

**The Office of the Attorney General and the Office of the State Controller
have approved this contract form.**

State of Colorado (Name of agency/institution) _____ [1] _____

Contract Routing Number (CLIN #): _____ [2] _____

STATE OF COLORADO PERSONAL SERVICES CONTRACT

THIS CONTRACT, dated this [3] day of [4], 20 [5], by and between the State of Colorado, for the use and benefit of the Department of _____ [6] located at _____ [7], _____ [8], Colorado, 80 [9] (the "State"), and _____ [10] a(n) _____ [11], located at _____ [12], _____ [13], ("Contractor").

FACTUAL RECITALS

- A. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this contract through the Colorado Financial Reporting Systems (COFRS).
- B. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
- C. Contractor's bid was selected in accordance with Colorado law and State Procurement Rules pursuant to the State's issuance of a(n) **(select type of procurement – Request for Proposal RFP; Request for Documented Quotes DQ; Invitation for Bids IFB; Competition Not required – exempt procurement; emergency procurement; other competitive procurement method – competitive reverse auction; other competitive procurement method – competitive negotiation, or sole source)** _____ [14]
OR:

Contractor's bid was selected in accordance with other law(s) or grant(s) _____ [15] which specifically name(s) Contractor as the awarded supplier or specifies the supplier selection method.

- D. Authority for the agency entering into this contract arises from Colorado Revised Statutes (CRS) _____ [16] or _____ [17].
- E. The State requires _____ [18]. Contractor is ready, willing and able to provide such services and goods, if applicable.

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this contract, the State and Contractor agree as follows:

AGREEMENT

1. Definitions

The following terms as used in this contract shall be construed and interpreted as follows, unless the context otherwise expressly requires a different construction and interpretation:

- 1.1. “**Compensation**” means the funds payable to Contractor by the State which are related to the Goods and Services set forth in the Statement of Work set forth in **Exhibit A**, attached hereto and incorporated herein.
- 1.2. “**Contract**” means this contract for Goods and Services, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this contract, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to State Fiscal Rules and Policies.
- 1.3. “**Exhibit**” means a statement of work document, schedule, budget, or other identified exhibit which has been incorporated into and attached to this contract.
- 1.4. “**Goods**” means anything that is produced or manufactured and that is obtained by the State, either in and of itself, or in conjunction with services.
- 1.5. “**Services**” means services performed or tangible material produced or delivered in the performance of services.

BASIC CONTRACT TERMS

2. Statement of Work

- 2.1 Contractor shall perform the Services and provide the Goods (if applicable) described in **Exhibit A**, Statement of Work. [OPTION #1]

[OPTION #2]

[OPTION #3]

3. Performance Standard

Contractor shall perform the Services and deliver the goods, if applicable, described in **Exhibit A**, Statement of Work, in accordance with the highest standard of care, skill and diligence provided by a professional person or company in performance of work similar to the Services, and all services, and all consumables, products, and materials used in performance of the Services shall be of good quality and free from faults and defects. Contractor warrants that (a) services or goods provided under this contract shall meet the description in **Exhibit A**, Statement of Work, (b) there are no pending or threatened suits, claims, or actions of any type with respect to the services or goods provided and (c) the services and goods shall be free and clear of any liens, encumbrances, or claims arising by or through Contractor or any party related to Contractor.

4. Performance Term

- 4.1. This contract shall be effective upon approval by the Colorado State Controller, or designee, or on _____ [19], whichever is later (the “Effective Date”) and extend through _____ [20]. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the sequence and manner set forth in **Exhibit A**, Statement of Work.

4.2. In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to three (3) months. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the three (3) month period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate.

