

**STATE OF COLORADO**  
**Department of Personnel & Administration, Division of Finance and Procurement,**  
**State Purchasing Office**  
**Contract**  
**with**  
**Example Corp**

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## **1. PARTIES**

This contract (hereinafter called “Price Agreement”) is entered into by and between Example Corp (hereinafter called “Contractor”), and the STATE OF COLORADO acting by and through the Department of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office (hereinafter called the “State” or “SPO”). Contractor and the State hereby agree to the following terms and conditions.

## **2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

This Price Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

## **3. RECITALS**

### **A. Authority, Appropriation, and Approval**

Authority to enter into this State Price Agreement exists in R-24-102-202-01. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

### **B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Price Agreement.

### **C. Purpose and Scope**

Contractor is authorized to provide travel agency services under this Price Agreement. This Price Agreement authorizes the purchase of travel agency services, in accordance with the terms of awards issued as a result of Solicitation #IFB-0001-BS-14, by eligible entities within the State of Colorado.

The State Purchasing Office is issuing this Price Agreement for rates for travel agency services between the Contractor and the State of Colorado, on behalf of State agencies, institutions of higher education, political subdivisions, non-profits and other entities (including cooperatives), pursuant to the terms of this Price Agreement.

Except with respect to orders placed by it under this agreement, the Department of Personnel & Administration shall not be liable to Contractor as a signatory to this Price Agreement for any breach by an Ordering Entity of any payment or other obligation herein or under a purchase order or contract that orders services from this Price Agreement.

### **D. Participation**

Use of this Price Agreement by Ordering Entities authorized by Colorado statutes to use state contracts are subject to the approval of the SPO. Issues of interpretation and eligibility for participation are solely within the authority of the SPO.

### **E. References**

All references in this Price Agreement 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.

## **4. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

### **A. Contract Funds**

“Contract Funds” means funds available for payment by the State to Contractor pursuant to this Price Agreement and Orders.

### **B. Evaluation**

“Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in §6 and Exhibit D.

### **C. Exhibits**

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Rates), **Exhibit B** (Option Letter), **Exhibit C** (Volume detail report), and **Exhibit D** (State of Colorado Contract Management Information FINAL Contractor Performance Evaluation).

### **D. Institution of Higher Education**

“Institution of Higher Education” means a Colorado university or college which is supported by the State.

### **E. MBE/WBE/SBE/DBE/VBE**

“MBE/WBE/SBE/DBE/VBE” means minority-owned, woman-owned, small, disadvantaged, and veteran-owned business enterprises certified as such by the State of Colorado.

### **F. Non-Profit**

“Non-Profit” means entities that have 501( c)(3) status under the Internal Revenue Code are recognized as “in good standing” with the Colorado Secretary of State office, and receive funding from federal, state, or local governmental sources to have access and make purchases from State Price Agreement vendors. Non-Profits are approved by the State Purchasing Office to make purchases from State Price Agreement vendors.

### **G. Order**

“Order” means any purchase order, contract, or other authorized agreement used by an Ordering Entity to order the services or products priced in this Price Agreement. An order amended consistent with the requirements of any Ordering Entity shall also be governed by the same terms and conditions.

#### **H. Ordering Entity**

“Ordering Entity” means a State Agency; other departments of the State (including the Department of Law, the State Treasurer, the Judicial Department, the Secretary of State; the Legislature); Institutions of Higher Education, Political Subdivisions, Non-Profits and other entities (including cooperatives) that place Orders.

#### **I. Party or Parties**

“Party” means the State or Contractor, and “Parties” means both the State and Contractor.

#### **J. Political Subdivision**

“Political Subdivision” means any Colorado governmental entity such as cities, towns, counties, libraries, etc.

#### **K. Price Agreement**

“Price Agreement” means this contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies. The State Purchasing Office administers Price Agreements on behalf of State Agencies and other Ordering Entities.

#### **L. Review**

“Review” means examining Contractor’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit D**.

#### **M. Services**

“Services” means the alcohol and drug testing services required to be performed by Contractor pursuant to this Price Agreement.

#### **N. State Agency**

“State Agency” means the departments, divisions, commissions, boards, bureaus and institutions in the executive branch of Colorado State government (not including the legislative or judicial department, the department of law, the department of state, the department of the treasury, state-supported Institutions of Higher Education not governed by the procurement code, or other Political Subdivisions).

