



STATE OF COLORADO PRICE AGREEMENT

SIGNATURE AND COVER PAGE

State Agency Department of Personnel and Administration, State Purchasing and Contracts Office	Contract Number 165043
Contractor J-R Motors Company South dba AutoNation Toyota Arapahoe	Contract Performance Beginning Date November 30, 2020
Contract Description 2021 or newer vehicles	Initial Contract Expiration Date September 30, 2021


THE PARTIES HERETO 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.

<p style="text-align: center;">CONTRACTOR</p> J-R Motors Company South dba AutoNation Toyota Arapahoe  _____ By: Dawn Barnhart, Controller Date: _____	<p style="text-align: center;">STATE OF COLORADO</p> Jared Polis, Governor Department of Personnel and Administration, State Purchasing and Contracts Office Kara Veitch, Executive Director DocuSigned by:  _____ By: John Chapman, State Purchasing Manager Date: <u>12/3/2020</u>
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In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

DocuSigned by:
 By: _____


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Effective Date: 12/3/2020

TABLE OF CONTENTS

	SIGNATURE AND COVER PAGE	1
1.	PARTIES	2
2.	TERM AND EFFECTIVE DATE	2
3.	AUTHORITY	4
4.	PURPOSE	4
5.	DEFINITIONS	4
6.	STATEMENT OF WORK	7
7.	PAYMENTS TO CONTRACTOR	7
8.	RESERVED	8
9.	REPORTING - NOTIFICATION	8
10.	CONTRACTOR RECORDS	8
11.	CONFIDENTIAL INFORMATION-STATE RECORDS	9
12.	CONFLICTS OF INTEREST	10
13.	INSURANCE	10
14.	BREACH	12
15.	REMEDIES	12
16.	DISPUTE RESOLUTION	15
17.	NOTICES AND REPRESENTATIVES	15
18.	RIGHTS IN WORK PRODUCT AND OTHER INFORMATION	16
19.	GOVERNMENTAL IMMUNITY	16
20.	STATEWIDE CONTRACT MANAGEMENT SYSTEM	16
21.	GENERAL PROVISIONS	17
22.	COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)	20
	EXHIBIT A, GENERAL WORK REQUIREMENTS	1
	EXHIBIT B, STATEMENT OF WORK	1
	EXHIBIT C, PRODUCTS AND PRICING	1
	EXHIBIT D, HIPAA BUSINESS ASSOCIATE AGREEMENT	1

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

- i. The Parties may extend the Term of this Contract by written amendment executed by the Parties and approved by the State Controller prior to the termination of the Contract on September 30, 2021.
- ii. Continuation of this Contract beyond the initial term is not a right of the Contractor. The State may enter into an amendment to extend the Term when such extension is clearly in the best interest of the State.

D. 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 150 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.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract 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 **§15.A.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§17**. 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 **§15.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 2021 or newer vehicles to Purchasing Entities. The Contractor was selected as a result of ITN-AR-20-002.

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. **“Extension Term”** means the time period defined in §2.C.
- 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
- 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. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- EE. **“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 §17.

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 §17, 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.

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. Garage Keepers Liability

The Garage Keepers Liability Insurance must have a minimum of \$1,000,000 per occurrence.

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

E. 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.

F. 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.

G. 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 §17 within 7 days of Contractor's receipt of such notice.

H. 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.

I. 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.

J. 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. 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 §15 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.

15. 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 §14.B., shall have all of the remedies listed in this §15.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.E**.

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 §14.B and the dispute resolution process in §16 shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

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.

16. 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, shall be referred in writing as described in Exhibit A, 2.B., 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 §16.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.

17. 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 §17 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
 3rd floor
 Denver, CO 80203
 Amy.Risley@state.co.us

For Contractor:

John Basci
 Commercial Sales Manager
 10531 E Arapahoe Rd
 Centennial, CO 80112
 bascij@autonation.com

18. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**A. Work Product**

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

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this 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.

19. 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.

20. 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.

21. 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 **§21.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 §22 of the main body of this Contract.
- ii. The provisions of the other sections of the main body of this Contract.
- iii. Exhibit A, General Requirements
- iv. Exhibit D, HIPAA Business Associate Agreement
- v. Exhibit B, Statement of Work.
- vi. Exhibit C, Products and Pricing

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 §22 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.

