

**AGENCY-SPECIFIC PARTICIPATING ADDENDUM**  
**to NASPO ValuePoint**  
**Master Agreement for Cloud Solution**  
**Administered by the State of Utah**  
**with Deloitte Consulting, LLP**  
**Master Agreement No. AR2479**  
**And**  
**The State of Colorado Department of Health Care Policy and Financing**

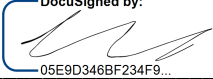
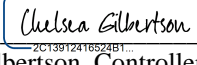
**Cover Page**

<b>Colorado State Agency</b> Department of Health Care Policy and Financing	<b>Participating Addendum Number</b> 180371
<b>Contractor</b> Deloitte LLP	<b>Participating Addendum Performance Beginning Date</b> The Effective Date
<b>Contract Description</b> Health Care Data Analytics	<b>Initial Participating Addendum Expiration Date</b> 09/09/2026
<b>Principal Representatives</b>	
<b>For the State:</b>	<b>For Contractor:</b>
Chris Underwood Department of Health Care Policy and Financing 303 E. 17 <sup>th</sup> Avenue Denver, CO 80203 Chris.Underwood@state.co.us	Mark Kay Deloitte, LLP 1601 Wewatta St. Suite 400 , Denver, CO 80203 mkay@deloitte.com

## SIGNATURE PAGE

### THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

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

<p><b>CONTRACTOR</b> Deloitte Consulting, LLP</p> <p>DocuSigned by:  05E9D346BF234F9...</p> <p>By: Mark Kay, Managing Director, Lead Client Service Partner, State of Colorado 4/28/2023   16:26 PDT Date: _____</p>	<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Health Care Policy and Financing Kim Bimestefer, Executive Director</p> <p>DocuSigned by:  0B6A84797EA8493...</p> <p>By: Kim Bimestefer, or Delegate 5/1/2023   18:02 PDT Date: _____</p>
<p>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.</p> <p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>DocuSigned by:  2C1391241652451...</p> <p>By: _____ Chelsey Gilbertson, Controller Delegate</p> <p>5/2/2023   21:12 PDT Effective Date: _____</p>	

## **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 Contractor named on the Cover Page for this Participating Addendum (the “Contractor”), and the State of Colorado acting by and through the State agency named on the Cover Page for this Participating Addendum (the “State”). This Participating Addendum covers participation in the NASPO ValuePoint Master Agreement for Cloud Solutions led by the State of Utah (the “Master Agreement”), for use by the Colorado Department of Health Care Policy and Financing. The specific Goods and Services provided under the Master Agreement are listed in Exhibit B, Scope of Services Awarded to Contractor.

## **2. PARTICIPATION**

The Colorado Department of Health Care Policy and Financing is the only entity authorized to 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, all terms and conditions of the Master Agreement 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. NOTICES AND REPRESENTATIVES**

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

## **5. SUBCONTRACTORS**

The Contractor may only use Subcontractors, as defined in Exhibit A, under this Participating Addendum if the State has provided written approval for the Contractor to use that Subcontractor. All such approved Subcontractors authorized in the State of Colorado, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to 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.

## **6. ORDERS**

Any Order placed by the State for a Good or Service available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions) 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.

## **7. 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. HIPAA Business Associate Addendum, Exhibit E
- B. AWS Hosting, Exhibit D
- C. Colorado Special Provisions as stated in Participating Addendum Exhibit A, State Specific Terms
- D. The provisions of the main body of this Participating Addendum
- E. All other sections of Participating Addendum, Exhibit A, State Specific Terms
- F. Participating Addendum Exhibit B, Scope of Services Awarded to Contractor and C, Pricing Discounts and Pricing Schedule

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision incorporated in any exhibit attached hereto, 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 the Colorado Special Provisions as stated in participating Addendum Exhibit A, State Specific Terms, or the main body of this Participating Addendum.

