





# STATE OF COLORADO PRICE AGREEMENT

## SIGNATURE AND COVER PAGE

<b>State Agency</b> Department of Personnel and Administration, State Purchasing and Contracts Office	<b>Contract Number</b> 176889
<b>Contractor</b> LilyPad EV LLC	<b>Contract Performance Beginning Date</b> The later of the Effective Date or August 1, 2022
<b>Contract Description</b> 80A Electric Vehicle Charging Stations	<b>Initial Contract Expiration Date</b> August 31, 2023

### THE PARTIES HERE TO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<b>CONTRACTOR</b> LilyPad EV LLC	<b>STATE OF COLORADO</b> Jared Polis, Governor Department of Personnel and Administration, State Purchasing and Contracts Office Tony Gherardini, Executive Director
DocuSigned by:  By: <u>Keith Anderson, VP Business Development</u> Date: <u>8/19/2022</u>	DocuSigned by:  By: <u>John Chapman, State Purchasing Manager</u> Date: <u>8/22/2022</u>
<b>In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.</b>  <b>STATE CHIEF INFORMATION OFFICER</b> Anthony Neal-Graves, Chief Information Officer and Executive Director  DocuSigned by:  By: <u>Douglas K. Palmer</u> Date: <u>8/22/2022</u>	<b>In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</b>  <b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD  DocuSigned by:  By: <u>Rachael Kamlet</u> <b>Robert Jaros or Controller Delegate</b> Effective Date: <u>8/24/2022</u>

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### 1. PARTIES

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

### 2. TERM AND EFFECTIVE DATE

#### A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no

obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

**B. Initial Term**

The Parties' respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Signature and Cover Page for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover Page for this Contract (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Contract.

**C. Extension Terms - State's Option**

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of 1 year or less at the same rates and under the same terms specified in this Contract (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Exhibit E. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

**D. End of Term Extension**

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§18**, 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 Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Contract.

**E. Order Term**

Orders may only be placed prior to the expiration or earlier termination of this Contract, 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 Contract 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 Contract necessary to complete all outstanding Orders shall survive the expiration or termination of this Contract until all such Orders are complete.

**F. Early Termination in the Public Interest**

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§16.A.i**.

**i. Method and Content**

The State shall notify Contractor of such termination in accordance with **§18**. The notice shall specify the effective date of the termination and whether it affects all or a

portion of this Contract.

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 **§16.A.i.a.**

iii. **Payments**

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

**3. AUTHORITY**

Authority to enter into this Contract exists in §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01.

**4. PURPOSE**

The Parties are entering into this Contract for the Contractor to provide 80A Electric Vehicle Charging Stations to Purchasing Entities. The Contractor was selected as a result of RFP-AR-SPCO-22-04.

**5. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

- A. **“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.
- B. **“Business Interruption”** means any event that disrupts Contractor’s ability to complete the Work for a period of time, and may include, but is not limited to a Disaster, power outage, strike, loss of necessary personnel or computer virus.
- C. **“Ceiling Price”** means the maximum price Contractor or a Subcontractor may charge for a Good or Service under this Contract.
- D. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- E. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- F. **“Contract”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- G. **“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 Contract.
- H. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.

- I. **“Disaster”** means an event that makes it impossible for Contractor to perform the Work out of its regular facility or facilities, and may include, but is not limited to, natural disasters, fire or terrorist attacks.
- J. **“End of Term Extension”** means the time period defined in **§2.D**.
- K. **“Environmentally Preferable Products”** means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.
- L. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Contract.
- M. **“Exhibits”** means the following exhibits attached to this Contract:
- i. **Exhibit A**, General Requirements.
  - ii. **Exhibit B**, Statement of Work.
  - iii. **Exhibit C**, Products and Pricing
  - iv. **Exhibit D**, HIPAA Business Associate Agreement
  - v. **Exhibit E**, Sample Option Letter
  - vi. **Exhibit F**, Information Technology Provisions
- N. **“Extension Term”** means the time period defined in **§2.C**
- O. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- P. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State 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.
- Q. **“Initial Term”** means the time period defined in **§2.B**
- R. **“Order”** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Contract from the Contractor, and shall include any modification to such a document.
- S. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- T. **“Purchasing Entity”** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the

State, institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.

- U. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- V. **“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.
- W. **“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.
- X. **“Services”** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- Y. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, PHI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA.
- Z. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S..
- AA. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- BB. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- CC. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work. The term “Subcontractor” includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- DD. **“Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- EE. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- FF. **“Work Product”** means the tangible and intangible results of the Work, whether finished or

unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

## **6. STATEMENT OF WORK**

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibits A and B and any Order.

## **7. PAYMENTS TO CONTRACTOR**

### **A. Payments Under Orders**

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

### **B. Payment Procedures**

#### **i. Invoices**

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity's Order. Contractor shall not invoice the State under any Order unless the State is a party to that Order. Contractor shall allow 45 days for the State and Purchasing Entities to pay an invoice following the receipt of that invoice, unless the State or a Purchasing Entity specifically agrees to a shorter time in an Order.

#### **ii. Payment Disputes**

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

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

iii. Discount and Delinquency Period

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

**8. RESERVED**

**9. REPORTING - NOTIFICATION**

A. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in **§18**.

B. 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 **§18**, 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 **§9.B** shall constitute a breach of this Contract. This **§9.B** shall not apply if the Contract Funds include any federal funds.