22. 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

- A. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.

COLORADO REVISED STATUTES, 24-109-105

(2) A PERSON MAY BE DEBARRED FOR ANY OF THE FOLLOWING REASONS:

(D) WILLFUL MATERIAL FAILURE TO PERFORM IN ACCORDANCE WITH THE TERMS OF ONE OR MORE CONTRACTS, FOLLOWING NOTICE OF SUCH FAILURE, OR A HISTORY OF MATERIAL FAILURE TO PERFORM, OR OF MATERIALLY UNSATISFACTORY PERFORMANCE OF, ONE OR MORE CONTRACTS.

B. Key Personnel

Contractor shall designate people to hold the following specific personnel positions:

- i. **Primary Point of Contract** - The Primary Point of Contract shall be responsible for all of the following:
 - (a) Serving as the individual responsible for addressing all questions and concerns for the State and Purchasing Entities, unless an Order specifies another point of contact for that Order.
 - (b) 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.
 - (c) Overseeing all other personnel and ensuring proper staffing levels throughout the term of the Contract.
- ii. **Quarterly Volume Reporting Lead** - The Quarterly Volume Reporting Lead shall be responsible for all of the following:
 - (a) Ensuring the completeness and accuracy of the Quarterly Volume Reports described in this **Exhibit A**.
 - (b) Ensuring the final submission of the Quarterly Volume Reports described in this Exhibit A by the appropriate due date for that report.
 - (c) Reports must be submitted via e-mail to Amy Risley at:
Amy.Risley@state.co.us

2. ORDERING AND ORDER FULFILLMENT

A. Ordering

- i. 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.

- ii. 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.
 - (a) Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity's Orders.
- iii. 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.
- iv. 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.
 - (a) 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.
 - (b) 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.
 - (c) 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.

B. Order Disputes, Termination and Resolution

- i. If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §16 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.
- ii. 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.
- iii. If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

3. DATES AND CONFIRMATIONS REQUIRED

A. **For each vehicle ordered**, vendors shall complete and return the “Contractor’s Confirmation of 2021 Vehicle Production for SFM” form **Exhibit 3** (from Bid Specifications) to SFM or “Contractor’s Confirmation of 2021 Vehicle Production for Aurora” **Exhibit 5** (from Bid Specifications, or other entity **Exhibit 5a** (from Bid Specifications) to the Purchasing Entity as soon as it is available, but no later than five (5) working days after notification from the manufacturer. This form shall include the following information:

- i. Date Contractor received SFM or Purchasing Entity Purchase Order (PO)
- ii. Manufacturer’s Factory Order # and date received
- iii. Manufacturer’s Factory Production Date
- iv. Estimated date of delivery to SFM or Purchasing Entity

FOR STATE OF COLORADO AWARDS: AWARDED DEALER MUST SUBMIT STATUS CODE REPORT (NOTIFICATIONS) VIA EMAIL TO SFM AND PUBLIC SAFETY WITH UPDATES ON AND INCLUDING; BUILD PROGRESS, UPFIT PROGRESS; DELIVERY AND ETA’S; DELAYS , ETC. REPORTS MUST BE EMAILED EVERY MONTH STARTING AFTER CONFIRMATION OF PURCHASE ORDER. EMAILS MUST BE SENT TO:

Terry.Sisneros@state.co.us

B. OEM Confirmation

The Contractor shall notify SFM or the Purchasing Entity no later than 10 business days after the receipt of the Purchase Order if they have not received the OEM confirmation. The Contractor shall inform SFM immediately by phone and in writing via email, USPS, or fax, when the contractor is aware or suspects that there is a problem with an order or a production date from the factory. The dealer shall demonstrate to the State of Colorado all efforts made to secure vehicles.

- i. If Contractor is unable to provide a vehicle, the State reserves the right to cancel any pending order(s) and/or the State Price Agreement and award a State Price Agreement to the next lowest Bidder or to conduct another bid, or exercise other remedies such as the Uniform Commercial Code (UCC) to acquire vehicles in a timely manner. Unless otherwise approved by SFM or other Purchasing Entities, all model year 2021 or newer vehicles ordered request to be delivered and invoiced no later than September 30, 2021. See §2 D Order Terms.