#### **O. State Purchasing Office or SPO**

“State Purchasing Office” or “SPO” means the State of Colorado State Purchasing Office, Colorado Department of Personnel & Administration, Division of Finance and Procurement.

#### **P. Subcontractor**

“Subcontractor” means third-parties, if any, engaged by Contractor to aid in performance of its obligations under this Price Agreement. The use of Subcontractors is governed by **§6(D)(i)**.

#### **Q. Unless otherwise agreed or unless otherwise specified**

“Unless otherwise agreed” or “unless otherwise specified” means those terms specified in an Order.

#### **R. Work**

“Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Price Agreement and **Exhibit A** (Rates), including the performance of the Services.

#### **S. Work Product**

“Work Product” means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

### **5. TERM**

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

The Parties’ respective performances under this Price Agreement shall commence on the later of either the Effective Date or January 1, 2014. This Price Agreement shall terminate on December 31, 2015 unless sooner terminated or further extended as specified elsewhere herein.

#### **B. Two Month Extension**

The State, at its sole discretion upon written notice to Contractor as provided in **§16**, may unilaterally extend the term of this Price Agreement for a period not to exceed two months if the Parties are negotiating

a replacement Price Agreement (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this Price Agreement in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the four-month extension. The four month extension shall immediately terminate when and if a replacement Price Agreement is approved and signed by the Colorado State Controller.

### **C. State's Option to Extend**

The State may require continued performance for a period of three (3) one-year renewals at the same rates and same terms specified in the Price Agreement. If the State exercises its option(s), it shall provide written notice to Contractor at least 30 days prior to the end of the current contract term in form substantially equivalent to **Exhibit B** (Option Letter). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Price Agreement. The total duration of this Price Agreement, including the exercise of any options under this clause, shall not exceed 5 years, unless authorized in writing by the State Purchasing Director.

## **6. STATEMENT OF WORK**

### **A. Completion**

Contractor shall complete the Work and its other obligations as described herein and in accordance with any Order issued by an Ordering Entity. The State shall not be liable to compensate Contractor for any Work performed on an Order placed by a State Agency or other State departments or Institutions of Higher Education (the "State Ordering Entities") prior to the Effective Date or after the termination of this Price Agreement, and shall not be held liable to compensate Contractor for any Work performed on an Order placed by a non-State Ordering Entity.

### **B. Employees**

All persons employed by Contractor or Subcontractors to perform Work under this Price Agreement shall be Contractor's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Price Agreement.

### **C. Orders**

i. Ordering Entities will place Orders with Contractor for Services on an "as-needed" basis. Each Ordering Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Ordering Entity's rules, policies, and procedures, as identified by the Ordering Entity, regarding the purchase of alcohol and drug testing services. The Ordering Entity that places an Order shall be responsible for payment of the Order. The State of Colorado shall not be liable for payment of Orders placed by non-State Ordering Entities and Contractor shall not seek compensation from the State of Colorado for such Orders.

ii. Contractor shall not begin Work without authorization. State Agencies and Institutions of Higher Education shall ensure that no Work begins before a valid purchase order is issued, and shall comply with the purchasing requirements described in State Fiscal Rule 2-2-4 (Orders in excess of \$100,000 shall utilize a State contract and encumbrance of Contract Funds).

iii. Orders may be placed consistent with the terms of this Price Agreement during the period specified in §5.

All Orders for services pursuant to this Price Agreement, at a minimum, shall include:

- a. The Services being performed;
- b. The place and requested time of delivery or performance;
- c. A billing address;
- d. The name, phone number, and address of the Ordering Entity procurement officer or representative;
- e. The price per hour and the ceiling amount to be paid for the Services being ordered;
- f. The State of Colorado Price Agreement Number: 96178YYY11M.

All communications concerning administration of Orders placed shall be furnished solely to the purchasing officer within the Ordering Entity's purchasing office, or to such other individual identified in writing in

the Order.

iv. Orders must be placed pursuant to this Price Agreement prior to the termination date hereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Price Agreement. Notwithstanding the expiration or termination of this Price Agreement, provisions required to implement and govern Order performance shall survive Price Agreement termination. Contractor is reminded that financial obligations of State Agencies payable after the current applicable fiscal year are contingent upon Contract Funds for that purpose being appropriated, budgeted, and otherwise made available in the next fiscal year, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Price Agreement, or otherwise inconsistent with its terms. Orders for any indefinite quantity or indefinite delivery order arrangement priced against this Price Agreement may not be placed after the expiration or termination of this Price Agreement, notwithstanding the term of any such indefinite delivery order agreement.