C. SOC 1 Type II Annual Report

If Contractor performs Work for any of the State's IT systems that impact the State's Comprehensive Annual Financial Report as determined by the Colorado Office of the State Controller, Contractor, on an annual basis, shall deliver to the State, at Contractor's sole cost and expense, Contractor's System and Organization Controls 1 Type II Report ("SOC 1 Type II Report") prepared by a qualified independent audit firm with respect to the Statement on Standards for Attestation Engagements, Reporting on Controls at a Service Organization (SSAE) as promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants, as amended, from time to time.

**10. CONTRACTOR RECORDS**

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor



that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 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.

**11. CONFIDENTIAL INFORMATION-STATE RECORDS**

**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines including, without limitation: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Addendum attached to this Contract. 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 Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

## 12. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval,

Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

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

### 13. INSURANCE

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

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Cyber/Network Security and Privacy Liability

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

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

E. Professional Liability Insurance

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

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

F. Crime Insurance

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

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

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

H. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

I. 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 **§18** within 7 days of Contractor's receipt of such notice.

J. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

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

policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract 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 Contract 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 Contract, 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 §13.

**14. LIMITATION OF CONTRACTOR'S LIABILITY TO STATE**

The liability of Contractor, or its Subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss of State Records or unauthorized disclosure of State Confidential Information, not to exceed three (3) times the Maximum Amount, or \$1M whichever is greater, payable by the State under this Contract.

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

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

**15. BREACH**

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner, shall be a breach. 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.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. 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 as described in §16

for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State.

## 16. REMEDIES

### A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in **§15.B.**, shall have all of the remedies listed in this **§16.A.** in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

#### i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract 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 Purchasing Entities all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State or any Purchasing Entity, Contractor shall assign to the Purchasing Entity 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 Purchasing Entity has an interest. At the State or Purchasing Entity's request, Contractor shall return materials owned by the Purchasing Entity that Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the Purchasing Entity at the State or Purchasing Entity's request.

##### b. Payments

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

##### c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages. A Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary

to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the Purchasing Entity 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 neither the State nor any Purchasing Entity shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §15.B and the dispute resolution process in §17 shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

### C. Purchasing Entity's Remedies

- i. If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that Order, in addition to all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.
- ii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within five (5) Business Days following Contractor's receipt of that notice of breach or termination.

## 17. DISPUTE RESOLUTION

### A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives or through a dispute on an Order, as described in Exhibit A, §2.5, 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 arising under this Contract

If the initial resolution described in §17.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Purchasing and Contracts Office as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§ 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

### C. Resolution of Controversies arising under any Order made pursuant to this Contract

Any dispute between Contractor and a Purchasing Entity concerning the performance of an Order shall be resolved under the dispute resolution processes as described in the applicable Order. If the Order does not describe a dispute resolution process, the dispute shall be resolved under the Purchasing Entity's dispute resolution statutes, policies, or other applicable regulations, or in a manner as agreed upon by the Purchasing Entity and Contractor.

## 18. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. 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 below. Either Party may change its principal representative or principal



representative contact information by notice submitted in accordance with this §18 without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

**For the State:**

Amy Risley  
State Purchasing & Contracts Office  
1525 Sherman St  
5<sup>th</sup> floor  
Centennial, CO 80112  
Amy.risley@state.co.us

**For Contractor:**

Frank Huerta  
LilyPad EV  
4591 Pacheco Blvd  
Martinez, CA 94553  
[Frank.Huerta@lilypadev.com](mailto:Frank.Huerta@lilypadev.com)

**19. 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.

**i. Copyrights**

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the Purchasing Entity, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the Purchasing Entity a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product created under that Purchasing Entity’s Order and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The Purchasing Entity may assign and license its rights under this license.

**ii. Patents**

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

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, 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 Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

**20. 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 GIA; 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.

**21. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §20 shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

**22. GENERAL PROVISIONS**

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

Except as otherwise provided in §22.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Modification

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

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

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

## J. Order of Precedence

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

- i. Colorado Special Provisions in **§23** of the main body of this Contract.
- ii. Exhibit F, Information Technology Provisions
- iii. The provisions of the other sections of the main body of this Contract.
- iv. Exhibit A, General Requirements
- v. Exhibit D, HIPAA Business Associate Agreement
- vi. Exhibit B, Statement of Work.
- vii. Exhibit C, Products and Pricing
- viii. Exhibit E, Sample Option Letter.

Notwithstanding anything to the contrary herein, the State and Purchasing Entities 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 provision 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 laws, 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 **§23** or the main body of this Contract.

## K. Severability

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

## L. Survival of Certain Contract Terms

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

## M. Taxes

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

N. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in §21.A, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

O. Waiver

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

P. CORA Disclosure

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

Q. Standard and Manner of Performance

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

R. Licenses, Permits, and Other Authorizations.

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

S. 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 in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §11 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §11.

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.

iv. Accessibility Indemnification

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

T. Accessibility

- i. Contractor shall comply with: 1) the Work Product provided under this Contract 2) all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by the Office Of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S. and 3) all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. Contractor shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor's failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.
- iii. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

**23. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

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

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

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

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

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

**C. GOVERNMENTAL IMMUNITY.**

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

**D. INDEPENDENT CONTRACTOR**

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

**E. COMPLIANCE WITH LAW.**

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

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

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

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract 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 Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