[OPTION #4]

5. Compensation

- 5.1. Payment of compensation pursuant to this contract will be made as earned, in whole or in part, from available State funds encumbered in a maximum amount not to exceed \$ 21 for the performance of the Services and acquisition of Goods required by this contract and **Exhibit A**, Statement of Work. Satisfactory performance under the terms of this contract shall be a condition precedent to the State's obligation to compensate Contractor.
- 5.2. The maximum compensation payable under this contract, and under any renewal hereof, shall include all Contractor fees, costs and expenses.
- 5.3. The State shall not be liable to Contractor for payment of work or services or for costs or expenses incurred by Contractor prior to the "Effective Date".

[FOR USE ONLY WITH MULTI-YEAR CONTRACTS]

- 5.4. The maximum amount available during each fiscal year of this contract for the purchase of Goods and Services shall be:
 - (a) \$ 22 in fiscal year 23;
 - (b) \$ _____ in fiscal year _____; and
 - (c) \$ _____ in fiscal year _____.

[OPTION #5]

6. Availability of Funds

This contract is contingent upon the continuing availability of State appropriations as provided in Section 2 of the Colorado Special Provisions, incorporated as a part of this contract. The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If Federal appropriations or grants fund this contract in whole or in part, the contract is subject to and contingent upon the continuing availability of appropriated Federal funds for this contract. If State of Colorado or Federal funds are not appropriated, or otherwise become unavailable to fund this contract, the State may immediately terminate the contract in whole or in part without further liability.

PROCEDURES FOR AND OBLIGATIONS OF CONTRACT PERFORMANCE

7. Billing/Payment Procedure

- 7.1. The State shall establish billing procedures and pay Contractor the contract price or rate for Services performed, reviewed, and accepted or Goods delivered, inspected, and accepted pursuant to all the terms and conditions of this contract, including without limitation, performance, quality, milestones and completion requirements for payment set forth in **Exhibit A**, Statement of Work, and the State's inspection and acceptance rights in Section 8. Contractor shall submit invoices for payment on forms and provide requested documentation in a manner prescribed or approved by the State. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described Services and Goods. Incorrect payments by the State

to Contractor due to omission, error, fraud, or defalcation shall be recovered from Contractor by deduction from subsequent payments under this contract or other contracts between the State and Contractor or collected as a debt due to the State.

- 7.2. Invoices and payments shall be mailed using the US Postal Service or other delivery service with a properly addressed stamped envelope to the address specified by the Contractor on form W-9 or other similar form and by the State in its billing procedures.
- 7.3. The State shall make payment in full with respect to each invoice within forty-five (45) days of receipt thereof; provided that the amount invoiced represents Goods and/or Services which have been accepted by the State and the form of the invoice is acceptable to the State. Uncontested amounts not paid by the State within forty-five (45) days shall bear interest on the unpaid balance beginning with the forty-sixth (46th) day at a rate of one percent (1%) per month until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which the State has delivered to Contractor notice of a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the applicable interest rate.

8. Inspection and Acceptance

The State reserves the right to inspect Services and Goods provided under this contract at all reasonable times and places during the term of this contract, including any extensions. If any of the Services or Goods does not conform to contract requirements, the State may require Contractor to promptly perform the Services or provide Goods again in conformity with contract requirements, at no additional cost to the State. When defects in the quality or quantity of Services and Goods cannot be corrected by re-performance, the State may:

- (a) require Contractor to take necessary action to ensure that future performance conforms to this contract requirements; and
- (b) equitably reduce the payment due to Contractor to reflect the reduced value of the Services performed or Goods provided.

These remedies shall in no way limit the remedies available to the State in other provisions of this contract or remedies otherwise available in equity or at law, all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment under this provision shall not constitute a breach of contract or default by the State.

9. Reporting

Unless otherwise provided in this contract or the exhibits hereto, Contractor shall submit, on a quarterly basis and upon termination or completion of work, a written progress report analyzing the performance under this contract and specifying progress made for each activity identified in Contractor's duties and obligations. Such written analysis shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of Contractor and failure to comply may result in the delay of payment of funds and/or termination of this contract. Required reports shall be submitted to the State not later than the end of each calendar quarter, or at such time as otherwise specified. Notwithstanding anything herein to the contrary, including without limitation the priority provisions set forth in Section 35, specific reporting requirements set forth in **Exhibit A**, Statement of Work, or in other exhibits to this contract, shall take precedence over this general reporting provision.