## **PARTICIPATING ADDENDUM EXHIBIT A, STATE SPECIFIC TERMS**

### **AUTHORITY**

**AUTHORITY TO ENTER INTO THIS PARTICIPATING ADDENDUM EXISTS IN THE COLORADO PROCUREMENT CODE, 24-101-101 *ET. SEQ.*, C.R.S., AND ITS ASSOCIATED RULES.**

### **1. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

- A. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Participating Addendum, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Participating Addendum, then such debarment or suspension shall constitute a breach.
- B. **“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.
- C. **“Ceiling Price”** means the maximum price a Contractor or a Subcontractor may charge for a Good or Service under this Participating Addendum.
- D. **“Chief Procurement Officer”** means the position described in the Colorado Procurement Code and its implementing regulations.
- E. **“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.
- F. **“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.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. **“End of Term Extension”** means the time period defined in §2.C of this Exhibit A.
- I. **“Effective Date”** means the date on which this Participating Addendum is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Participating Addendum. If this Participating Addendum is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Participating Addendum shall be the later of the date on which this Participating Addendum is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Participating Addendum is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Participating Addendum.
- J. **“Exhibits”** means the exhibits and attachments included with this Participating Addendum as shown on §8.
- K. **“Extension Term”** means the time period defined in §2.B of this Exhibit A.

- L. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement, and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- M. **“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.
- N. **“Initial Term”** means the time period defined in §2.A of this Exhibit A.
- O. **“Order”** means any delivery order, purchase order, contract, agreement or other binding document used by the State to order the Goods and Services described in this Participating Addendum from the Contractor, and shall include any modification to such a document.
- P. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- Q. include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- R. **“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, C.R.S.
- S. **“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.
- T. **“Services”** means the services to be performed by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement, and shall include any services to be rendered by Contractor in connection with the Goods.
- U. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, Tax Information, 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.

- V. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- W. **“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.
- X. **“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.
- Y. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work. The term “Subcontractor” includes, but is not limited to, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- Z. **“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.
- AA. **“Work”** means the Goods delivered and Services performed pursuant to this Participating Addendum.
- BB. **“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 or any other Contractor Property as defined below.

Any term used in this Participating Addendum that is defined in another Exhibit or in the main body of this Participating Addendum shall be construed and interpreted as defined in that portion of this Participating Addendum.

## 2. **TERM**

### A. **Initial Term - Work Commencement**

The Parties’ respective performances under this Participating Addendum shall commence on the Effective Date and shall terminate on the date on which the NASPO ValuePoint Master Agreement terminates, unless this Participating Addendum is terminated earlier as described in this Participating Addendum or the State cancels its participation as described in the Master Agreement (the “Term”).

### B. **Extension of Term**

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

C. End of Term Extension

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

D. Order Term

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

E. Early Termination in the Public Interest

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Participating Addendum ceases to further the public interest of the State, the State, in its discretion, may terminate this Participating Addendum in whole or in part. A determination that this Participating Addendum 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 §10.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 termination of this Participating Addendum.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in §10.A.i.a..

iii. Payments

If the State terminates this Participating Addendum in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Participating Addendum that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made.



**F. Termination upon Issuance of a Statewide Participating Addendum**

If, at any time during the term of this agreement, the State elects to enter into a statewide Participating Addendum, then this agreement will terminate 30 days following the effective date of such statewide agreement. Any Order initiated under this agreement still outstanding at the time of termination will be considered an Order under the statewide agreement, unless otherwise agreed upon by the parties of the statewide agreement.

**G. Termination**

Either party may terminate this Participating Addendum, with or without cause, by giving thirty (30) days prior written notice to the other party. Any order placed hereunder may be terminated by the Participating Entity without cause by giving thirty (30) days prior written notice to the other party. If either party fails to perform in material conformance with its obligations under an order executed hereunder, the other party shall have the right to terminate such order by giving at least thirty (30) days prior written notice to the breaching party; provided that the breaching party does not cure the breach prior to the specified effective date. In the event the General Assembly or federal government fails to appropriate the specific funds necessary to enter into or continue any order executed hereunder, in whole or part, the Participating Entity may terminate the order as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available upon written notice to Contractor at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. In the event of any termination hereunder, Contractor shall be entitled to receive compensation for any work performed (including work in progress) through the effective date of termination. Any partial termination shall be subject to the parties reaching mutual agreement on a change order relative to the remaining scope.

**3. LIMITATION OF LIABILITY**

For the avoidance of doubt, the Parties agree that the insurance required under Section 16 of the Master Agreement does not modify nor reduce Contractor's potential liability relating to this Contract, even if the minimum coverages required under this contract are less than the limitation of liability set forth below in paragraph 2 of this Section 3.