**H. SOFTWARE PIRACY PROHIBITION.**

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

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

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

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

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

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.**

*[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being



performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

## **EXHIBIT A, GENERAL WORK REQUIREMENTS**

### **1. CONTRACTOR PERSONNEL**

- 1.1. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.
- 1.2. Key Personnel
  - 1.2.1. Contractor shall designate people to hold the following specific personnel positions:
    - 1.2.1.1. Primary Point of Contract
      - 1.2.1.1.1. The Primary Point of Contract shall be responsible for all of the following:
        - 1.2.1.1.1.1. Serving as the individual responsible addressing all questions and concerns for the State and Purchasing Entities, unless an Order specifies another point of contact for that Order.
        - 1.2.1.1.1.2. Ensuring the completion of all Work in accordance with the Contract's requirements. This includes, but is not limited to, ensuring the accuracy, timeliness and completeness of all Work.
        - 1.2.1.1.1.3. Overseeing all other personnel and ensuring proper staffing levels throughout the term of the Contract.
      - 1.2.1.2. Quarterly Volume Reporting Lead
        - 1.2.1.2.1. The Quarterly Volume Reporting Lead shall be responsible for all of the following:
          - 1.2.1.2.1.1. Ensuring the completeness and accuracy of the Quarterly Volume Reports described in this Exhibit A.
          - 1.2.1.2.1.2. Ensuring the final submission of the Quarterly Volume Reports described in this Exhibit A by the appropriate due date for that report.
- 1.3. Subcontractors
  - 1.3.1.

### **2. ORDERING AND ORDER FULFILLMENT**

- 2.1. Ordering
  - 2.1.1. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.
  - 2.1.2. The State and Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.
    - 2.1.2.1. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity's Orders.
  - 2.1.3. Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this Contract.

- 2.1.4. If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.
- 2.1.4.1. Contractor's internet-based portal and electronic catalogs shall clearly designate that they are part of this Contract and shall have a link to the State's price agreement web location, as determined by the State. Contractor shall ensure that all Environmentally Preferable Products are clearly listed on internet-based portal and electronic catalogs.
- 2.1.4.2. If Contractor provides an internet-based portal or electronic catalog, Contractor shall also provide paper catalogs or catalogs on other digital media to each Purchasing Entity upon request by that Purchasing Entity.
- 2.1.4.3. If Contractor's catalog will be either hosted on or accessed through the State's eCommerce system, then Contractor shall comply with all policies, procedures and directions from the State in relation to hosting its catalog on or making its catalog accessible through that system. Contractor shall ensure that all information made available through the State's eCommerce system is accurate and complies with this Contract.
- 2.2. Delivery of Goods and Performance of Services
- 2.2.1. Contractor shall provide all Goods and perform all Services described in each Order.
- 2.2.2. 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.
- 2.2.3. 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 Purchasing Entity'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.
- 2.3. Inspection and Acceptance
- 2.3.1. Goods delivered to a Purchasing Entity under an Order shall not be deemed accepted prior to that Purchasing Entity inspecting the Goods in accordance with the Order and accepting those Goods.
- 2.3.2. Services provided to a Purchasing Entity under an Order shall not be deemed completed until that Purchasing Entity has reviewed the Services, ensured that all Services were completed in accordance with the Order and have been accepted by the Purchasing Entity.
- 2.4. Ordering Support
- 2.4.1. Contractor shall provide the State and each Purchasing Entity with the contact information for the individual or individuals within Contractor's organization who are assigned to handle questions and resolve problems that Purchasing Entity may have in relation to the Work or an Order.
- 2.4.1.1. Contractor shall make personnel available from 8:00 a.m. to 5:00 p.m. Mountain Time, as adjusted for daylight savings time, at a minimum, each Business Day as necessary to handle questions and resolve problems received by Contractor.
- 2.4.1.2. Contractor shall make all of these individuals available by phone (both through a local

number and a toll-free number), fax and email at all times that the individual is available to handle questions and resolve problems received by Contractor.

- 2.4.1.3. Contractor shall provide all of these individuals with the ability to access the account information and other information relating to the State or Purchasing Entities to be able to respond to questions and resolve problems relating to any Order, including, without limitation, the status of Orders, delivery, back-orders, pricing, discounts, product availability, product information, and accounts and billing.
- 2.4.2. Contractor shall provide all training to Purchasing Entities necessary for those Purchasing Entities to place Orders and properly use the Goods and Services, as requested by Ordering Entities.
  - 2.4.2.1. Training on placing Orders shall include, without limitation, training on aspects of ordering, online ordering, product delivery, product returns, and Contractor's customer service processes, as requested by the Purchasing Entity.
  - 2.4.2.2. Training on properly using the Goods and Services shall include, without limitation, training and providing information on energy efficiency of Goods, new features, opportunities for manufacturer/certified set up and training, Environmentally Preferable Products, and other services or options that are offered or available related to the Goods and Services, as requested by the Purchasing Entity.
- 2.5. Order Disputes, Termination and Resolution
  - 2.5.1. If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with **§18** of the main body of this Contract. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contractor of any Order.
  - 2.5.2. Purchasing Entities may terminate an Order if it determines that Contractor was in breach of that Order. Termination of an Order shall not automatically terminate any other Order or this Contract.
  - 2.5.3. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.
- 2.6. Marketing
  - 2.6.1. If Contractor desires to distribute any materials, notices or literature with the intent to market the Goods or Services ("Marketing Materials"), Contractor shall deliver all such Marketing Materials to the State for review and approval prior to distributing any such materials to a Purchasing Entity.
    - 2.6.1.1. The State will review submitted Marketing Materials and may approve, deny or request changes to any Marketing Materials in its sole discretion. If the State requests changes, Contractor may make those changes or may choose to rescind its submission for review and approval.

2.6.1.2. Contractor shall not distribute any marketing materials to any Purchasing Entity prior to receiving the State's approval of those Marketing Materials.

2.6.2. The State shall not be responsible for maintaining any mailing lists or creating, printing, mailing or distributing any of Contractor's Marketing Materials, though the State may distribute Marketing Materials in its sole discretion.

