes, Termination and Resolution

- i. If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If

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

- ii. A Purchasing Entity may terminate an Order if it determines that Contractor was in breach of that Order. Termination of an Order shall not terminate any other Order or this Participating Addendum.
- iii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 10 Business Days following Contractor's receipt of that notice of breach or termination.

B. Initial Resolution

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

C. Resolution of Controversies arising under this Participating Addendum

If the initial resolution described in §16.B. fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office as described in in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

If access to the Product requires an application program interface (API), Contractor shall convey to Purchasing Entity an irrevocable and perpetual license to use the API during the System term. No transfer of ownership of any intellectual property will occur under this Agreement. Purchasing Entity grants Contractor a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Contractor and its designees to perform the ordered Services. If deliverables are created by Contractor specifically for Purchasing Entity and identified as such in Supporting Material, Contractor hereby grants Purchasing Entity a worldwide, non-exclusive, fully paid, irrevocable, royalty-free license to reproduce and use copies of the deliverables internally.

B. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce for Purchasing Entity's own use, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Addendum, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to owner and 3rd party rights in the Pre-existing Intellectual Property.

C. Exclusive Property of the State

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

D. Exclusive Property of Contractor

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

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

To the extent specified in any termination notice, contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, contractor shall complete and deliver to purchasing entities all work not cancelled by the termination notice, and may incur obligations as necessary to do so within this participating addendum's terms. At the request of the state and subject to section 17 above, Contractor will assign mutually agreed upon and paid for Work Product to the applicable Purchasing Entity, however, no transfer of ownership of any intellectual property shall occur under this Agreement. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of contractor in which the appropriate purchasing entity has an interest. At the state or purchasing entity's request, contractor shall return materials owned by the purchasing entity that contractor possesses at the time of any termination.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-

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

20. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

Except as otherwise provided in **§20.A.**, all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

This Participating Addendum represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Participating Addendum. Prior or

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

H. Digital Signatures

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

I. Modification

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

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

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

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's 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 Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of this Participating Addendum.

M. Survival of Certain Contract Terms

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

N. Taxes

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

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

O. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in §20.A., this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

T. Accessibility

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

U. Indemnification

i. General Indemnification

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

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all third party claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any negligent act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

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 Contractor Goods, Deliverable, Service, or Work Product provided by Contractor under this Agreement (collectively, "IP Deliverables"), or the use thereof, infringes a third party patent, copyright, trademark, trade secret, or any other intellectual property right. This does not include third party materials or technology, modifications not made by Contractor, or use with products or services not authorized by Contractor.

Contractor's obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is (a) provided by Contractor or Contractor's subsidiaries or affiliates; (b) specified by Contractor to work with the IP Deliverables; (c) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (d) is reasonably expected to be used in combination with the IP Deliverables.

iv. Accessibility Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts

(including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to 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 OIT pursuant to Section §24-85-103 (2.5), C.R.S.

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

EXHIBIT B - STATEMENT OF WORK

1. GOODS AND/OR SERVICES

For a description of the Goods and Services available under the Participating Addendum, see Exhibit C, "Requirements" and Exhibit D, "Price Schedule" of the Master Agreement No. 23008.

2. OTHER PROJECT REQUIREMENTS

A. Delivery of Goods and Performance of Services

- i. Contractor shall provide all Goods and perform all Services in accordance with the requirements described in each definitized Order.
- ii. Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. All Goods shall be delivered free on board ("F.O.B.") destination to the location specified in the Order.
- iii. If Goods required by an Order are out of stock, Contractor may only provide substitute Goods if the Contractor has notified the Purchasing Entity for that Order, in writing, that the Goods are out of stock, and the Contractor has received the Purchasing Entity's written approval to provide the substitute Goods. Purchasing Entities may request additional information comparing the substitute Goods with the original Goods in the Purchasing Entity's sole discretion.