#### **D. Performance**

i. Subcontracting will be allowed, however Contractor shall be the Prime Contractor and shall be fully accountable to the State and Ordering Entities for assuring that its Subcontractors comply with the terms of this Price Agreement.

ii. The State of Colorado, the State Purchasing Office and all State Ordering Entities are Colorado PERA affiliated employers. Pursuant to Colorado SB06-235 and C.R.S. 24-51-1101(2), the Contractor must notify the SPO Accounting Office (telephone number 303-866-3348) within fifteen (15) calendar days from the date of receipt of any purchase Order if the services to be provided are being or will be performed by a PERA retiree (as defined at C.R.S. 24-51-101).

iii. Contractor shall become familiar with individual Ordering Entity rules and regulations, as identified by the Ordering Entity, regarding Personnel, Procurement, and Fiscal Rules, and shall comply with any Executive Orders or other decisions regarding the State of Colorado and use of alcohol and drug testing services.

iv. State Ordering Entities have the authority and discretion to resolve performance issues with Contractor. Contractor is required to first meet with the Ordering Entity to resolve issues once an Ordering Entity has given notice of a performance issue. If resolution cannot be reached, then the SPO should be asked to assist in reaching resolution to the satisfaction of all parties involved. Failure to maintain satisfactory performance after notice will be sufficient cause for Ordering Entities to give notice of breach to Contractor.

v. Contractor is required to provide and maintain a toll-free telephone number and email address for statewide use by Ordering Entities. Contractor shall notify the State's principal representative identified in §16 of any change to Contractor's name, address or primary point of contact identified in §16.

vi. All Contractor marketing notices and literature intended for distribution to Ordering Entities must be submitted to SPO for advance approval. Maintenance of mailing lists and the production and distribution of pre-approved marketing notices and literature is the Contractor's responsibility and shall be at Contractor's expense.

vii. Contractor shall maintain registration on Colorado BIDS or the State's then current bidding system throughout the term of this Price Agreement.

viii. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104-191 governs the exchange of certain health data and the privacy and security of certain health information. Any work performed must be in compliance with the Health Insurance Portability and Accountability Act of 1996. HIPAA Standards/Final Rules are posted on the Department of Health and Human Services (DHHS) website: <http://www.os.dhhs.gov/ocr/hipaa/>

## **7. PAYMENTS TO CONTRACTOR**

An Ordering Entity shall, in accordance with the provisions of this §7, pay Contractor for Orders placed by the Ordering Entity in the amounts and using the methods set forth below:

### **A. Maximum Amount**

State Ordering Entity shall place Orders with the Contractor using a purchase order. All other Ordering Entities shall place Orders with a purchase order or other contracting document acceptable to the Contractor. The maximum amount payable by the Ordering Entity under the Contract shall be determined by the amount of these purchase orders and other contracting documents. No funds will be encumbered by the State Department of Personnel & Administration against this Price Agreement unless an Order is placed by that agency.

### **B. Payment**

All Ordering Entities issuing valid Orders will be bound by the terms and conditions of the Price Agreement, including, without limitation, the obligation to pay Contractor for Services. The State of Colorado shall not be liable for payment of Orders placed a Political Subdivision or an eligible Non Profit. Contractor shall not seek compensation from the State of Colorado for Orders placed by non-State Ordering Entities.

#### **i. Rates.**

The Ordering Entity shall pay Contractor at the rates as set forth in **Exhibit A** Rates (not-to-exceed the ceiling amount stated therein) for Services ordered. Unless otherwise specified in the Order, payments will be made based on the monthly submission of statements to the Ordering Entity detailing the dates, quantity, and description of Services performed bill rate, and Order number. Incorrect payments to Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments under Orders or other contracts between the Ordering Entity and the Contractor. The SPOe reserves the right to post **Exhibit A** Rates on the State Price Agreement website (<https://www.bidscolorado.com/>) for use by Ordering Entities.

Contractor shall have an accounting and billing system and provide Ordering Entities with a toll free number for Ordering Entity inquiries on billing problems.

The terms and conditions on any invoice, Contractor time sheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the State of Colorado or any State Ordering Entities. The Contractor's and Ordering Entities' rights and obligations shall be solely governed by the terms and conditions of this Price Agreement. Any employee's signature on Contractor's forms shall be effective only to establish receipt of services.