C. Delivery of Goods and Performance of Services

- i. Contractor shall provide all Goods and perform all Services described in each Order.
- ii. Contractor shall provide monthly updates of open orders to Purchasing Entity. More frequent updates may be requested by Purchasing Entity.
- iii. Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. The State’s terms are FOB destination with freight included to destinations in the Metropolitan Denver area (7 county areas to include: Denver, Adams, Arapahoe, Boulder, Douglas, Broomfield and

Jefferson). Deliveries outside of the 7-county area are FOB destination with freight added, which has been pre-negotiated in writing between Ordering Entity and Contractor.

- iv. 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.
- v. Contractor to follow all delivery terms from solicitation III N, O, P, R, S, T, U.

D. Inspection and Acceptance

- i. 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.
- ii. 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.

E. Ordering Support

- i. 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.
 - (a) 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.
 - (b) 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.
 - (c) 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.

F. Training - 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 Purchasing Entities.

- i. 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.
- ii. 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.

G. Order Disputes, Termination and Resolution

- i. If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §16 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.
- ii. Vehicles that are ordered by SFM or Purchasing Entity prior to build-out and considered within normal and acceptable ordering and build timeframes are expected to be delivered through Contractor within usual spring delivery timeframe of current model year. SFM and SFM's customers are caused financial harm and other issues when vehicles are "rolled over" to the next model year. If the OEM or Contractor fails to comply with the terms of an order, whether due to acts beyond their control or otherwise, SFM will count this as a delivery and performance issue that will jeopardize future awards to Contractor.
- iii. 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.
- iv. 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.

H. Marketing

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.

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

I. Additional Terms

Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form, including, without limitation, terms

regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this 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.

4. VOLUME AND OPERATIONAL REPORTING

A. Volume Reporting

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. Quarterly Volume Report shall be delivered to the State's representative as identified in §17 of the Contract on a quarterly basis. Reports are due Quarterly, within 30 calendar days following the end of the State Fiscal Year quarter that the report covers. 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. All data and information contained in a Quarterly Volume Report shall be the property of the State and shall not be considered proprietary.

Reports shall contain, at a minimum, all of the following:

- i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
 - ii. The total spent by each type of Purchasing Entity under this Contract.
 - iii. Total vehicles sold listing vehicles purchased by body code for all Purchasing Entity's.
 - iv. The total of the list cost of all items purchased by each type of Purchasing Entity under this Contract.
 - v. 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.
 - vi. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Contract.
 - vii. The total sales of Environmentally Preferable Products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Contract.
 - viii. Any additional summary information as requested by the State.
- B. 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:
- i. The name of the Purchasing Entity who the sale was made to.
 - ii. The date of the sale.
 - iii. 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.

- iv. Any other detail information as requested by the State.

C. Additional Operational Reporting

- i. 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.
 - a. DELIVERABLE: Ad-Hoc Operational Reports
 - b. 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.

5. PERIODIC BUSINESS REVIEWS

- A. The State may schedule periodic business reviews to review Contractor's performance under this Contract.
- B. Contractor shall ensure personnel assigned to the Contract are available for these meetings with the State as scheduled by the State.
- C. Contractor's key personnel designated in §17 shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

6. CLOSEOUT PERIOD

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.

- A. During the Closeout Period, Contractor shall complete all of the following, as directed by the State:
 - i. 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.
 - ii. Notify any Subcontractors of the termination of the Contract, as directed by the State.
 - iii. 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.
- B. 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.

7. PRICING

A. Price Lists

- i. The Contractor may not increase any prices in **Exhibit C** or awarded vehicle spec sheets. The State may publish any pricing information under this Contract, including, without

limitation the pricing shown on **Exhibit C**, Vehicle and Price List, on the State's website and any other website as the State determines is necessary or efficient to facilitate the use of this Contract by Purchasing Entities.

- ii. If Contractor lowers any of its prices in accordance with §7.B.i.(a) or discontinues any item shown on the existing pricing information, Contractor shall provide updated pricing information to the State for the State to publish.