B. Additional Terms

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

EXHIBIT C - PRODUCTS AND PRICE LIST

1. Contractor has been awarded the following categories:

- Computer Equipment, Peripherals & Related Services, including Equipment Leases and HPE GreenLake Services.
 - Band 3, Servers and Storage

2. The products and price lists are located on the Contractor's dedicated State website, hosted and maintained by the Contractor, and incorporated into this Participating Addendum by reference. Changes in products and pricing must be approved by the lead state and are effective when published on the following Contractor dedicated State website.

www.hpe.com/buy/NASPOVP-Compute-2023-2028

3. Equipment Leases and HPE GreenLake Services

- A. Equipment leasing is allowed under this agreement; however, Purchasing Entities are responsible for negotiating their own terms at time of Order.

4. Pricing

A. Price Lists

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

B. Price Decreases and Ceiling Prices

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

C. Environmentally Preferable Purchasing

- i. If requested by Purchasing Entities, Contractor shall provide training regarding the environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, that are purchased or made available under this Participating Addendum. This training shall be provided at no additional cost, unless otherwise agreed upon by the Parties, and shall be presented at a time and in a manner as agreed upon by the Parties.
- ii. The State reserves the right to request additional information to verify this Participating Addendum is in compliance with all applicable State regulations and policies, including all sustainable purchasing and environmentally preferable purchasing policies or executive orders.

EXHIBIT D - HIPAA BUSINESS ASSOCIATE AGREEMENT (AS APPLICABLE WITH PURCHASING ENTITY)

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 Exhibit D, 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.

APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

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

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

1. Purpose

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

2. Additional Terms

- a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
 - i. Reserved.
- b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
 - i. Reserved.
- c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:
 - i. Reserved.
- d. Definition of Receipt of PHI. Business Associate’s receipt of PHI under this Contract shall be deemed to occur, and Business Associate’s obligations under the Agreement shall commence, as follows:
 - i. Reserved.
- e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate’s use and disclosure of PHI under the Contract:
 - i. Reserved.
- f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:
 - i. Reserved

EXHIBIT E - 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 for Services related to the Goods purchased:
 - 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.
 - ii. If required by the Statement of Work and to the extent Services are related to the purchased equipment, 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.
 - iii. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - iv. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - v. 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”).

- vi. 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.

Notwithstanding the above, the Contractor is permitted to provide remote technical support, and general Order administration. The Contractor may provide technical user support on a 24/7 basis using a follow the sun model.

- 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 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 requirements of the Contract.
- 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 requirements of the Contract, 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 in accordance with Contract requirements. 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.
- 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 Colorado Office of Information Security (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>
 - ii. 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

- 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 I audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by OIS and agreed to by Contractor; 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 or any Services provided in this Contract, 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 or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
- B. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify 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

EXHIBIT F - PII CERTIFICATION
(AS APPLICABLE WITH PURCHASING ENTITY)

STATE OF COLORADO
THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK

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

Signature: _____
Printed Name: _____
Date: _____

EXHIBIT F - PII CERTIFICATION
(AS APPLICABLE WITH PURCHASING ENTITY)

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

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

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

EXHIBIT G

SAFEGUARDING REQUIREMENTS FOR FEDERAL TAX INFORMATION (AS APPLICABLE WITH PURCHASING ENTITY)

If, and only to the extent, that Contractor accesses, receives, or processes Federal Tax Information on behalf of State, this Addendum shall apply. This Addendum regarding Safeguarding Requirements for Federal Tax Information (“Addendum”)¹ is an essential part of the agreement between the State and Contractor as described in the Contract to which this Addendum is attached. Unless the context clearly requires a distinction between the Contract and this Addendum, all references to “Contract” shall include this Addendum.

1. PERFORMANCE

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

- A. All work will be done under the supervision of the Contractor or the Contractor’s employees.
- B. The Contractor and the Contractor’s employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075 and Colorado Revised Statutes 24-50-1002.
- C. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- D. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- E. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of Contractor’s computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any FTI remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- F. Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the State or the State’s designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State or the State’s designee with a statement containing the date of destruction, description of material destroyed, and the method used.

¹ The language of this Addendum is derived from IRS Publication 1075, *Tax Information Security Guidelines For Federal, State and Local Agencies*, Exhibit 7 – Safeguarding Contract Language, “Contract Language for Technology Services.” This Addendum is not exhaustive of all requirements contained in Publication 1075. By agreeing to this Addendum, Contractor agrees to comply with all applicable requirements in Publication 1075 or described on the website of the IRS Safeguards Program, located at www.irs.gov/privacy-disclosure/safeguards-program.