#### **ii. Rate Changes**

Pricing must remain firm for the first 12 months of the Contract. Any price increase requested shall be made in writing to the SPO 30 days prior to the anticipated increase and shall be substantiated by verifiable Contractor cost increases. Such requests shall contain complete documentation and cost justification for the requested increase. Increases shall become effective once approved by the SPO. Any price increase must be made effective by an amendment to the Price Agreement signed by the original signatories to the Price Agreement.

If price increases exceed what the SPO considers to be normal or expected, the State reserves the right to seek additional competition and/or purchase from other vendors.

Failure to obtain the SPO's approval of price increases shall void such price increases. If Contractor increases its rates to an Ordering Entity without obtaining SPO approval, the Price Agreement may be cancelled, subject to proper notice for breach under §14.



**iii. Renewal of Agreement.**

In the event of renewal of this Price Agreement, or any amendment of its terms (including prices), unless otherwise specified in the Order, the Contractor shall perform services in accordance with the terms of the Price Agreement current at the time of the Order, and invoice at the rates in the Price Agreement in effect at the time services are performed under the Order. If the parties have agreed to completion of Work within an agreed, not-to-exceed ceiling amount, unless otherwise agreed subsequently, the Contractor shall be paid at the rates in the Price Agreement in effect at the time the Order was placed.

**iv. Discount/Delinquency Period.**

Any applicable cash discount period or delinquency period will start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable services at the specified destination by an authorized Ordering Entity representative, whichever is later.

**v. Interest.**

Payments shall be submitted to Contractor at the address shown on the invoice or statement, as long as Contractor has exercised due diligence in notifying the SPO of any changes to that address. State law and regulations provide that vendors will be paid by State agencies within forty-five (45) days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by special conditions specified in the Order. A State liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Contractor shall invoice State Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid, and the applicable interest date. (Section 24-30-202(24), C.R.S., as amended)

**vi. Remittance.**

Payments from Ordering Entities will be remitted by mail, or may be made using the State "Procurement Card," or made as otherwise agreed by Contractor and the Ordering Entity.

**vii. Advance, Interim and Final Payments**

Any advance payment allowed under any Order issued by a State Agency against this Price Agreement shall comply with State Fiscal Rules and be made in accordance with the provisions of this Price Agreement or such Exhibit. Contractor shall initiate any payment requests by submitting invoices to the State Agency in the form and manner set forth and approved by the State Agency. Other Ordering Entities may have their own fiscal procedures regarding advance payments.

**viii. Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund work engaged by Ordering Entities under this Price Agreement, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to Work engaged by a State Ordering Entity under this Price Agreement shall be made only from available State Ordering Entity funds encumbered for Work engaged by the State Ordering Entity under this Price Agreement, and the State Ordering Entity's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund any Work engaged by a State Ordering Entity under this Price Agreement, the State Ordering Entity may terminate the Order, immediately, in whole or in part, without further liability in accordance with the provisions hereof.

#### **ix. Erroneous Payments**

At the State's sole discretion, State Ordering Entity 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, may be recovered from Contractor by deduction from subsequent payments under this Price Agreement or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

#### **x. Tax Exempt Status**

State agencies generally are tax-exempt and are not liable for any sales, use, excise, property, or other taxes imposed by any federal, state or local government tax authority. The State's FEIN # is 84-730123K. The State's tax exemption number is 98-02565. The State is also not liable for any taxes assessed against Contractor for franchise or licensing, or related to the income of the Contractor. No taxes of any kind shall be charged to the State.

Contractor is hereby notified that when Services are purchased for the benefit of State Ordering Entities, some Political Subdivisions require Contractor to pay sales or use taxes even though the ultimate product or service is provided to the State or a State Ordering Entity. These sales or use taxes will not be reimbursed by the State Ordering Entity, nor will any prices or rates in this Price Agreement be adjusted on account of such taxes. Contractor will accord the same tax free treatment to Political Subdivisions to the extent that they establish like exemption from taxes.

### **8. REPORTING - NOTIFICATION**

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

#### **A. Performance, Progress, Personnel, and Funds**

Contractor shall submit a report to the Ordering Entity upon expiration or sooner termination of this Price Agreement, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in **Exhibit D**.