B. Price Modifications

- i. Price Decreases and Ceiling Prices

- (a) Contractor may decrease its prices shown in **Exhibit C** at any time by providing written notice to the State.
- (b) 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.

EXHIBIT B, STATEMENT OF WORK

1. GOODS AND/OR SERVICES

Contractor shall provide 2021 or newer model year vehicles.

2. SPECIFICATIONS

- A. At a minimum all vehicles ordered shall include manufacturer standard new vehicle equipment for 2021 model year or newer fleet vehicles. Vehicles that do not meet current Federal emission standards but are “covered” with Department of Energy credits will not be accepted.
- B. Vehicle options shall be provided as factory installed under the terms of the full, factory-backed, bumper-to-bumper warranty. Contractor installed options are not permitted unless pre-approved by the State or Purchasing Entity in writing. If a Contractor substitutes an OEM (Original Equipment Manufacturer) option with a non-OEM option, the State or Purchasing Entity may return the vehicle for a correctly equipped vehicle any time after the non-OEM option is discovered. The State or Purchasing Entity may also require the Contractor to reimburse the State or Purchasing Entity for all expenses and fees related to the repair of a non-OEM option that fails within the standard warranty period.
- C. In the event that OEM is unable to deliver ordered vehicle(s) within the model year ordered, SFM or the Purchasing Entity reserves the right to choose out of dealer stock unit(s) as close to original specifications as possible. SFM or the Purchasing Entity will be invoiced at the Price as listed in Exhibit C. This will only apply to vehicles ordered prior to build-out/factory fleet close dates and considered within normal and acceptable ordering and build out time frames. Vehicles ordered after the last order date has been announced by the OEM will not be subject to this clause.
- D. For each vehicle ordered, Contractor will provide an approved form by the Purchasing Entity that will include the following information:
 - i. Date Contractor received SFM or Purchasing Entity Order
 - ii. Manufacturer’s Factory Order # and date received
 - iii. Manufacturer’s Factory Production Date
 - iv. Estimated date of delivery to SFM or Purchasing Entity
- E. The projected delivery time is 90-120 days from order placement.

3. OTHER PROJECT REQUIREMENTS

- A. **Clean Fuel Fleet Program** - Clean fuel vehicles provided shall include a full factory warranty and be serviceable by any Factory Authorized Dealer.
- B. **Alternative Fuels** - Alternative fuel vehicles provided shall include a full factory warranty and be serviceable by any Factory Authorized Dealer. Dealer installed conversions are NOT acceptable unless they are part of an OEM/Dealer certified program and On-Board Diagnostics (OBD) II/III compatible. Such vehicles shall be specifically designed to operate on alternative fuel as its primary fuel. Information for Dealers authorized to repair and service AFV’s, if different from all OEM dealers, shall be provided by Contractor.

- C. **Hybrid and Electric Vehicles** - Vehicles offered shall include a full factory warranty and be serviceable by any Factory Authorized Dealer.
- D. **Tires** - Tires provided on vehicles shall be All Season/Mud and Snow radials or open side lug All Terrain tires when specified. Closed lug design tires are NOT acceptable for an All-Terrain tire option.
- E. **All vehicles delivered to any Purchasing Entity must be a full turn-key ready vehicle unless prior written notification has been made.**
- F. **Warranty** - The States minimum standard warranty period for all 2021 or new vehicles is 3 years or 36,000 miles and is to cover the ordered vehicle including all options and accessories.
- G. **Conditions of Contract** - If Contractor is unable to provide a vehicle, the State reserves the right to cancel any pending order(s) and/or the State Price Agreement and award a State Price Agreement to the next lowest Contractor or to conduct another bid, or exercise other remedies.
- H. **Due to State budget conditions, SFM cannot accept any vehicles prior to March 1, 2021 unless authorized by SFM. Contractors shall make deliveries after this date. The exceptions to this condition are: Public Safety, Undercover and Patrol vehicles and vehicles that may have Federal Grant funding or Agency Funding. Additionally, other Purchasing Entities may elect to accept their vehicles earlier and/or later than SFM. Contractors will work directly with additional Purchasing Entities to ensure all dates are met.**
- I. If a model year change occurs during the contract period, or if the awarded vendor will allow, 2022 model year vehicles may be sold under the terms, conditions and prices of the 2021 or newer model year awards. Model year substitutions MUST be approved in writing by SFM or Purchasing Entity.
- J. Contractor shall notify SFM within five (5) business days in writing of any mid-year model changes including discontinuations, mid-year introductions, etc., as related to specific body code vehicle included on price agreement.
- K. **Compliance Standards** - Vehicles delivered shall be in full compliance with all applicable federal and state laws, rules and standards regarding construction and performance. This includes, but is not limited to the Federal Motor Vehicle Safety Standards (FMVSS), EPA emission level requirements, and state noise standards.
- L. **Delivery Requirements** - Vehicles shall be delivered under the terms and conditions and the resulting State Price Agreements completed as a result of the bid solicitation and shall be of the same make, model, and equipment level as bid. Substitutions will not be allowed. The SFM Vehicle Body Codes listed in Exhibit 1 of the bid specifications indicate the vehicle types, size and sample representative models designated/used by SFM. The Gross Vehicle