- G. All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined 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 prior written approval of the State, by and through the contracting agency and the Office of Information Technology, and the IRS.²
- I. The Contractor will maintain a list of employees' authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- J. The Contractor will not use live FTI in a test environment or utilize a cloud computing model that receives processes, stores, or transmits FTI without express written authorization from the State.³
- K. The Contractor will maintain the confidentiality of all taxpayer information provided by the State or learned in the course of Contractor's duties under this Contract in accordance with safeguards set forth under Colorado Revised Statutes § 39-21-113(4), as amended.
- L. The Contractor agrees to comply with the following additional requirements in performance of this Contract:

None

- M. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

2. CRIMINAL/CIVIL SANCTIONS

- A. Each officer or employee of any person⁴ to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein 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. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- B. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information

² see IRS Publication 1075, Exhibit 6 – Contractor 45-Day Notification Procedures.

³ see IRS Publication 1075, Section 9 and <https://www.irs.gov/privacy-disclosure/use-of-live-fti-in-system-testing> .

⁴ The term "person" is used in this Section 2 as it is used in Title 26 of the United States Code and related regulations. The term "person" means a person or entity, including "an individual, a trust, estate, partnership, association, company or corporation." 26 U.S.C. § 7701(a)(1).

contained in such material 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 by or disclosure to anyone without an official need to know 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. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information 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 act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

C. 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 a Contractor, who 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 who knowing that disclosure of the specific material is 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.

D. Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding FTI. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches.⁵ For both the initial certification and the annual certification, the Contractor 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 the 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. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

⁵ see IRS Publication 1075, Section 10 or www.irs.gov/privacy-disclosure/reporting-improper-inspections-or-disclosures.

HPE Data Privacy and Security Agreement Schedule, Exhibit H

This Data Privacy and Security Agreement (“DPSA”) Schedule governs the privacy and security of Personal Data by HPE in connection with the Services on Customer’s behalf and is made a part of the agreement between HPE and Customer, or if no agreement exists, HPE’s standard terms and conditions (“Agreement”).

1. This DPSA forms part of the Agreement. To the extent there are any conflicts between the terms of this DPSA and the Agreement, the DPSA shall take precedence only before Exhibits B and C of the Participating Addendum.

2. Definitions:

- 2.1. “Personal Data” or “Customer Personal Data” means any (Customer) information relating to an identified or identifiable natural persons or as otherwise defined in applicable Privacy Laws.
- 2.2. “Business Contact Data” means contact information of Customer’s representatives for invoicing, billing, and other business inquiries, (ii) information on Customer’s usage of Services, and (iii) other information that HPE collects and needs to communicate with Customer.
- 2.3. “Privacy Laws” mean all applicable laws and regulations relating to the Processing of Personal Data and privacy that may exist in the relevant jurisdictions.
- 2.4. “Controller” means the natural or legal person, public authority, agency, or any other body which alone or jointly with others determines the purposes and means of the Processing of Personal Data in accordance with applicable Privacy Law.
- 2.5. “Processor” means any natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of a Controller or on the instruction of another Processor acting on behalf of a Controller.
- 2.6. “Process,” “Processing,” or “Processed” means an operation or set of operations performed on or with Personal Data whether or not by automatic means (including, without limitation, accessing, collecting, recording, organizing, retaining, storing, adapting or altering, retrieving, consulting, using, disclosing, making available, aligning, combining, blocking, erasing, and destroying Personal Data) and any equivalent definitions in Privacy Law to the extent that such definition should modify this definition.
- 2.7. “Special Category Data” means Customer Personal Data which relates to an individual’s racial/ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health, sexual life, biometric data (if used for the purpose of uniquely identifying an individual) or genetic data.