10. Rights in Data, Documents, and Computer Software

- 10.1 Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by Contractor in the performance of its obligations under this contract (the "Work Product"), shall be the exclusive property of the State and all Work Product shall be delivered to the State by Contractor upon completion, termination, or cancellation of this contract. The rights of the State with respect to such

Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such Work.

- 10.2 Contractor shall not use, willingly allow, cause or permit such property to be used for any purpose other than the performance of Contractor's obligations under this contract, without the prior written consent of the State. The rights of the State with respect to such property shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such property.

[OPTION #6]

11. Maintenance, Inspection and Monitoring of Records

- 11.1 Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of programs or the delivery of Services or Goods under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the Federal and/or Colorado State government has begun but is not completed or audit findings have not been resolved after a three (3) year period, such materials shall be retained until the resolution of the audit findings.
- 11.2 Contractor shall permit the State, the Federal Government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Contractor's performance hereunder.
- 11.3 Contractor also shall permit these same described entities to monitor all activities conducted by Contractor pursuant to the terms of this contract. As the monitoring agency, in its sole discretion, may deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract performance.

12. Confidentiality of State Records and Information

- 12.1 Contractor acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited, to personal records and information of individuals. It shall be the responsibility of Contractor to keep all State records and information confidential at all times and to comply with all Colorado State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of Contractor made by a third party who is not an authorized party to this contract shall be immediately forwarded to the State's principal representative for resolution.
- 12.2 Contractor shall notify all of its agent, employees, subcontractors and assigns who will come into contact with State information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and information wherever located. No State information of any kind shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the contract and as approved by the State. State information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in this contract and approved by the State. Disclosure of State records or information may be

cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.

[OPTION #7]

13. Litigation Reporting

Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services or Goods provided or Contractor's performance under this contract, which has been filed in any Federal or state court or administrative agency, shall deliver copies of such document to the State's principal representative, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the State.

14. Conflict of Interest.

14.1 During the term of this contract, Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations under this contract.

14.2 Additionally, Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of Contractor's obligations to the State in accordance with the terms and conditions of this contract, without the prior written approval of the State.

14.3. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

14.4. Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of Contractor or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (a) an employee, officer or agent;
- (b) any member of the employee's immediate family;
- (c) an employee's partner; or
- (d) an organization, which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. Contractor's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements.

REPRESENTATIONS AND WARRANTIES

15. Warranties. During the term of this contract and for a period of [24] months following the State's final acceptance under this contract, Contractor warrants as follows:

15.1 All Goods furnished under this contract shall be new and in good working order, free from defects in materials or workmanship, installed properly and in accordance with manufacturers' recommendations or other industry standards and will function in a failure-free manner. Contractor shall repair or replace, at its option, any Goods that fail to satisfy this warranty.

- 15.2 Contractor shall assign and deliver to the State all written manufacturer's warranties relating to the Goods.
- 15.3 All Services under this Contract shall be performed in accordance with the specifications set forth in this contract and **Exhibit A** and in a manner acceptable to the State. Contractor shall re-perform any Services that fail to satisfy this warranty.
- 15.4 All deliverables delivered under this contract by Contractor shall meet the specifications set forth in this contract and **Exhibit A**. Contractor shall correct or replace any deliverables which fail to satisfy this warranty.

The foregoing warranties and such other warranties as may be set forth in **Exhibit A**, Statement of Work, are a part of the minimum work requirements of this contract, and as such will be at no additional cost to the State.

16. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Services and/or deliver the Goods covered by this contract. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this contract, without reimbursement by the State or other adjustment in contract price. Additionally, all employees of Contractor performing services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform this contract, shall be deemed to be a default by Contractor and grounds for termination of this contract by the State.