Contractor, its subsidiaries and subcontractors, and its personnel shall not be liable to the State for any claims, liabilities, or expenses relating to this Participating Addendum, any order placed hereunder, or the services ("Claims") for an aggregate amount in excess of the greater of: (i) one million dollars (\$1,000,000) or (ii) the total fees paid by the Participating Entity to Contractor under the applicable order over the twelve (12)-month period immediately preceding the date on which the first cause of action giving rise to a Claim under the order accrues. In no event shall Contractor, its subsidiaries or subcontractors, or its personnel be liable to the State for any loss of revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense, relating to this Participating Addendum, any order placed hereunder, or the services. In circumstances where any limitation on damages provision hereunder is unavailable, the aggregate liability of each party, its subsidiaries and subcontractors, and their respective personnel for any Claim shall not exceed an amount that is proportional to the relative fault that their conduct bears to all other conduct giving rise to such Claim.

Except that 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 Sections 13(T)(i) and 13(T)(iii) of this Participating Addendum;
- 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 recklessness, bad faith, or intentional misconduct of Contractor or its Subcontractors.

#### **4. REPORTING - NOTIFICATION**

##### **A. 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 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.

##### **B. Litigation Reporting**

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

##### **C. 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, in accordance with §5 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 Contract Funds include any federal funds.

#### **5. CONTRACTOR RECORDS**

##### **A. Maintenance**

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

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

**B. Inspection**

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 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 Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

**D. Final Audit Report**

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

**6. 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, to the extent they are respectively applicable: (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 Participating Addendum as an Exhibit, if applicable, and (ii) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Participating Addendum if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

**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 if requested by the State.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Participating Addendum, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, Contractor shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. In the event of an Incident caused by the negligent acts or omissions or breaches of Contractor, the State may request that Contractor engage, at Contractor's sole expense, the services of an independent, qualified, Contractor-selected (subject to State approval) third party to conduct a security audit as to the applicable State system(s). Contractor shall provide the State with 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 Participating Addendum, 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 Participating Addendum, 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.

## **7. 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 a Purchasing Entity, 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 or any Order.

### **B. Apparent Conflicts of Interest**

Contractor acknowledges that with respect to this Participating Addendum, even the appearance of a conflict of interest will 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 the 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 apparent conflict constitutes a breach of this Participating Addendum.

## **8. INSURANCE**

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

### **A. Workers' Compensation**

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

### **B. Additional Insured**

The State shall be included as additional insured on all commercial general liability policies with respect to Contractor's acts or omissions related to performance of services under the Contract (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

### **C. Primacy of Coverage**

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program excluding Professional Liability, Protected Information and Crime coverages, carried by Contractor or the State.

### **D. Cancellation**

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

**E. Subrogation Waiver**

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Participating Addendum, excluding liability insurance for Protected Information, Crime and Professional Liability, shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**F. Certificates**

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Participating Addendum within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

**9. BREACH**

**Notice and Cure Period**

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party's primary contact described in this Participating Addendum. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies set forth in §10 of this Exhibit A for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion, 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 in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Participating Addendum in whole or in part or institute any other remedy in this Participating Addendum as of the date that the debarment or suspension takes effect.

**10. REMEDIES**

**A. State's Remedies**

If Contractor is in breach under any provision of this Participating Addendum, the State, following the notice and cure period set forth in §9 of this Exhibit A, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating

Addendum and any remedies available by law or equity. 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.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request, and the State acknowledges that all such "in process" Work is delivered as-is, without warranty express or implied.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received and Work Product that was in-process as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

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

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance; however if a suspension exceeds fifteen (15) days, then Contractor may re-provision persons assigned to the Project, without incurring liability to the State.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

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

d. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable for reasons permitted by applicable law, regulation, policy or order 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.

e. Intellectual Property

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

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period set forth in §9 of this Exhibit A and the dispute resolution process in §11 of this Exhibit A shall have all remedies available at law and equity.

## 11. DISPUTE RESOLUTION

A. Initial Resolution

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



**B. Resolution of Controversies**

If the initial resolution described in **§11.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged Breach of Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Participating Addendum as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (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.

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

**A. Work Product**

Contractor assigns to the Purchasing Entity and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product under an Order. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

**B. 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 shall be the exclusive property of the State (collectively, “State Materials”). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Participating Addendum without the prior written consent of the State. Upon termination of this Participating Addendum for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

**C. Exclusive Property of Contractor**

Contractor retains the exclusive rights, title, and ownership to any and all: (i) pre-existing materials owned or licensed to Contractor, (ii) all materials owned or licensed to Contractor separate from this Contract and (iii) all updates to and derivatives of (i) and (ii); collectively 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 Participating Addendum, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Contractor Property”). Contractor Property shall be licensed to the State, if contained in a Deliverable, as set forth in this Participating Addendum or a State approved license agreement: (i) entered into as exhibits to this Participating Addendum; (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.