## 2.7. Additional Terms

2.7.1. 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 Contract 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.

## 3. VOLUME AND OPERATIONAL REPORTING

### 3.1. Volume Reporting

3.1.1. The State will use a centralized method of tracking volume. Contractor shall populate a Quarterly Volume Report, using the format as specified by the State, for each State Fiscal Year Quarter that contains, at a minimum, all of the following:

3.1.1.1. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:

3.1.1.1.1. The total spent by each type of Purchasing Entity under this Contract.

3.1.1.1.2. The total of the list cost of all items purchased by each type of Purchasing Entity under this Contract.

3.1.1.1.3. The total estimated cost savings for each type of Purchasing Entity under this Contract, calculated as the total list cost minus the total spent for that Purchasing Entity.

3.1.1.1.4. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Contract.

3.1.1.1.5. The total sales of Environmentally Preferable Products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Contract.

3.1.1.1.6. Any additional summary information as requested by the State.

3.1.1.2. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:

3.1.1.2.1. The name of the Purchasing Entity who the sale was made to.

3.1.1.2.2. The date of the sale.

3.1.1.2.3. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended cost for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list cost for the item calculated by multiplying the quantity by the

list price, and the savings on the item calculated by subtracting the extended cost from the extended list cost.

- 3.1.1.2.4. Any other detail information as requested by the State.
- 3.1.2. Contractor shall deliver a Quarterly Volume Report to the State's representative as identified in Section 17 of the Contract on a quarterly basis.
  - 3.1.2.1. DELIVERABLE: Quarterly Volume Report
  - 3.1.2.2. DUE: Quarterly, within 30 calendar days following the end of the State Fiscal Year quarter that the report covers.
- 3.1.3. If any due date for a Quarterly Volume Report falls on a day that is not a Business Day, then the due date shall be automatically extended to the next Business Day, unless otherwise directed by the State.
- 3.1.4. All data and information contained in a Quarterly Volume Report shall be the property of the State and shall not be considered proprietary.
- 3.2. Additional Operational Reporting
  - 3.2.1. Upon request by the State, the Contractor shall develop and deliver to the State Ad-Hoc Operational Reports that include all detailed and summary transaction, historical or payment information related to the State or any of the Purchasing Entities as requested by the State.
    - 3.2.1.1. DELIVERABLE: Ad-Hoc Operational Reports
    - 3.2.1.2. DUE: Within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

#### **4. PERIODIC BUSINESS REVIEWS**

- 4.1. The State may schedule periodic business reviews to review Contractor's performance under this Contract.
- 4.2. Contractor shall ensure personnel assigned to the Contract are available for these meetings with the State as scheduled by the State.
- 4.3. Contractor's key personnel designated in §1.1 of this Exhibit A shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

#### **5. CLOSEOUT PERIOD**

- 5.1. This Contract shall have a Closeout Period that begins 30 days prior to the expiration of this Contract and continues until the State has determined that all Work has been completed.
  - 5.1.1. During the Closeout Period, Contractor shall complete all of the following, as directed by the State:
    - 5.1.1.1. Provide to the State, or any other contractor at the State's direction, all reports, data, systems, Deliverables and other information reasonably necessary for the State to ensure Contractor's completion of the Work, as determined by the State.
    - 5.1.1.2. Notify any Subcontractors of the termination of the Contract, as directed by the State.
    - 5.1.1.3. Remove all references to the State's price agreement from its websites, materials and other documentation, and inform entities that contact Contractor that it no longer has a price agreement with the State.

- 5.1.2. The Closeout Period may extend past the termination of the Contract. The State will perform a closeout review to ensure that Contractor has completed all requirements of the Closeout Period. If Contractor has not completed all of the requirements of the Closeout Period by the date of the termination of the Contract, then any incomplete requirements shall survive termination of the Contract.

## 6. PRICING

### 6.1. Price Lists

- 6.1.1. The State may publish any pricing information under this Contract, including, without limitation the pricing shown on Exhibit C, Products and Pricing, on the State's website and any other website as the State determines is necessary or efficient to facilitate the use of this Contract by Purchasing Entities.
- 6.1.2. If Contractor modifies any of its prices in accordance with §6.2, or discontinues any item shown on the existing pricing information, Contractor shall provide updated pricing information to the State for the State to publish.

### 6.2. Price Modifications

#### 6.2.1. Price Increases

- 6.2.1.1. Contractor may request an increase in the prices listed in Exhibit C by submitting its request to the State in writing as described in §18 of the main body of this Contract. Requests for increases in prices are limited as follows:
- 6.2.1.1.1. Contractor may not request a price increase during the first 12 months of this Contract.
- 6.2.1.1.2. Contractor may not request a price increase within any 12-month period following the State's approval of a price increase under this section.
- 6.2.1.1.3. Contractor may not submit a request for a price increase to the State fewer than 60 days prior to when Contractor intends those increased prices to be effective.
- 6.2.1.1.4. Contractor may only request a price increase if it can justify that increase based on the Producer Price Index or the Consumer Price Index issued by the US Department of Labor, Bureau of Labor Statistics; or a similar industry pricing guide.
- 6.2.1.2. The State may approve or deny any request for a price increase based on the information provided by Contractor and other circumstances in its sole discretion.
- 6.2.1.2.1. Contractor may only begin using the increased prices in Orders that are issued following the effective date of the modification that increases the prices. For Orders placed prior to a price increase that are in effect at the time of the price increase, Contractor shall only charge the Purchasing Entity the prices that were in effect at the time the Order was placed.
- 6.2.1.3. If the State does not approve a price increase, or Contractor increases its prices without submitting a request to the State, then those increased prices shall be void in any Order in which they are used and Contractor shall fulfill the Order at the existing rates approved by the State under this Contract. Contractor's use of rates in any Order that exceed those approved by the State under this Contract shall be a material breach of this Contract.