#### **B. Volume Reports**

Contractor shall furnish sales reports to the State's principal representative identified in §16 or named successor 15 days after the end of each calendar quarter, detailing the total sales to all Ordering Entities in conjunction with this Price Agreement. The quarter periods are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 of any given year. The Contractor reports shall include:

- a. The total dollars spent by State Agencies;
- b. The total estimated dollars saved by State Agencies by comparison with Contractor's list or non-discounted rates for that period;
- c. The total dollars spent by Institutions of Higher Education;
- d. The total estimated dollars saved by Institutions of Higher Education by comparison with Contractor's list or non-discounted rates for that period;
- e. The total dollars spent by Political Subdivisions and non-profit entities;
- f. The total estimated dollars saved by Political Subdivisions and non-profit entities by comparison with Contractor's list or non-discounted rates for that period;
- g. The dollar value of purchases paid for with the State's Procurement Card as opposed to traditional methods of payment; and
- h. The total dollars spent by each of these aforementioned entities that resulted in compensation to MBE/WBE/SBE/DBE/VBE Service providers, including Contractor and any Subcontractors to Contractor.
- i. Contractor shall be required to provide Colorado specific reporting in the form set forth in Exhibit C.



ii. Any modifications made to the volume report requirements will be a collaborative effort between the SPO and the Contractor. The information collection needs of the State, however, shall be the primary factor considered in determining reporting requirements.

iii. Contractor also shall be required to provide a comprehensive sales history to the State's principal representative identified in §16 or named successor in the form set forth as **Exhibit C** Volume detail report at the end of each calendar quarter. The Volume detail report shall identify the Ordering Entity name, Orders placed, quantity of Services sold by the number of hours charged, minimum and maximum hourly contract rates, actual hourly rate charged, extended dollar amount, and overall total spent for that period. Failure to provide these reports shall constitute cause for cancellation of this Price Agreement and may disqualify Contractor from the award of future price agreements by the State.

iv. If requested, Contractor also shall provide detailed reports of the type described above to any Ordering Entity under this Price Agreement.

### **C. Litigation Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Price Agreement or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the SPO of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the State Department of Personnel & Administration.

### **D. Noncompliance**

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Price Agreement.

### **E. Subcontracts**

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the SPO or the State's principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado and that Subcontractors shall comply with the terms of this Price Agreement, which terms shall be incorporated by reference in the subcontracts.

## **9. CONTRACTOR RECORDS**

### **A. Maintenance**

Contractor shall make, keep, maintain, and allow inspection and monitoring by the Ordering Entity of a complete file of all records, documents, communications, notes, and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of three years after the date this Price Agreement expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending Price Agreement matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

### **B. Inspection**

Contractor shall permit the Ordering Entity, the federal government and any other duly authorized agent of a governmental agency, to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Price Agreement during the Record Retention Period or for a period of three years following termination of this Price Agreement or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Price Agreement, including any extensions or renewals. If the Work fails to conform to the requirements of this Price Agreement, the State may

require Contractor promptly to bring the Work into conformity with Price Agreement requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take action necessary to ensure that future performance conforms to Price Agreement requirements, and may exercise the remedies available under this Price Agreement, at law or in equity, in lieu of or in conjunction with such corrective measures.

### **C. Monitoring**

Contractor shall permit the Ordering Entity, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Price Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

### **D. Final Audit Report**

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Price Agreement, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

## **10. CONFIDENTIAL INFORMATION-ORDERING ENTITY RECORDS**

Contractor shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

### **A. Confidentiality**

Contractor shall keep all Ordering Entity records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for Ordering Entity records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

### **B. Notification**

Contractor shall notify its agent, employees, Subcontractors and assigns whom may come into contact with Ordering Entity records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

### **C. Use, Security, and Retention**

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Price Agreement or approved in writing by the Ordering Entity. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Price Agreement or approved in writing by the Ordering Entity.

### **D. Disclosure-Liability**

Disclosure of Ordering Entity records or other confidential information by Contractor for any reason 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 Ordering Entity, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this §10.

## **11. CONFLICTS OF INTEREST**

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Price Agreement, even the appearance of a conflict of interest is 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 to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Price Agreement.

## **12. REPRESENTATIONS AND WARRANTIES**

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Price Agreement.

### **A. Standard and Manner of Performance**

Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Price Agreement.

### **B. Legal Authority – Contractor Signatory**

Contractor warrants that it possesses the legal authority to enter into this Price Agreement and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Price Agreement, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Price Agreement within 15 days of receiving such request.

### **C. Licenses, Permits, Etc.**

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Price Agreement, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Price Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Price Agreement is a material breach by Contractor and constitutes grounds for termination of this Price Agreement.