### **13. 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 such 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 §13.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 Participating Addendum 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 Participating Addendum 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 Participating Addendum.

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

T. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties arising from third party claims for bodily injury or damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or intentional misconduct of Contractor, or its employees, agents, Subcontractors, or assignees in its or their performance of Services under this Participating Addendum.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §5 of Exhibit A may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State as a result of any third party claims brought against the State by an individual whose PII was disclosed or impermissibly used, which such disclosure or use was caused by any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §5 of Exhibit A.

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 Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

#### **14. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

Notwithstanding anything to the contrary in this Participating Addendum, these in the event of a conflict, these special provisions shall supersede and control over all terms of the Master Agreement and all other terms of this Participating Addendum. These Special Provisions apply to all contracts except where noted in italics.

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

This Participating Addendum shall not be valid until it has been approved by the Colorado State Controller or designee. If this Participating Addendum is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Participating Addendum 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 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 Participating Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR.**

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

**unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Participating Addendum. 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 Participating Addendum. 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 Participating Addendum 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 Participating Addendum 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 Participating Addendum shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Participating Addendum that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Participating Addendum, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Participating Addendum.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Participating Addendum 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 Participating Addendum 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 Participating Addendum, including, without limitation, immediate termination of this Participating Addendum 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 Participating Addendum. 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 Participating Addendum, 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 what the Participating Addendum will provide, see Exhibit B of the Master Agreement #CH16012, "Scope of Services Awarded to Contractor"

### **2. OTHER PROJECT REQUIREMENTS**

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

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

#### **B. Additional Terms**

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



## **EXHIBIT C PRODUCTS AND PRICE LIST**

1. Contractor has been awarded the following categories: PaaS, IaaS, SaaS.
2. The products and price list is located on NASPO's website and is incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the lead state and shall be effective when published on the dedicated state website.

<https://www.naspovaluepoint.org/portfolio/cloud-solutions-2016-2026/deloitte-consulting/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 the State, and the State may negotiate lower prices with Contractor, without the review or approval of the State. Contractor shall not allow a Subcontractor to charge an amount greater than the Ceiling Price for any Order.

## EXHIBIT D, AWS HOSTING

In addition to the terms and conditions in the Participating Addendum, the terms and conditions set forth in this exhibit will apply to any Order where AWS hosting is included as part of the Services thereunder.

(a) Participating Entity or Purchasing Entity acknowledges and agrees that Contractor will be contracting with Amazon Web Services, Inc. ("AWS"), an independent commercial public cloud infrastructure provider, as a vendor to provide the AWS cloud-computing platform, services and tools ("AWS Platform") as part of the Services in the applicable Order. Participating Entity or Purchasing Entity agrees that AWS shall not be deemed a subcontractor under the terms of the Agreement.

(b) By entering into the Order, Participating Entity or Purchasing Entity acknowledges that its use of the AWS Platform is subject to AWS's access policy currently located at <https://s3.amazonaws.com/Reseller-Program-Legal-Documents/AWS+Access+Policy.pdf>, as it may be updated by AWS from time to time, and as may be made available on any successor or related site designated by AWS ("AWS Public Sector Access Policy"), a copy of the current version is attached to the NASPO Master Agreement as Schedule E. Participating Entity or Purchasing Entity hereby accepts the terms of the AWS Public Sector Access Policy.

(c) Participating Entity or Purchasing Entity acknowledges that aspects of, or changes to, the functionality of the AWS Platform is outside of Contractor's direct control. In the event the AWS Platform experiences an availability, performance, or security failure solely as a result of an outage, malfunction, unavailability of, or change by AWS to an AWS Platform component (a "Platform failure"): (i) Contractor shall coordinate with AWS and the Participating Entity or Purchasing Entity to monitor status on any such issue and Contractor will work collaboratively with the Participating Entity or Purchasing Entity to develop a mutually agreeable resolution to address the impact of such failure; and (ii) to the extent AWS provides a credit/payment to Contractor as a result, Contractor shall apply such amount against amounts due to Contractor for the Services; and (iii) Participating Entity or Purchasing Entity agrees that Contractor will not be in breach of its obligations for such a Platform failure. The foregoing shall not relieve Contractor, as applicable, from responsibility for any other aspects of the Services, such as the functionality of the hosted solution, nor from responsibility for Contractor not having properly installed or configured any AWS Platform components in accordance with the applicable Order.