17. Tax Exempt Status

Contractor acknowledges that the State of Colorado is not liable for any sales, use, excise, property or other taxes imposed by any Federal, State or local government tax authority. The State also is not liable for any Contractor franchise or income related tax. No taxes of any kind shall be charged to the State.

18. Legal Authority

Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind Contractor to its terms. Contractor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado. The person(s) executing this contract on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this contract.

19. Compliance with Applicable Law

- 19.1 Contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract. Contractor also shall require compliance with such laws and regulations by subcontractors under subcontracts permitted under this contract.

[OPTION # 8]

REMEDIES

20. Remedies

In addition to any other remedies provided for in this contract, and without limiting the remedies otherwise available at law or in equity, the State may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in this contract. "Substantial failure" to satisfy duties and obligations shall be defined to mean material, insufficient, incorrect or improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

- (a) Suspend Contractor's performance pending necessary corrective action as specified by the State, without Contractor's entitlement to adjustment in price/cost or schedule. Furthermore, at the State's option, a directive to suspend may include suspension of this entire contract or any particular part of this contract that the State determines in good faith would not be beneficial or in the State's best interests due to Contractor's substantial non-performance. Accordingly, the State shall not be liable to Contractor for costs incurred after the State has duly notified Contractor of the suspension of performance under this provision, and Contractor shall promptly cease performance and incurring costs in accordance with the State's directive;
- (b) Withhold payment to Contractor until the necessary Services or Goods or corrections in performance, development or manufacture are satisfactorily completed;
- (c) Request the removal from work on this contract of employees or agents of Contractor identified by the State, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this contract the State deems to be contrary to the public interest or not in the best interests of the State;
- (d) Deny payment for those Services or obligations which have not been performed and/or Goods which have not been provided and which, due to circumstances caused by Contractor, cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
- (e) Terminate this contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

21. Termination for Convenience

21.1 When the interests of the State so require, the State may terminate this contract in whole or in part, for the convenience of the State. The State shall give written notice of termination to Contractor specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the State of this termination for convenience provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Contractor shall stop work to the extent specified. Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this contract shall, at the option of the State, be delivered by Contractor to the State and shall become the State's property. The State may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor shall complete and deliver to the State the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the contract terms.

21.2 If this contract is terminated by the State as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the Goods or deliverables satisfactorily delivered or installed bear to the total Services, Goods or deliverables covered by this contract, less payments of compensation previously made. In addition, for contracts that are less than 60% completed, the State may reimburse the contractor for a portion

of actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by Contractor during the contract period which are directly attributable to the uncompleted portion of Contractor's obligations covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

22. Termination for Default/Cause

If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this contract, the State may notify Contractor in writing of such non-performance. If Contractor fails to promptly correct such delay or non-performance within the time specified, the State, may at its option, terminate this entire contract or such part of this contract as to which there has been delay or a failure to properly perform. If terminated for cause, the State shall only reimburse Contractor for accepted work or deliverables received up to the date of termination and final payments may be withheld. In the event of termination, all finished or unfinished documents, data, studies, research surveys, reports, other materials prepared by Contractor, or materials owned by the State in the possession of Contractor, at the option of the State, shall be returned immediately to the State or retained by the State as its property. At the State's option, Contractor shall continue performance of this contract to the extent not terminated, if any, and shall be liable for excess costs incurred by the State in procuring from third parties replacement services or substitute goods as cover. Notwithstanding any remedial action by the State, Contractor also shall remain liable to the State for any damages sustained by the State by virtue of any breach by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. Upon termination by the State, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. Further, the State may withhold amounts due to Contractor as the State deems necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods or services. Any action taken by the State hereunder or pursuant to paragraph 15 shall not be cause for Contractor to terminate this Contract for default or material breach. If, after termination by the State, it is determined for any reason that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

23. Insurance

23.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.
- b. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.