## **13. INSURANCE**

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Price Agreement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

### **A. Contractor**

#### **i. Public Entities**

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during

the term of this Price Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

**ii. Non-Public Entities**

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Price Agreement insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Subcontractors that are not "public entities".

**B. Contractors - Subcontractors**

If Subcontractors are permitted in §6(D)(i), Contractor shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this Price Agreement, to include insurance requirements substantially similar to the following:

**i. Worker's Compensation**

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor or Subcontractor employees acting within the course and scope of their employment.

**ii. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

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

**iii. 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.

**iv. Additional Insured**

- v. The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any Subcontractors hereunder.**

**vi. Professional Liability**

The Contractor named in this State Contract promises and agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$500,00 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Contract. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this State Contract and for at least two years beyond the completion and acceptance of the work under this Contract, or, alternatively, a two year extended reporting period must be purchased.

**vii. Primacy of Coverage**

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

**viii. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Contractor's receipt of such notice.

**ix. Subrogation Waiver**

All insurance policies in any way related to this Price Agreement and secured and maintained by Contractor or its Subcontractors as required herein 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.

### **C. Certificates**

Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Price Agreement. No later than 15 days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Price Agreement or any subcontract, Contractor and each Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

## **14. BREACH**

### **A. Defined**

In addition to any breaches specified in other sections of this Price Agreement, the failure of either the Contractor, the State or an Ordering Entity to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes 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 20 days after the institution or occurrence thereof, shall also constitute a breach.

### **B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State or an Ordering Entity may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Price Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

## **15. REMEDIES**

If Contractor is in breach under any provision of this Price Agreement, the State or an Ordering Entity shall have all of the applicable remedies listed in this §15 in addition to all other remedies set forth in other sections of this Price Agreement and under applicable law, following the notice and cure period set forth in §14(B). The State and any Ordering Entity may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

### **A. Termination for Cause and/or Breach**

The State may terminate this entire Price Agreement or any part of this Price Agreement. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Price Agreement to the extent not terminated, if any.

#### **i. Obligations and Rights**

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding Orders and subcontracts with third parties. However, Contractor shall complete and deliver to individual Ordering Entities all Work and Services not cancelled by the State termination notice and may incur obligations as are necessary to do so within this Pricing Agreement's terms. At the sole discretion of the Ordering Entity, Contractor shall assign to the individual Ordering Entities all of Contractor's right, title, and interest in Work Product created pursuant to any terminated Orders as of the effective date of their termination. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which any individual Ordering Entities have an interest. All materials owned by an Ordering Entity that are in the



possession of Contractor shall be immediately returned to the Ordering Entity. All Work Product, at the option of the Ordering Entity, shall be delivered by Contractor to the Ordering Entity and shall become the property of the Ordering Entity.

**ii. Payments**

The Ordering Entity shall reimburse Contractor only for accepted performance up to the date of termination of an Order. If, after termination of an Order by the State, it is determined 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 the same as if this Price Agreement had been terminated in the public interest, as described herein.

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the State or Ordering Entity, Contractor shall remain liable to the State or the Ordering Entity as may be appropriate for any damages sustained by the State or the Ordering Entity by virtue of any breach under this Price Agreement by Contractor. An Ordering Entity may withhold any payment to Contractor for the purpose of mitigating the Ordering Entity's damages, until such time as the exact amount of damages due to the Ordering Entity from Contractor is determined. The Ordering Entity may withhold any amount that may be due Contractor as the Ordering Entity deems necessary to protect its against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or Services. Contractor shall be liable for excess costs incurred by the Ordering Entity in procuring from third parties replacement Work, Services or substitute Goods as cover.

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

The State is entering into this Price Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Price Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Price Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's or any Ordering Entity's obligations hereunder. This subsection shall not apply to a termination of this Price Agreement by the State for cause or breach by Contractor, which shall be governed by §15(A) or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Price Agreement.

**ii. Obligations and Rights**

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

**iii. Payments**

If this Price Agreement is terminated by the State pursuant to this §15(B), Contractor shall be paid by respective Ordering Entities for all outstanding Orders an amount which bears the same ratio to the total reimbursement under those Order as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in each Order, less payments previously made. Additionally, if an Order is less than 60% completed, the Ordering Entity may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor by an Ordering Entity hereunder.