(d) "State Items" shall mean any State-provisioned application or other software installed or uploaded onto the AWS Platform by or on behalf of Participating Entity or Purchasing Entity, or by Contractor as part of the Services ("State Software") and any State-provisioned machine images, data, text, audio, video, images or other content that is installed or uploaded onto the AWS Platform by Contractor as part of the Services, or that Participating Entity or Purchasing Entity or any of its end users (a) runs on any State Software hosted on the AWS Platform, (b) uploads to any State Software hosted on the AWS Platform, or (c) causes to interface with the AWS Platform. Any State Items that Contractor maintains in its possession or accesses in connection with the Services outside of the Hosted Solution shall be treated by Contractor as Confidential Information under the terms of the Agreement. State Items, once uploaded to, and while hosted on the AWS Platform, will not be considered Confidential Information under the Agreement, but will be subject to any security control measures to be implemented as agreed to by the parties to the applicable Order. Contractor and its providers will only access State Items on the AWS Platform, or transfer State Items on the AWS Platform, in performance of its obligations under the Agreement or to comply with legal obligations. Contractor shall promptly notify Participating Entity or Purchasing Entity of any unauthorized third-party access to any State Items.

(e) Where it is not within Contractor's scope of responsibility as part of the Services to implement and/or configure the AWS Platform on behalf of the State, the State is responsible for properly configuring implementing, maintaining and using the AWS Platform in a manner that satisfies its compliance obligations and that provides adequate availability, security, resiliency and redundancy for its accounts and State Items such as, establishing multiple connectivity channels and load-balancing capabilities, using appropriate access controls to prevent unauthorized access, using encryption technology to protect information at rest and in transit, choosing the data center locations from the available options, and ensuring the appropriate level of backup to prevent loss. State has a variety of options to choose from when implementing and configuring its accounts on the AWS Platform, and in making those selections it should take into consideration the sensitivity and value of the content it plans to upload to the AWS Platform. It is recommended that State use strong resiliency, security and redundancy features, such as access controls, encryption and backup. Where the State requires hard drive encryption consistent with Federal Information Processing Standards (FIPS) Publication 140-2, State must choose the AWS GovCloud (US) environment as its AWS Platform environment.

(f) In lieu of an order to comply with any inspection under the Agreement of the AWS Platform or the AWS data center facilities, servers, networking equipment and hosting software systems, State may review relevant security documentation regarding AWS's FedRAMP program by submitting a request directly to AWS. In addition, notwithstanding anything to the contrary, State Participating Entity's or Purchasing Entity's audit rights set forth in the Contract shall not extend to AWS's books and records.

## EXHIBIT E, HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, this Participating Addendum. 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 Participating Addendum and this Agreement, all references to “Contract” shall include the Participating Addendum.

### 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.
- d. 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).
- e. 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.
- f. 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.

- g. 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>.
- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. 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.
- m. 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.
- n. 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.
- o. 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.
- p. 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.
- q. Business Associate's Insurance and Notification Costs.
- i. Business Associate shall (1) bear all costs of a Breach response required as a result of a Breach on Business Associate's systems, including, without limitation, notifications, and (2) 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 actual or alleged wrongful acts, including violations of privacy rights through improper use or disclosure of PHI by Business Associate.
  - 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.
- r. 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.
- s. 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.
- t. 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 1.j 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.
- u. 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 seek 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. 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.

## 8. 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 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. Covered Entity and Business Associate will agree on timing and scope of any examination under this Agreement. If Covered Entity and Business Associate are unable to agree on timing and scope, Covered Entity will schedule the examination at a time and place that will not unduly burden Business Associate's operations and the scope of the examination will be limited to HIPAA compliance. In accordance with the Colorado Open Records Act § 24-72-200.1, et seq., C.R.S. ("CORA"), Covered Entity shall treat any information obtained in connection with any audit or inspection as Business Associate's confidential information and shall hold it in strict confidence and not disclose it to any third party. Business Associate understands and agrees that Covered Entity is a public entity that is subject to CORA, which imposes a legal duty to disclose records in its possession unless an exception to disclosure exists in the statute, and, even then, only to the extent specific aspects of the information may be withheld under an exception. If Covered Entity receives a CORA request for information associated with any audit or inspection conducted by Covered Entity pursuant to this Section 8, Covered Entity will: (a) notify Business Associate of the request in writing and (b) cooperate with Business Associate if Business Associate chooses to seek a protective order at Business Associate's cost.

## 9. 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.
- v. 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.

## 10. 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 or if providing such assistance would be in conflict with professional rules.

## 11. 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.

## 12. 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.

### 13. 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.