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

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

23.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

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

23.4 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

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

23.6 The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

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

24. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, 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, protection, or other provisions of the Governmental Immunity Act. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of sections 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and the risk management statutes, sections 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended.

25. Force Majeure

Neither Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; public health/safety emergency acts of the State or any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

MISCELLANEOUS PROVISIONS

26. Representatives

Each individual identified below is the principal representative of the designating party. All notices required to be given to a party pursuant to this contract shall be hand delivered with receipt required or sent by certified or registered mail to such party's principal representative at the address for such party set forth below. Either party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent.

For the **State**: [25]
Name:
Title:
Address:
Telephone: () _____ - _____

For **Contractor**: [26]
Name:
Title:
Address:
Telephone: () _____ - _____

27. Assignment and Successors

Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State, which shall not be unreasonably withheld. Any attempt at assignment, transfer or subcontracting without such consent shall be void, except that Contractor may assign the right to receive payments from the State pursuant to section 4-9-318, C.R.S. All subcontracts and subcontractors consented to by the State shall be made subject to the requirements, terms and conditions of this contract. Contractor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work or Goods, and performance of any subcontracted Services. Contractor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the State as is required under Section 3 of the Colorado Special Provisions, incorporated as a part of this contract.

28. Third Party Beneficiaries

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the State and Contractor. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and Contractor that any such person or entity, other than the State or Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

29. Severability

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

30. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

31. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved

pursuant to the Colorado State Fiscal Rules.

32 Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, all terms and conditions of this contract, including but not limited to its exhibits and attachments, which may require continued performance, compliance, or effect beyond the termination date of the contract, shall survive such termination date and shall be enforceable by the State in the event of the Contractor's failure to perform or comply as required.

33. Modification and Amendment

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

32.2 Except as specifically provided in this contract, no modification of this contract shall be effective unless agreed to in writing by both parties in an Amendment to this contract, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

34. Venue

Venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

35. Order of Precedence

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

- (a) Colorado Special Provisions, pages _____ to _____.
- (b) Exhibit B, modifications to contract provisions
- (b) Remaining pages of the contract, pages 1 to _____.
- (c) **Exhibit A**, Statement of Work
- (d) List other exhibits, if any, in order of priority [27]

Contract Options

1. **Option #1.** If the completion of Services or delivery of Goods under this contract is time sensitive contract, add the following “time is of the essence” provision:

Time is of the essence for the performance of this contract. The failure of Contractor to complete the **[delivery of reports/milestone/performance/delivery]** by the date specified in this contract shall be grounds for termination of Contractor for default by the State, subject to adjustment or extension in the time for performance, agreed to by the State, in its sole discretion.

Instructions for the use of the following options (#2 – #5): The user must know and understand the State Controller’s policy on “**State Contract Modifications**”. The policy is located on the SCO website: <http://www.colorado.gov/dpa/dfp/sco/contracts.htm> . Scroll down to find the most current contract policies. The current approved contract modification forms for use with the “Model Contract” are: Options, Grant Funding Letters, Change Orders, Task Orders and Amendments. These contract modifications were developed for specific types of contracts and scopes of services and contain very specific language. These contract modifications are not universal and were not designed to fit all types of contract situations, nor should they be changed or combined with other contract modifications, except amendments, or be used for other than their intended purpose. State agencies may at any time choose to use a contract amendment to make changes to the original contract.

2. **Option #2.** If an option is used **to increase or decrease the grant funding dollars** provided by the State in federal or state grant type contracts is part of this contract, add the following provision:

2.1 “The State may allocate more or less funds available on this contract using a Grant Funding Letter substantially equivalent to Exhibit ___ and bearing the approval of the State Controller or his designee. The grant funding letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.”