**C. Termination of an Order by Ordering Entities**

An Ordering Entity through its designated procurement officer or other authorized representative may terminate an Order for default, and such termination shall be governed by this §15(C).

**i. Default**

If Contractor refuses or fails to perform any of its obligations under the provisions of an Order, with such diligence as will ensure its completion within the time specified in the Order, the Ordering Entity's procurement officer may notify Contractor in writing of the non-performance. If such breach is not



corrected within thirty (30) days of issuance of notice, or if, due to Contractor's actions or inactions, performance would be of no value to the State, the procurement officer may terminate Contractor's right to proceed with the Order or such part of the Order as to which there has been such delay or a failure to properly perform. Contractor shall continue performance of the Order to the extent it is not terminated.

**ii. Contractor's Duties**

Notwithstanding termination of the Order, and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the Ordering Entity has an interest (if any).

**iii. Compensation**

Payment for acceptable Services performed and accepted by the Ordering Entity shall be at the Price Agreement price. The Ordering Entity may withhold amounts due to Contractor as the procurement officer deems necessary to protect the Ordering Entity against loss because of outstanding liens or claims of former lien holders and to reimburse the Ordering Entity for the extra costs incurred in procuring similar services.

**iv. Erroneous Termination for Default**

If after notice of termination of Contractor's right to proceed under the provisions of this paragraph, it is determined for any reason that Contractor was not in breach under the provisions of this paragraph, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for the public interest section herein.

**v. Termination of an Order for the Public Interest**

Unless otherwise agreed, the procurement officer, when the interests of the Ordering Entity so require, may terminate any Order, in whole or in part, for the public interest of the Ordering Entity, provided only that such termination will not relieve such Ordering Entity from its obligations with respect to any Services already delivered to or used by such Ordering Entity. The procurement officer shall give at least thirty (30) days prior written notice of the termination to Contractor specifying the part of the Order terminated and when termination becomes effective. Termination for the public interest of all or any portion of an Order shall not constitute a breach of this Price Agreement by the Ordering Entity.

**(a) Contractor's Obligations** Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination. Contractor will stop work to the extent specified. Contractor must still complete and deliver to the Ordering Entity the work not terminated (if any) by the notice of termination.

**(b) Compensation** Upon termination of an Order by an Ordering Entity, Contractor shall be entitled to compensation as follows:

Contractor shall submit a termination claim specifying the amounts due because of the termination for the public interest together with cost or pricing data bearing on such claim. Contractor shall be paid an amount which bears the same ratio to the total reimbursement under the Order as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in the Order, less payments previously made. Additionally, if a terminated Order is less than sixty (60) percent completed, the Ordering Entity may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under such Order) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor under such Order.

**D. Remedies Not Involving Termination**

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of this Price Agreement pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed that, due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

**iv. Removal**

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Price Agreement is deemed to be contrary to the public interest or the State's best interest.

**v. Intellectual Property**

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Price Agreement, Contractor shall, at the State's option **(a)** obtain for the State or Contractor the right to use such products and services; **(b)** replace any product involved in the performance of the Services with non-infringing products, or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove or discontinue any infringing Services or products and refund the price paid therefore to the State.

Non-State Ordering Entities may include other remedies in the terms of the Orders they place.

**16. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative or named successor at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Notices to Ordering Entities shall be as provided for in the Order accepted by the Contractor. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Bill Snowden
Department of Personnel & Administration Division of Finance and Procurement State Purchasing Office
1525 Sherman Street
Denver, CO 80202
303-866-3950
<a href="mailto:william.snowden@state.co.us">william.snowden@state.co.us</a>

**B. Contractor:**

Responsible Party
Example Corp
Downtown
Denver, CO 80216
303-XXX-XXXX
Email address

**17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Price Agreement shall be the exclusive property of the Ordering Entity and, all Work Product shall be delivered to an Ordering Entity by Contractor upon completion of an Order or termination

thereof. The Ordering Entity's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works, and to amend, update or alter such Work Product as the Ordering Entity deems appropriate. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the Ordering Entity. Ordering Entities shall have the right to exercise all incidents of ownership of the Work Product without any further obligation to Contractor other than compensation for Services rendered as set forth herein.