3. Appointment and Instructions:

- 3.1. HPE shall Process Customer Personal Data as necessary to provide the Services and to meet HPE’s obligations under this DPSA, the Agreement, and applicable Privacy Law as a service provider and Processor of Customer Personal Data. Details of the Processing including the subject matter, purpose and duration of the Processing the types of personal data and categories of data to whom the data are set out in Exhibit A.
- 3.2. HPE shall Process Customer Personal Data in accordance with Customer’s instructions as set out in this DPSA, the Agreement, or other documented instructions between HPE and Customer. Potential costs and charges associated with such additional instructions shall be agreed pursuant to the terms of the Agreement.

- 3.3. HPE may Process Customer Personal Data other than on the instructions of Customer if it is required under law applicable to HPE. In this situation, HPE shall inform Customer of such a requirement before HPE Processes Customer Personal Data unless the law prohibits this on important grounds of public interest. If HPE is unable to comply with Customer's instructions or this DPSA due to changes in legislation or, if HPE believes (without having to conduct a comprehensive legal analysis) that any instruction from Customer will violate applicable law or for any other reason, HPE shall promptly notify Customer in writing.
- 3.4. HPE acknowledges that HPE has no right, title, or interest in Customer Personal Data (including all intellectual property or proprietary information contained therein). HPE may not sell, rent, or lease Customer Personal Data to anyone.
- 3.5. If Customer uses the Services to Process any categories of data not expressly covered by this DPSA, Customer acts at its own risk and HPE shall not be responsible for any potential compliance deficits related to such use.

4. Compliance with laws

- 4.1. The Parties shall at all times comply with their respective obligations under this DPSA and Privacy Laws that apply to their respective processing of Personal Data. In addition, if HPE interacts with Protected Health Information as defined under the Health Insurance Portability and Accountability Act, the parties agree to comply with the terms of the Business Associate Agreement found athpe.com/info/customerprivacy.html.
- 4.2. HPE shall also comply with all applicable laws and HPE's privacy policy with respect to the Processing of Business Contact Data and use Business Contact Data only for legitimate business purposes, including, without limitation, invoicing, collections, service usage monitoring and optimization, service improvements, maintenance, support, professional services, communications relating to contract renewals (directly or through a subprocessor acting on HPE's behalf or an HPE approved reseller for contract renewal purposes), and information about new and additional services.
- 4.3. Where HPE discloses its personnel's personal data to Customer or HPE personnel provide their personal data directly to Customer, which Customer Processes to manage its use of the Services, Customer shall Process that data in accordance with its privacy policies and applicable Privacy Laws. Such disclosures shall be made by HPE only where lawful for the purposes of contract management, service management, or Customer's reasonable and lawful background screening verification or security purposes.

5. Security

- 5.1. HPE shall implement and maintain the physical, technical, and organizational security measures set out in Exhibit A, as may be supplemented or modified in the applicable transaction document, to protect Customer Personal Data and Business Contact Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure, or access.
- 5.2. Customer acknowledges that HPE may change the security measures through the adoption of new or enhanced security technologies and authorizes HPE to make such changes provided that they do not diminish the level of protection. HPE shall make information about the most up to date security measures applicable to the Services available to Customer upon request.

6. Sub-processing and Location of Processing

- 6.1. Customer authorizes HPE to engage affiliated and unaffiliated sub-processors (“Sub-processors”) to perform some or all of its obligations under the Agreement. Only where necessary to provide the Services, HPE will provide its Sub-processors with access to Customer Personal Data.
- 6.2. The Sub-processors applicable to the Services and location of processing can be found at **hpe.com/info/customer-privacy.html** and are deemed as approved by Customer. Customer will subscribe to HPE’s notification tool on the above website, and in the event of changes to approved Sub-processors, HPE will notify Customer via the notice subscription tool. Customer may object to the appointment or replacement of a Sub-processor at any time, and the parties shall use all reasonable endeavors to resolve Customer’s objection. If the parties fail to resolve Customer’s objection within a reasonable period of time, the matter shall be addressed pursuant to the dispute resolution procedure in the Agreement. In case HPE and customer fail to agree on an amicable resolution to the proposed sub-processor change, HPE shall have a right to terminate the contract without further obligations.
- 6.3. HPE shall conduct appropriate due diligence of its Sub-processors and execute valid, enforceable, and written contracts with Sub-processors requiring the Sub-processor to abide by terms no less protective than those in this DPSA regarding the Processing and protection of Customer Personal Data (including the EU Model Contract terms relating to data importers in the case of an onward transfer of EU, EEA, or Swiss Personal Data to a non-adequate country).
- 6.4. HPE remains responsible for the acts and omissions of the Sub-processors it engages to provide the Services to Customers giving rise to a breach of this DPSA as if they were its own acts or omissions.