If the State has the **option to increase or decrease quantities**, add the following provision:

2.2 “The State may increase the quantity of goods/services described in paragraph/schedule/exhibit at the unit prices established in the contract. The State may exercise the option by written notice to the Contractor within ___ days before the option begins in a form substantially equivalent to Exhibit __. Delivery/performance of the goods/service shall continue at the same rate and under the same terms as established in the contract.”

If the State allows for the **option to increase or decrease the total contract price** based upon a change in the service schedule established by the agency, add the following provision:

2.3 “The State may unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices established in the contract and the schedule of services required, as set by the State. The State may exercise the option by providing a fully executed option to the Contractor, in a form substantially equivalent to Exhibit __, immediately upon signature of the State Controller or his delegate. Performance of the service shall continue at the same rate and under the same terms as established in the contract.”

If the State has an **option to initiate the next phase** for a phased contract, add the following provision:

2.4 “The State may require the Contractor to being performance on the next phase of the contract as outlined in the Statement of Work in Exhibit A. The State may exercise the option by written notice to the Contractor within ____ days prior to the end of the current contract phase in a form substantially equivalent to Exhibit ____. If the State exercises this option, the contract will be considered to include this option provision.”

Option #3. The following language must be included in the original contract to allow the state agency to use change orders to make changes to the specifications:

3.1 “Bilateral changes within the general scope of this contract and **Exhibit A**, Statement of Work, may be executed using the change order letter process described in this Section, substantially in the form of the Change Order Letter attached as Exhibit ____ and incorporated herein, for any of the following reasons:

- (a) Where the agreed changes to the specifications result in an adjustment to the price, delivery schedule, or time of performance;
- (b) Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance;
- (c) Where the changes to this contract are priced based on the unit prices to be paid for the goods and/or services established in this contract or **Exhibit A**, Statement of Work; or
- (d) Where the changes to this contract are priced equal to or less than established catalog prices generally extended to the public or on prices or rates set by law or regulation.

Other bilateral modifications not within the terms of this Section must be executed by formal amendment to this contract, approved in accordance with Colorado State law and State Fiscal Rules.”

4. **Option #4.** If a renewal (extending the contract term) option is a part of this contract, add the following “Renewal Option” provision:

4.3 “The State unilaterally may require continued performance of Contractor’s obligations under this contract for one (1) additional year at the **same rates and same terms specified in the contract and Exhibit A**, Statement of Work.] **[ONLY THE AGGREGATE AMOUNT APPEARS IN THE CONTRACT.]** The State may exercise this option by the delivery of written notice to Contractor, in accordance with Section [26] of this contract, substantially in the form of the Option Letter, attached hereto as **Exhibit** _____, and incorporated herein, within thirty (30) days of the contract term or any renewal term. Upon exercise of this option by the State, the extended contract shall include this option provision for future use; provided, however, that the total duration of this contract, including the exercise of all options under this provision, shall not exceed a total contract period of five (5) years. Financial obligations of the State of Colorado payable after any current fiscal year are contingent upon the availability of funds for that purpose as set forth in Section 6 of this contract.”

5. **Option #5.** If this is a master contract with task orders, add the following provision:

5.5 “Tasks will be defined, negotiated, and ordered by agreement of the parties based on the rates established in Appendix ____ and are subject to the same terms and same conditions established in the contract. The Contractor understands that there is no guaranteed minimum commitment by the state to issue task orders pursuant to this contract. Changes to terms,

conditions, and prices specified, or other provisions of the contract shall be completed by formal amendment and signed by the State Controller or his designee.

Task Orders processed in accordance with this paragraph shall occur as follows:

If the State has need of services, and the Contractor agrees to provide those services, the State shall provide a definition of the requirements to the Contractor. The Contractor will propose a price for the task using the rates agreed to and identified as Appendix ____ to the contract and attached to the Contractor's proposal. The proposal shall include the estimated number of hours, material costs, and amount of other elements of cost priced by the parties in the rates established in Appendix ____, as well as the proposed time of performance, in a form acceptable to the State.