#### 6.2.2. Price Decreases and Ceiling Prices

- 6.2.2.1. Contractor may decrease its prices shown in Exhibit C at any time by providing written notice to the State.

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

6.3. **PAYMENT**

6.3.1. Purchasing Entity is not liable for any order placed by Purchasing Entity prior to goods and/or services being received and accepted by Purchasing Entity.



## EXHIBIT B, STATEMENT OF WORK

### 1. GOODS AND/OR SERVICES

Contractor shall provide Electric Vehicle Supply Equipment (EVSE) hardware (or charging stations and ancillary equipment), software, and accompanying warranty and services for each equipment category as specified below. Contractor shall provide the following equipment:

- ChargePoint CP6000 as Level 2 Other EVSE – a charging station for medium to long dwell times designed for limited access use such as fleets. This charging station provides 80A, 19.2 kW per port - the highest possible power output under the SAE J-1772 AC standard. Furthermore, power output is software-adjustable in discrete increments less than 80A to align with available power capacity on site.

All of the equipment provided under this contract includes 24/7, 365 driver support, one business day response time for station failure and malfunction, and a one year parts-only warranty. All equipment has the option of ChargePoint's comprehensive warranty coverage called Assure.

All equipment includes advanced software features as detailed below and unlimited software configuration changes are permitted for equipment covered under the Assure warranty. Equipment networking fees include free over-the-air software updates which ensure equipment receives security updates and new features as they become available.

#### Level 2 Other EVSE

ChargePoint CP6000 Level 2 Charging Station (for fleet vehicle use)

*All ChargePoint CP6000 equipment provided under this price agreement shall meet the following specifications:*

- Charging stations shall be outdoor, commercial grade, wall or pedestal mounted equipment with robust weatherproof construction, and shall comply with NEMA 3-R for indoor/outdoor use.
- Charging stations shall be UL certified and have a minimum one-year warranty. Units must be compliant with the current version of the National Electrical Code (NEC) Article 625.
- Level 2 charging stations shall comply with SAE J1772 standards for 19.2KW per port (up to 80A at 208V/240V)
- Charging stations shall come with a SAE J1772 Standard Connector.
- Charging stations and supporting equipment will comply with NEC (2017 edition) Article 625 and related articles and tables.
- Charging stations and supporting electrical components, enclosures, and mounting systems must be built to UL2594 and NEC Article Standards or equivalent.
- Charging cables shall have a length of no less than 18 feet. The intent is to allow charging in a parking space adjacent to the charger and the next space further away (both sides).

- Charging stations shall be type evaluated through the National Type Evaluation Program (NTEP) and the installation and use shall comply with all requirements of the National Institute of Standards and Technology (NIST) Handbook Section 44 Section 3.40 Electric Vehicle Fueling Systems – Tentative Code and shall have received safety certification by a nationally recognized testing laboratory (NRTL).
- Charging stations shall be indicated and recorded in megajoules (MJ) or kilowatt-hours (kWh) and decimal subdivisions thereof, with the value of the smallest unit of recorded delivery if the charging station is equipped to record, shall be 0.005 MJ or 0.001 kWh.
- Charging stations shall have cable management features to keep long cords retracted or wound up to prevent trip hazards, freezing to the ground in cold areas, or being run over by vehicles. For increased reliability, the cable management shall not be motorized but rather should be via weights and pulleys and comply with NEC articles 625 as it applies to cord management systems.
- Display screens will be protected from malfunctions due to condensation and normal local weather conditions.
- Charging station and supporting equipment will be capable of operating over an ambient temperature range of minus 22 to 122 degrees Fahrenheit.
- Charging station will be able to withstand high elevation and be fully operational at each site's elevation, which in Colorado can range from 3,300 feet to over 10,000 feet.
- Charging stations and supporting equipment will utilize tamper-resistant screws and design but provide a locked or easy opening mechanism for service work.
- Charging stations shall contain, if Contractor feels it is necessary, transient voltage and surge suppression (TVSS) protection in order to protect the electronics from power anomalies.
- Charging stations shall connect to a network via Wi-Fi and/or cellular connection using multiple carriers.
- Charging stations shall support remote upgrades of software on the charging stations via the wireless network connection.
- The charging stations will be capable of running in a standalone mode if the network connectivity is lost. Charging stations shall be capable of operating in urban and rural settings with intermittent or limited cell reception.
- The charging station shall have an RFID based authentication system.
- The charging station will be compatible with emerging payment technologies like smart phone apps and near field communication. Charging stations shall have payment or access control to allow users to authenticate with a credit card using equipment at the station as well as other payment methods such as RFID device, NFC, smartphone apps, or other identifying and authorizing methods.

- The EV charging network shall provide remote diagnostics and troubleshooting features that prevents expensive service calls to the charging station for diagnosis.
- Public-facing (non-fleet only) Charging stations must have an interactive video screen at least 5” in diameter that has the ability to display up to 60 seconds of custom video content.
- Public-facing (non-fleet only) Charging stations must have weather-proof buttons or proximity sensor screen for operating the station. Fleet-only stations do not require buttons or a screen but should have an RFID reader at minimum and LED lights to indicate charging status.
- The EV charging stations shall provide 365x24x7 driver customer service support to help resolve any issues for drivers and station owners that includes at a minimum, a toll-free telephone number clearly posted near the charging equipment that is available to EV drivers accessing the charging equipment.
- The customer support service must be capable of providing or dispatching service to address customer concerns at the charging station. When someone contacts the station operator or calls the toll-free number due to an issue, they should get immediate assistance including rebooting the system if necessary.
- Fleet-only stations will support ISO 15118 (V2G).
- Network shall provide ability to remote start the charging station.