7. Audit and Assurance

- 7.1. HPE shall arrange for audits of HPE’s data Processing and protection practices to confirm compliance with applicable Privacy Law by reputable third party auditors and provide Customer with a report summary and additional information on request.
- 7.2. Customer shall have the right to conduct additional audits of HPE’s compliance with its obligations under this DPSA in accordance with the Agreement. The audit rights are generally exercised in consultation with HPE. HPE is obliged to assist Customer in such audits and any audits of the competent authorities. These audits must be carried out in consideration of the business processes and HPE’s need for security and confidentiality.
- 7.3. Certain information about HPE’s security standards and practices are sensitive confidential information which will not be disclosed by HPE to Customer. Upon request, HPE agrees to respond, no more than once per year, to a reasonable information security questionnaire concerning security practices specific to the Services provided hereunder.
- 7.4. On Customer’s request, HPE shall within a reasonable timeframe make appropriate information available to Customer to demonstrate its compliance with applicable Privacy Law, save where that information is readily available to Customer direct through its use of the Services.

8. Providing Customer Assistance

- 8.1. At Customer’s request HPE shall cooperate with Customer and provide Customer with assistance necessary to facilitate the Processing of Customer Personal Data in compliance with Privacy Laws applicable to Customer in relation to HPE Services, including by way of

example:

- 8.1.1. assist Customer by implementing appropriate and reasonable technical and organizational measures, insofar as this is possible, to assist with Customer's obligation to respond to requests from individuals seeking to exercise their rights under the Privacy Laws applicable to Customer;
 - 8.1.2. provide reasonable assistance to Customer in Customer's assessment and implementation of appropriate technical and organizational measures to ensure a level of security appropriate to the risks represented by the Processing and the nature of Customer Personal Data;
 - 8.1.3. the notification of Security Incidents pursuant to Exhibit A;
 - 8.1.4. provide reasonable assistance to Customer in carrying out a privacy impact assessment.
- 8.2. If Customer requests cooperation or assistance pursuant to this Section, Customer shall notify HPE in writing of the requirements and formulate Customer's instructions. HPE shall respond within a reasonable period of time and provide Customer with approximate time and fee estimates for the implementation of any changes necessary to accommodate Customer's compliance needs. To the extent that compliance with this Section constitutes a change to the scope of the Services, the parties shall, acting reasonably, agree on appropriate change order.

9. Data Quality, Retrieval and Destruction, Repair, or Replacement Service

- 9.1. To the extent that Customer is not able to access Customer Personal Data itself, HPE shall on Customer's written request (i) update, correct, or delete Customer Personal Data; and/or (ii) provide copies of Customer Personal Data.
- 9.2. Upon termination of the Agreement, HPE shall at the election of Customer return or delete Customer Personal Data and HPE shall not retain copies of Customer Personal Data unless otherwise agreed with Customer or where it is required to do so under applicable law, in which case HPE shall stop actively Processing the data and maintain the security and confidentiality of the data.
- 9.3. With regard to the repair or replacement of data carriers (server, hard-disks, SSD, flash-disks, memory etc.), Customer will either purchase the optional (C)DMR Service or adequately wipe (following the NIST Standard) carriers prior to providing them to HPE.