Upon negotiation and agreement of the parties concerning the statement of work, the price, and the time of performance, the Task Order attached as Exhibit ____ to the contract shall be prepared and signed by both parties.

Performance of the work and payment for that work shall be governed by the standards and procedures set forth in this contract. Upon negotiation and acceptance of the task order, the Contractor warrants that performance will be successfully completed within the time frame and price stated in the task order. The State's financial commitment stated in the task order shall not be considered valid until the State Controller or a delegate executes the task order."

Additional language:

This additional language is provided for those state agencies wishing to encumber all available funds when the master contract is executed or wish to establish a not to exceed amount in the master contract.

"The cumulative not to exceed amount for all task orders issued pursuant to this contract shall not exceed _____. The State's financial obligation is limited by this amount, and the Contractor shall accept no task orders, which result in a cumulative amount in excess of the not to exceed amount stated in this paragraph. Increases or decreases to the not to exceed amount shall be completed by formal amendment and signed by the State Controller or his designee."

6. **Option #6.** If intellectual property or technology is part of this contract, add the following "Intellectual Property Indemnification" provisions:

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

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

10.4 The State shall notify Contractor within a reasonable time after receiving notice of a claim of infringement. The State shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for the defense of such claim. Contractor, at its sole expense, shall (a) obtain the right for the State to continue using the product, (b) replace the product with a non-infringing product with equivalent functionality, (c) modify the product so that it retains equivalent functionality, but is non-infringing or (d) reimburse the State for the removal and replacement of the product. In the event Contractor fails to vigorously and timely pursue the defense or settlement of such claim, the State may assume such defense and settlement and Contractor shall be liable for all costs and expenses incurred by the State."

7. **Option #7.** If the Health Insurance Portability & Accountability Act of 1996 ("HIPAA") applies to this contract, add the following provision:

12.3 "Health Insurance Portability & Accountability Act of 1996 ("HIPAA"). Federal law and regulations governing the privacy of certain health information requires a "Business Associate Contract" between the State and Contractor. 45 C.F.R. Section 164.504(e). Attached and incorporated herein by reference and agreed to by the parties is a HIPAA Business Associate Addendum for HIPAA compliance. Terms of the Addendum shall be considered binding upon execution of this contract and shall remain in effect during the term of this contract including any extensions."

8. **Option #8.** If the Federal funding is a part of this contract , add the following provisions:

20.2 "Federal laws and regulations incorporated into this contract include, without limitation:

- (a) Age Discrimination Act of 1975 42 U.S.C. Sections 6101, *et seq.*
- (b) Age Discrimination in Employment Act of 1967 29 U.S.C. 621-634
- (c) Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. 12101, *et seq.*
- (d) Equal Pay Act of 1963 29 U.S.C. 206(d)
- (e) Immigration Reform and Control Act of 1986 8 U.S.C. 1324b
- (f) Section 504 of the Rehabilitation Act of 1973 29 U.S.C. 794
- (g) Title VI of the Civil Rights Act of 1964 42 U.S.C. 2000d
- (h) Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e
- (i) Title IX of the Education Amendment of 1972 20 U.S.C. 1681, *et seq.*
- (j) Section 24-34-302, *et seq.*, Colorado Revised Statutes 1997, as amended

20.3 Contractor also shall comply with any and all laws and regulations prohibiting discrimination in the performance of Contractor's obligations under this contract. In consideration of and for the purpose of obtaining any and all Federal and/or Colorado State financial assistance, Contractor makes the following assurances, upon which the State relies:

- (a) Contractor shall not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of work under this contract.
- (b) At all times during the performance of this contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by Contractor, or be subjected to any discrimination by Contractor.

20.4 Contractor shall take all necessary affirmative steps, as required by 45 CFR 92.36(e), Colorado Executive Order, and Procurement Rules to assure that small and minority businesses and

women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this contract."