### **Software**

(All stations operate on ChargePoint software)

#### *General*

- Software shall be compliant with a publicly available open standard such as Open Charge Point Protocol (OCPP) v1.6.

#### *Station Management*

- Software shall allow for remote updates using the charging station’s wireless network connection.
- Network shall provide remote diagnostics, proactive station monitoring, and troubleshooting features that prevent the need for service calls to the charging station for diagnosis and minimize station downtime.
- Network shall provide ability to remote start the charging station.

#### *Energy Management*

- Software shall be capable of providing energy analysis and management strategies to help reduce peak demand costs.
- Station shall utilize energy management protocols such as Open ADR 2.0b, Zigbee Smart Energy V2.0, or SEP 2.0.

#### *Interface, Access, and Management Requirements*

- The charging station interface shall include the following:
  - Ability to start or stop a charging session.

- Support multiple user-selectable languages, including, English, French, and Spanish for Level II stations.
- Using an app, the EV driver interface shall give users the ability to:
  - View and find charging stations on the ChargePoint app.
  - View the status of the charging station including its availability and operational status.
  - Reserve a charging station if reservations are enabled on the station.
  - View a history of all charging sessions at various locations.
  - Set up a pre-paid billing account to pay for charging.
  - Manage multiple accounts online.
- The software shall provide a notification mechanism such as an app notification or a Short Message Service (SMS) to EV drivers on charging events such as charging complete, plug out, GFCI fault or demand fault event.
- The software shall include an optional wait list or queue management function that allows drivers to reserve a space in a virtual queue and is notified when a station is made available.
- Equipment/software administrator interface shall include:
  - Ability to view all charging sessions at the charging stations owned by the service provider (e.g. the State).
  - Ability to view inventory and status of all charging stations.
  - Ability to configure stations to restrict or modify access to specific drivers or specific groups of drivers, and the ability to identify drivers connected to the stations.
  - Ability to create, modify or delete various pricing options for charging on the stations.
  - Ability to view energy usage and greenhouse gas (GHG) savings on all charging stations owned by the service provider.
  - Ability to set and accept reservations on charging stations.
- The software shall provide comprehensive reporting capability available to both EV drivers and EV service providers.
- The software shall provide reports on all charging sessions with data including but not limited to: 1. Connect and disconnect times 2. Start and end charge times 3. Maximum instantaneous peak power 4. Average power 5. Number of charging events 6. Total energy (kWh) per charging event 7. Rolling 15-minute average power 8. Date/time stamp 9. Unique ID for charging event 10. Unique ID for identifying the EVSE 11. Other non-dynamic EVSE information such as GPS ID 12. Percentage of station downtime.
- The software shall provide ability to set different permissions by user type or lock a user out who has abused charging times.
- The software shall provide ability for multiple users to be in the system at one time.
- All data should be available on screen and downloadable in CSV format and graphical report images in PNG, JPEG, PDF, etc.

### *Pricing*

- Software shall be capable of the following pricing options:
  - Flexible pricing options that include free and per minute, hour, kWh, flat or block pricing, or flat plus consumption.
  - Different pricing options for different types of users including subscriptions
  - Different pricing by time of day
  - Penalties for staying beyond time limit or after a vehicle's battery is fully charged

#### *Payment*

- Software shall allow payment by contactless credit card as well as other payment methods such as RFID, NFC, smart phone apps, or other identifying and authorizing methods
- Software shall have the ability to accept and process user payments and manage billing settlements with the charging station owner. User payments will be made at the point of sale at each station.
- Software provider shall have a flexible billing model, with options of fixed hourly, kilowatt hour pricing (where allowed), per session, or per minute or hour charges for the entire time the electric vehicle is connected, whether charging or not.
- Network shall be PCI/DSS (Payment Card Industry) compliant to allow for credit card payment.
- Equipment and software shall be futureproofed to allow for alternative forms of payment as payment technology evolves.

#### **Services**

##### *Warranty*

- All stations shall come with ChargePoint's basic warranty of one-year parts-only coverage
- All stations shall have the option of ChargePoint's comprehensive parts and labor service called Assure.
- ChargePoint's comprehensive Assure warranty shall include:
  - Unlimited software configuration changes
  - 98% annual uptime guarantee with non-performance penalty
  - Standard one (1) business day response time to station failures or one (1) business day from Parts arrival when required
  - Automated monthly summary reports and detailed quarterly reports of your station's performance metrics. We send the reports automatically so you don't have to generate them.
  - Proactive station monitoring and dispatch
  - Labor coverage for station equipment issues typically not covered by warranty such as vandalism, abuse and accidents caused by reckless drivers or snow plows.
  - Additional options are available upon request, such as strategic spares, consigned inventory, and customer training for on-site repairs and maintenance.

##### *Repairs and Technical Support (for station owners and operators)*

- ChargePoint shall provide station owner, installer, and partner support Monday – Friday, 5 AM PST – 6 PM PST via a toll free number.
- ChargePoint shall provide one business day response time to station failures or 1 business day from parts arrival when required.
- ChargePoint shall maintain contracts with electricians across Colorado for carrying out repairs throughout the state

- Contractor shall respond to all repair or support inquiries within one business day.
- Contractor shall have technicians available based in the Denver metro area.