Weight Rating (GVWR) for the vehicles bid shall meet or exceed the minimum GVWR when specified in the standard specifications.

Vehicles are to be delivered complete with all manufacturer standard new vehicle equipment and must be in compliance with the 2021 or newer Vehicle Specifications for each body code and requested optional items as listed on the SFM or Purchasing Entity purchase order. SFM and any Purchasing Entity reserve the right to return a vehicle after acceptance that is not complete according to the 2021 or newer Vehicle Specifications for each body code and any purchase order, if later found to be in violation. The Contractor shall promptly bring the vehicle up to the award specification or accept return of vehicle and reimburse any monies paid by the State or Purchasing Entity.

M. Delivery Compliance for State Fleet Management and Purchasing Entity - The following requirements apply to vehicles at time of delivery to SFM or the Purchasing Entity.

i. Contractors shall bring the following items in the SFM or Purchasing Entity office at the time of scheduled delivery (all documents shall be typed):

- (a) The Contractor's invoice with a typed Vehicle Identification Number (VIN), the State or Ordering Purchase Order Number, and the Dealer Stock Number.
- (b) The manufacturer's window sticker with price and option info (Do not leave the sticker on the vehicle door glass).
- (c) The manufacturer's "Certificate of Origin" with a typed assignment as follows (there shall be no corrections):
Undetermined at this time
1001 East 62nd Ave
Denver, CO 80216
- (d) The Application for Title and the Bill of Sale (if used for odometer disclosure).
- (e) Two sets of keys plus the key code (usually on a sticker or tag) needed for key duplication.
- (f) A weight slip and VIN slip and VIN Verification shall be provided whenever a body has been modified *i.e. hi-cube vans, box trucks and buses and stake beds, etc.).

ii. Contractors shall leave the following items in the vehicle at the time of scheduled delivery:

- (a) The owner's manual visible on the front seat.
- (b) The Dealer Stock Number on the windshield.
- (c) A sixty (60) day permit shall be attached in the rear window of the vehicle.
- (d) **Vehicles shall be washed, HAVE LICENSE PLATE BRACKETS AND SCREWS INSTALLED ON THE VEHICLE, serviced and in standard**

“make ready” condition (I.e. prepared for immediate use including no less than one quarter (1/4) tank reading of fuel and full tanks of Diesel Emission Fluid when equipped with DEF tanks). Note: Vehicles must be delivered with no less than ¼ tank of each fuel type, including, CNG, diesel, propane, etc., and full DEF tanks, or vehicles will be refused.

- (e) SFM or the Purchasing Entity shall make a cursory visual check of the delivered vehicle’s condition and options to expedite the delivery process. Should any problems be found after delivery, SFM or the Purchasing Entity have up to four (4) weeks to inspect and reject the vehicle while it is still on their lot. If rejected, the Contractor shall retrieve the vehicle within one (1) business day of notification via email for correction/repairs, and then shall redeliver the vehicle as soon as the repairs are complete. The dealer will expedite repairs to its maximum capability, so as not to cause financial hardship to the State or Purchasing Entity.