10. Data Transfers

- 10.1. To address the transfer of EU, EEA, UK (once the UK has ceased to be a member state of the EU) or Swiss Personal Data by Customer or a Customer affiliate to HPE or an HPE affiliate located in a country which is not approved by the European Commission as providing adequate protection for personal data pursuant to Article 25(6) of the Directive 95/46/EC or Article 45(3) of the General Data Protection Regulation, the Customer may rely on HPE's Binding Corporate Rules – Processors (BCR-P) or the execution of a controller to processor EU Model Contract ("EU Model Contract"). The list of Services subject to HPE BCR-P are listed on BCR website at **hpe.com/uk/en/privacy/binding-corporate-rules.html** and/or can be provided upon request.
- 10.2. For BCR-P transfers, HPE (and any other HPE company and Subprocessor whom the Customer authorizes to Process Personal Data pursuant to Clause 4 of the DPSA) may receive and/or transfer Personal Data to any country in accordance with the BCR-P. Customer shall ensure that if the transfer involves Special Category Data, that data subjects have been informed of the transfer, or will be informed before the transfer, that this Special

Category Data could be transmitted to another country. The BCR-P shall be binding on the Customer by means of the third-party rights set out in Clause 4.1 of the BCR-P which shall include the right to enforce the BCR-P against HPE, including judicial remedies and the right to receive compensation. The BCR-P includes the intercompany agreement and the applicable policies and procedures which form HPE's Binding Corporate Rules for Processors as they apply to the Customer and as developed, amended or updated by HPE from time to time in accordance with the applicable Working Documents adopted by the Article 29 Working Party (and subsequently the European Data Protection Board). A copy of the documentation comprising the BCR-P, which is incorporated by reference and is an integral part of this DPSA, is available to Customer upon written request. Customer shall inform data subjects regarding the existence of Processors outside of the EU/EEA/Switzerland and of Customer's reliance on the BCR-P as required by Privacy Laws and shall make available to data subjects upon request a link to HPE's BCR Rights Notice at hpe.com/uk/en/privacy/binding-corporate-rules.html.10.3. For EU Model Contract transfers, HPE hereby grants Customer the right to benefit from, and Customer hereby agrees to be bound to, the EU Model Contracts executed by HPE with Sub-processors as if Customer executed such EU Model Contracts as the controller.

- 10.3.1. When interpreting the EU Model Contract, the term "Member State in which the data exporter is established" will be interpreted to mean (as appropriate) Switzerland or the EU or EEA member state in which the Data Exporter (as defined in the EU Model Contract) is established.
- 10.3.2. In the case of any conflict between the EU Model Contract, the terms of this DPSA, and the Agreement, to the extent HPE Processes the Personal Data of EEA or Swiss residents, the EU Model Contract shall prevail but only to the extent necessary to resolve the conflict or inconsistency.
- 10.3.3. Any audit pursuant to an EU Model Contract shall be conducted in accordance with the general procedures for audits provided in the Agreement and Exhibit A except to the extent expressly required by a regulatory authority or Privacy Laws. Customer shall use commercially reasonable efforts to notify the regulatory authority of the audit requirements of the Agreement and to request that the audit be conducted in accordance with those requirements.
- 10.3.4. Any losses suffered by the parties or their respective affiliates under the EU Model Contract shall be treated as if they had been suffered by Customer or HPE respectively and shall in all cases be recovered by Customer or HPE subject to any limits on that party's liability in the Agreement. Nothing in this Section shall limit the liability of either party in relation to a claim by a data subject under an EU Model Contract.
- 10.3.5. In the event that EU Model Contracts are no longer a valid transfer mechanism or where HPE commits to an alternative valid transfer mechanism (e.g. Binding Corporate Rules for Processors), HPE shall notify Customer of the mechanism and seek Customer's agreement to rely on this mechanism instead of the EU Model Contract.

Exhibit A—Support and Professional Services Data Processing

In this Exhibit, HPE describes the terms specific to Services, including its commitment to technical and organizational security measures to protect Customer Personal Data.

HPE performs the following Personal Data Processing as part of Services - As part of providing on-site and remote hardware and software maintenance support and professional services, HPE may have access to data stored in the Customer's business applications (including metadata), IT, and network infrastructure. This data may include Customer Personal Data.

Type of Customer Personal Data Processed - The type of personal data processed will depend on the data the Customer has stored on the business applications (including metadata), IT and network infrastructure and may include sensitive personal data.

Categories of Data Subjects - Any data subject whose Personal Data is stored by the Customer on the business applications (including metadata), IT and network infrastructure including, without limitation Customer's clients, end users, employees, contractors and temporary workers.

Duration of Processing - HPE shall process Customer Personal Data for the duration of the applicable transaction document.