*Customer Service* (for electric vehicle drivers)

- ChargePoint shall provide 24/7 toll-free live driver support in multiple languages, including English, Spanish, and French for Level 2 stations.

*Training*

- Contractor shall make in-person and webinar trainings available on request to station owners and operators.

*Commissioning*

- Contractor shall commission all EVSE hardware and software sold through this contract.

**EXHIBIT C, PRODUCTS AND PRICING**

	<b>Name or Number</b>	<b>Description</b>	<b>Price</b>	<b>Shipping</b>
<b>Equipment</b>				
ChargePoint CP6000	CP6011X-80A-L7	CP6011, NA, AC Station, 1 x Type 1 Cable, 80A, 1-Phase, 23' Cable, 8' Cable Management Kit, Pedestal Mount, Contactless Credit Card and RFID Reader, Cellular/Wi-Fi, UL, Power Share Jumper, 1YR Parts Warranty	\$5,233	\$275
ChargePoint CP6000	CP6021X-80A-L7	CP6021, NA, AC Station, 2 x Type 1 Cable, 80A, 1-Phase, 23' Cable, 8' Cable Management Kit, Pedestal Mount, Contactless Credit Card and RFID Reader, Cellular/Wi-Fi, UL, Power Share Jumper, 1YR Parts Warranty	\$8,723	\$275
ChargePoint CP6000	CP6013X-80A-L7	CP6013, NA, AC Station, 1 x Type 1 Cable, 80A, 1-Phase, 23' Cable, 8' Cable Management Kit, Wall Mount, Contactless Credit Card and RFID Reader, Cellular/Wi-Fi, UL, Power Share Jumper, 1YR Parts Warranty	\$5,233	\$275
ChargePoint CP6000	CP6023X-80A-L7	CP6023, NA, AC Station, 2 x Type 1 Cable, 80A, 1-Phase, 23' Cable, 8' Cable Management Kit, Wall Mount, Contactless Credit Card and RFID Reader, Cellular/Wi-Fi, UL, Power Share Jumper, 1YR Parts Warranty	\$8,273	\$275
<b>Network</b>				
	CPCLD-POWER-1	Prepaid Power Cloud Plan subscription with station management features such as Basic Fleet Vehicle Management, Automatic Software Updates, and basic Power Sharing. Real-time dashboards and reports provided for applicable features. Station Activation purchase required.	\$240	\$0
	CPCLD-POWER-2	Prepaid Power Cloud Plan subscription with station management features such as Basic Fleet Vehicle Management, Automatic Software Updates, and basic Power Sharing. Real-time dashboards and reports provided for applicable features. Station Activation purchase required.	\$460	\$0
	CPCLD-POWER-3	Prepaid Power Cloud Plan subscription with station management features such as Basic Fleet Vehicle Management, Automatic Software Updates, and basic Power Sharing. Real-time dashboards and reports provided for applicable features. Station Activation purchase required.	\$650	\$0

	CPCLD-POWER-4	Prepaid Power Cloud Plan subscription with station management features such as Basic Fleet Vehicle Management, Automatic Software Updates, and basic Power Sharing. Real-time dashboards and reports provided for applicable features. Station Activation purchase required.	\$815	\$0
	CPCLD-POWER-5	Prepaid Power Cloud Plan subscription with station management features such as Basic Fleet Vehicle Management, Automatic Software Updates, and basic Power Sharing. Real-time dashboards and reports provided for applicable features. Station Activation purchase required.	\$970	\$0
	<b>Warranty</b>			
	CP6000-ASSURE-1	1 prepaid year of ChargePoint Assure for CP6000 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$610	\$0
	CP6000-ASSURE-2	2 prepaid years of ChargePoint Assure for CP6000 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$1,170	\$0
	CP6000-ASSURE-3	3 prepaid years of ChargePoint Assure for CP6000 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$1,685	\$0
	CP6000-ASSURE-4	4 prepaid years of ChargePoint Assure for CP6000 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$2,160	\$0
	CP6000-ASSURE-5	5 prepaid years of ChargePoint Assure for CP6000 stations. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs when needed, Unlimited Configuration Changes, and Reporting.	\$2,595	\$0
	<b>Additional Fees</b>			



	CPSUPPORT-SITEVALID	<p>Customer works with their own contractor to perform all construction and station installation services. ChargePoint will then engage an authorized ChargePoint Partner to perform Site Validation of electrical capacity, transformers, panels, breakers, wiring, cellular coverage and that the station installation meets all ChargePoint published requirements and local codes. Upon successful Site Validation, the customer will be eligible to obtain warranty coverage under a ChargePoint Maintenance plan, sold separately. Note, a failed Site Validation will incur a second validation fee to repeat the validation after the site deficiencies are corrected. Priced per AC station.</p>	\$599	\$0
	CPSUPPORT-ACTIVE	<p>Initial Station Activation &amp; Configuration Service includes activation of cloud services and configuration of radio groups, custom groups, connections, access control, visibility control, pricing, reports and alerts. One time initial service per station.</p>	\$349	\$0

**Shipping cost is to installation location**

## **EXHIBIT D, HIPAA BUSINESS ASSOCIATE AGREEMENT**

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

### **1. Purpose**

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

### **2. Definitions**

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

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

- a. Business Associate. “Business Associate” shall have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and shall refer to Contractor.
- b. Covered Entity. “Covered Entity” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and shall refer to the State.
- c. Information Technology and Information Security. “Information Technology” and “Information Security” shall have the same meanings as the terms “information technology” and “information security”, respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

### **3. Obligations and Activities of Business Associate**

#### **a. Permitted Uses and Disclosures**

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

- iii. 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.
  - iv. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
- b. Minimum Necessary.** Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).
- c. Impermissible Uses and Disclosures**
- i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
  - ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.
- d. Business Associate's Subcontractors**
- i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.
  - ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
  - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- b. 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>.
- c. 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.