N. Delivery Terms and Compliance for Institutions of Higher Education, Political

Subdivisions and Non-Profits - All institutions of Higher Education, Political Subdivisions and Registered Non-Profits must specify on the Purchase Order or commitment document all delivery terms and conditions that apply. Delivery instructions to the customer are to be similar to State delivery instructions.

- i. The State’s terms are FOB destination with freight included to destinations in the Metropolitan Denver area (7 county areas to include: Denver, Adams, Arapahoe, Boulder, Douglas, Broomfield and Jefferson). Deliveries outside of the 7-county area are FOB destination with freight added, which has been pre-negotiated in writing between Purchasing Entity and Contractor.
- ii. Any Purchasing Entity may arrange to pick up a vehicle from the awarded Contractor at no additional charge.
- iii. Contractor is expected to comply with delivery instructions issued by Institutions of Higher Education, Political Subdivisions and Non-Profits. Any changes or clarifications must be negotiated with and agreed to by the applicable Institution of Higher Education, Political Subdivision or Non-Profit.
- iv. The State Procurement Administrator managing the State Price Agreement should be notified immediately of any issues related to the delivery of vehicles.

O. Quotation of Vehicles for Institutions of Higher Education, Political Subdivisions and

Non-Profits - At the request of the political subdivision Contractor shall begin all vehicle quotes with the State Awarded Standard Vehicle Base Price. Vehicle quotes that begin with a Contractor MSRP or quotes that cannot provide a pricing breakdown that includes the awarded Standard Vehicle Base Price will not be considered valid.

Contractors shall include, on the requested quotation for the political subdivision, the Original Equipment Manufacturer (OEM) Model number and any OEM codes for all specifications, accessories, and up-fits, when an OEM code is available.

- P. **Legislative Changes** - The State reserves the right to amend this contract in response to Colorado legislative changes that affect this program.
- Q. **Invoicing and Payment** - The Contractor shall send all invoices to State Fleet Management or the Purchasing Entity as instructed on the Purchase Order. Invoices shall include the Purchase Order number. Invoices are not to be sent to the State Purchasing & Contracts Office.
- R. **Term of the Price Agreement (Contract)** - In the event that a Contractor can offer an awarded vehicle after September 30, 2021 the State reserves the right to issue an extension to the State Price Agreement. Extensions must be issued prior to August 31, 2021.
- S. **Sex Offender Registration Information Requirements** - Contractor must comply with the following laws in order to have employees on-site at a State of Colorado facility:
- Colorado Revised Statutes, Title 16-22-103, et.seq.
Code of Federal Regulations, 34 CFR 668.46
Jeanne Clery Act 20 USC 1092 (f)
- T. **Name or Address Changes** - Contractor must notify the State of any changes to the Contractor's name or address within fifteen business days of change.
- U. **Invoicing** – State Purchasing Entities are Colorado PERA affiliated employers. In the event billable personal Services are performed by the Contractor, and pursuant to Colorado SB06-235 and CRS §24-51-1101(2), the Contractor must notify in writing (email is acceptable) the State Purchasing Entity's representative listed on the Order within fifteen (15) calendar days from the date of receipt of any Order if the Services to be provided are being or will be performed by a PERA retiree (as defined at CRS §24-51-101).

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EXHIBIT C, PRODUCTS AND PRICING

Body Code	Body Code Description	Make	Model	Base Price
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AH	Sedan Hybrid Compact (Gas/Electric) Toyota Prius AWD	Toyota	Prius AWD	\$24,954
AH	Sedan Hybrid Compact (Gas/Electric) Toyota Corolla	Toyota	Corolla	\$21,750
AH	Sedan Hybrid Full Size (Gas/Electric) Toyota Camry	Toyota	Camry	\$26,119
AP	Plug In Hybrid Electric Vehicle PHEV Toyota Prius Prime	Toyota	Prius Prime	\$26,421
KH	Pass Util Hybrid (Gas/Elec) Toyota Highlander 4X4	Toyota	Highlander	\$37,219

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. 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.
 - i. Reserved.
 - ii. Reserved.
 - iii. Reserved.
 - iv. Reserved.
 - v. Reserved.