## **18. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

## **19. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor by State Ordering Entities under this Price Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Price Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Price Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established by State Ordering Entities and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Price Agreement term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the State Purchasing Office, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

## **20. GENERAL PROVISIONS**

### **A. Assignment and Subcontracts**

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

### **B. Binding Effect**

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **C. Captions**

The captions and headings in this Price Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

### **D. Counterparts**

This Price Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

### **E. Entire Understanding**

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

### **F. Indemnification**

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

### **G. Jurisdiction and Venue**

All suits or actions related to this Price Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

### **H. Modification**

#### **vi. By the Parties**

Except as specifically provided in this Price Agreement, modifications of this Price Agreement shall not be effective unless agreed to in writing by the Parties in an amendment to this Price Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules. Modifications permitted under this Price Agreement, other than amendments, shall conform to the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

#### **vii. By Operation of Law**

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

### **I. Order of Precedence**

The provisions of this Price Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Price Agreement and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** §21 of the Price Agreement, Colorado Special Provisions,
- ii.** The provisions of the main body of this Price Agreement,
- iii. Exhibit A.** Rates

The provisions of each Order

- iv. Exhibit B.** Option Letter
- v. Exhibit C.** Volume detail report

**vi. Exhibit D. State of Colorado Contract Management Information Final Contractor Performance Evaluation**

Any conflict or inconsistency between the terms of an Order and this Price Agreement shall be resolved by giving effect first to the documents in the order of precedence above and finally to the terms of the Order.

**J. Severability**

Provided this Price Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Price Agreement in accordance with its intent.

**K. Survival of Certain Price Agreement Terms**

Notwithstanding anything herein to the contrary, provisions of this Price Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Ordering Entity if Contractor fails to perform or comply as required.

**L. Third Party Beneficiaries**

Except as provided for herein, enforcement of this Price Agreement and all rights and obligations hereunder are reserved solely to the Parties. Except as provided for herein, any services or benefits which third parties receive as a result of this Price Agreement are incidental to the Price Agreement, and do not create any rights for such third parties.

**M. Waiver**

Waiver of any breach under a term, provision, or requirement of this Price Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

**N. CORA Disclosure**

To the extent not prohibited by federal law, this Price Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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## **21. COLORADO SPECIAL PROVISIONS**

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

### **A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).**

This Price Agreement shall not be valid until it has been approved by the Colorado State Controller or designee.

### **B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).**

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

### **C. 3. GOVERNMENTAL IMMUNITY.**

No term or condition of this Price Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

### **D. 4. 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 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. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Price Agreement. 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 shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

### **E. 5. COMPLIANCE WITH LAW.**

Contractor shall strictly 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. 6. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Price Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Price Agreement, to the extent capable of execution.

### **G. 7. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Price Agreement or incorporated herein by reference shall be null and void.

### **H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Price Agreement 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 Price Agreement 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 Price Agreement, including, without limitation, immediate termination of this Price Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.



**I. 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201, 24-50-507.**

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 Price Agreement. 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. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

*[Not applicable to intergovernmental agreements]* Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**K. 11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.**

*[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 Price Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Price Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Price Agreement 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 Price Agreement. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Price Agreement is being performed, (b) shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Price Agreement, (c) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State 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 State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Price Agreement for breach and, if so terminated, Contractor shall be liable for damages.

**L. 12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Price Agreement.

SPs Effective 1/1/09

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

## 22. SIGNATURE PAGE

Contract Routing Number XXXXX

### **THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;"><b>CONTRACTOR</b> Example Corp</p> <p>By: _____ Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, Governor</b> Department of Personnel &amp; Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director</p> <p>_____ By: Carol Pfarr, Division Director Signatory avers to the State Controller or delegate that Contractor has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: _____</p>
<p style="text-align: center;">2nd Contractor Signature if Needed</p> <p>By: _____ Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

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

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

<p style="text-align: center;"><b>STATE CONTROLLER</b> Robert Jaros, CPA, JD, MBA</p> <p>By: _____</p> <p>Date: _____</p>
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Exhibit B

**OPTION LETTER**

<b>Date:</b>	<b>Original Contract CMS #:</b>	<b>Option Letter #</b>	<b>CMS Routing #</b>
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**1) OPTIONS:**

a. Option to renew only for subsequent one-year terms.

b. In accordance with Section(s) 5C of the Original Price Agreement between the State of Colorado, Department of Personnel & Administration, Division of Finance and Procurement, State Purchasing Office, and AD-ez Advertising the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date.

**2) Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> Department of Personnel &amp; Administration Division of Finance and Procurement State Purchasing Office Kathy Nesbitt, Executive Director</p> <hr/> <p>By: Carol Pfarr, Division Director</p> <p>Date: _____</p>
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CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

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

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

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