**d. 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.

**e. 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.

**f. 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.

**g. 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.

**h. 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.

**i. 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.

**j. 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.

**k. 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.

**l. Business Associate's Insurance and Notification Costs**

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

**A.** loss of PHI data;

- B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and
  - C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
- ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
  - iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
  - iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

**m. 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.

**n. 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.
- o. Retention of PHI.** Except upon termination of this Agreement as provided in Section 3 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.e above, for a period of six years.

**2. 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.

**3. Termination****a. Breach**

- i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.
- ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

**b. Effect of Termination**

- i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.
- ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

**4. Injunctive Relief**

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

**5. Limitation of Liability**

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

## **6. 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.

## **7. Certification**

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

## **8. Amendment**

- a.** Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
  - i.** In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
  - ii.** Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.
  - iii.** Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
  - iv.** Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
    - A.** Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
    - B.** Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.
- b.** Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the



mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

#### **9. 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.

#### **10. 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.

#### **11. 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 an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

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

### 1. Purpose

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

### 2. Additional Terms

- a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
  - i. Reserved.
- b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
  - i. Reserved.
- c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:
  - ii. Reserved.
- b. 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.
- c. 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.
- d. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:
  - i. Reserved.

**EXHIBIT E, SAMPLE OPTION LETTER****OPTION LETTER**

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
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- 1) **OPTIONS:** Option to renew only (*for an additional 12 month term*).
- 2) **REQUIRED PROVISIONS:**  
 In accordance with the **Price Agreement, Section Insert Section Number and letter (ex. 3.C), and title of Section**, between the **State of Colorado, Department of Personnel and Administration, State Purchasing and Contracts Office**, (“State”) and **Insert Name of Contractor** (“Contractor”), the State hereby exercises its option for an additional term beginning **Insert Date in mm/dd/yyyy format** and ending on **Insert Date in mm/dd/yyyy format** at the same rates and same terms specified in the original Price Agreement, **Insert State of Colorado Price Agreement Number**, as amended.
- 3) **EFFECTIVE DATE:** The effective date of this **Option Letter** is upon approval of the State Controller or others delegated.

<b>STATE OF COLORADO</b> <b>Jared S. Polis, GOVERNOR</b> Department of Personnel and Administration Kara Veitch, Executive Director	
By: _____	Date: _____
John Chapman, State Purchasing Manager	

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**  
 Robert Jaros, CPA, MBA, JD

By: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT F, INFORMATION TECHNOLOGY PROVISIONS

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

### 1. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
- B. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. Information Technology is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
  - i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;
  - ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
  - iii. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
- C. Contractor shall, and shall cause its Subcontractors to meet all of the following:
  - iv. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
  - v. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
  - vi. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
  - vii. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
  - viii. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State’s Office of Information Security (“OIS”).
  - ix. Comply with all rules, policies, procedures, and standards issued by the Governor’s Office of Information Technology (“OIT”), including change management, project lifecycle methodology and governance, technical

standards, documentation, and other requirements posted at [www.oit.state.co.us/about/policies](http://www.oit.state.co.us/about/policies).

- D. Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
- E. Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its respective employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be deemed to be current.
  - x. Upon request, Contractor shall provide notice to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
  - xi. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

## **2. DATA HANDLING**

- A. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- B. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- C. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State data.
  - i. This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system

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

- ii. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.
- D. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract.

### **3. DELIVERY AND ACCEPTANCE**

- A. Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.
- B. Contractor's delivery of any Work or Deliverables to the State shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.
- C. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. Such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor's gross negligence or willful misconduct.

### **4. WARRANTY**

- A. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall

function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.

- B. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the State to ascertain the feasibility, risks, and impacts of each recommendation. The State's remedy for such defect or material non-conformity shall be:
- i. Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or
  - ii. Contractor shall refund to the State all amounts paid for such Work or Deliverable, as well as pay to the State any additional amounts reasonably necessary for the State to procure alternative goods or services of substantially equivalent capability, function, and performance.
- C. Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.

## 5. COMPLIANCE

- A. In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:
- i. All Colorado Office of Information Security (OIS) policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5 and posted at <http://oit.state.co.us/ois>
  - ii. All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:
    - a. Health Information Portability and Accountability Act (HIPAA)
    - b. IRS Publication 1075
    - c. Payment Card Industry Data Security Standard (PCI-DSS)
    - d. FBI Criminal Justice Information Service Security Addendum
    - e. CMS Minimum Acceptable Risk Standards for Exchanges

- f. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration
- iii. Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. Contractor shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.
- B. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include:
  - iv. An annual SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by OIS; or
  - v. The performance of security audit and penetration tests, as requested by OIS.
- D. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application level risk assessments, and other security assessment activities as required by this Contract or reasonably requested by OIS. Contractor will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the State. The State will work with Contractor and OIS to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and OIS will consider such requests in accordance with their policies and procedures referenced herein.

## **6. TRANSITION OF SERVICES**

Upon request by the State prior to expiration or earlier termination of this Contract or any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State or any successor provider and shall promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Contract.

## **7. LICENSE OR USE AUDIT RIGHTS**

- A. To the extent that Contractor, through this Contract or otherwise as related to the subject



matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.

- B. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.
- C. If upon receipt of the State's Audit Certification, the Parties reasonably determine that: (i) the State's use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Contract ("Overuse") and (ii) the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.