Security Measures - HPE shall maintain the following information and physical security program for the protection of Customer Personal Data (the "HPE Security Program").

- 1.1. As part of the HPE Security Program, HPE conducts periodic reviews of security practices against industry standards, such as NIST, ISO 27001, and SOC. HPE regularly re-evaluates and updates the HPE Security Program as the industry evolves, new technologies emerge, or new threats are identified.
- 1.2. The HPE Security Program consists at least of the following:
 - 1.2.1. HPE maintains physical security standards designed to prohibit unauthorized physical access to HPE facilities and equipment by using the following practices:
 - physical access to locations is limited to HPE employees, subcontractors, and authorized visitors;
 - HPE employees, subcontractors, and authorized visitors are issued identification cards that must be worn while on-premises;
 - monitoring access to HPE facilities, including restricted areas and equipment within facilities;
 - access to the data center where Customer Personal Data is hosted is logged, monitored, and tracked; and
 - data centers are secured with alarm systems and video cameras.
 - 1.2.2. HPE maintains the following standards for access control and administration of the relevant IT environment.
 - administrator accounts should only be used for the purpose of performing administrative activities;
 - each account with administrative privileges must be traceable to a uniquely identifiable individual;
 - all access to computers and servers must be authenticated and within the scope of an employee's job function;
 - initial passwords must be changed by the user on first use;
 - the display and printing of passwords must be masked, suppressed, or otherwise obscured such that unauthorized parties will not be able to observe or subsequently recover them;
 - passwords must be uniquely identifiable to an individual;
 - passwords must be encrypted when transmitted;
 - password complexity should never be less than 3 out of 4 character classes and must have character class choices such as upper-case letters, lower case letters, numeric digits, or special characters;
 - password length must be configured to be at least 8 characters;
 - passwords must expire every 90 days;
 - automatic time-out of access to computers and servers if left idle with the

- requirement for password authentication for re-access;
 - accounts must be set to lockout after several erroneous failed login attempts.
- 1.2.3. Computers and servers have reasonable up-to-date versions of system security software which may include host firewall, anti-virus protection, and up-to-date patches and virus definitions. Software is configured to scan for and promptly remove or fix identified findings. HPE maintains logs of various components of the infrastructure and an intrusion detection system to monitor, detect, and report misuse patterns, suspicious activities, unauthorized users, and other actual and threatened security risks.
- 1.3. Upon request, HPE will review with Customer a summary of vulnerability assessments. Vulnerability assessments shall not entitle Customer to view, or in any way access records and/or processes: (a) not directly related to Services; (b) in violation of Applicable Laws; and/or (c) in violation of HPE's confidentiality and security obligations owed to a third party.
- 1.4. Employees and contractors are trained on HPE's privacy and security policies and made aware of their responsibilities with regard to privacy and security practices. HPE employees and contractors are contractually bound to maintain the confidence of Customer Personal Data and comply with applicable HPE policies, standards, or requirements in relation to the Processing of Customer Personal Data. Failure to comply with those policies, standards, or requirements will be subject to investigation which may result in disciplinary action up to and including termination of employment or engagement by HPE.
- 1.5. In the event HPE confirms a security breach leading to the accidental or unlawful destruction, loss, alteration, or unauthorized disclosure of, or access to, Customer Personal Data ("Security Incident"), HPE will:
- 1.5.1. without undue delay, notify Customer of the Security Incident. HPE will provide Customer with updates on the status of the Security Incident until the matter has been remediated. The reports will include, without limitation, a description of the Security Incident, actions taken, and remediation plans. If Customer becomes aware of a Security Incident that affects the Services, Customer shall promptly notify HPE of such and inform HPE of the scope of the Security Incident. Notice shall be provided to HPE Security Operations Center via email at **soc@hpe.com** and/or to 1-877-762-6139.
- 1.5.2. at the request and cost of the Customer, (i) provide reasonable assistance to the Customer in notifying a security breach to the supervisory authority competent under the Privacy Laws applicable to the Customer; and (ii) provide reasonable assistance to the Customer in communicating a data breach to data subjects in cases where the data breach is likely to result in a high risk to the rights and freedoms of individuals.