



Cristy Lynn Sulewski
Ouray County Clerk

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04/18/2024

Memo: Agreement between Ouray County and Intellectual Technology, Inc. as contractor for the Colorado Department of Revenue

Dear Commissioners,

The attached agreement allows Ouray County citizens to complete motor vehicle transactions including, but not limited to, license plate renewals and duplicate title requests at any Colorado Department of Revenue motor vehicle kiosk placed throughout the state. Currently, Ouray County residents cannot utilize these kiosks. This will be helpful for college students, traveling workers and several others that may be located in a different county at the time that their vehicle renewal is due.

There is no fiscal impact to Ouray County. The funds received at these kiosks are directly deposited to the County in the same manner as when a citizen renews their license plates on-line.

In the future, I hope to have the state place a kiosk in Ridgway to reduce the amount of north and middle county folks that need to drive to Ouray. Currently, the state has a minimum population count to place new kiosks. This minimum is being reviewed and will hopefully be removed.

The County Attorney has reviewed the agreement. There is no fiscal impact to the County.

Thank you for your time and consideration.

A handwritten signature in blue ink that reads "Cristy Lynn Sulewski". The signature is written in a cursive, flowing style.

Cristy Lynn Sulewski
Ouray County Clerk and Recorder

**COLORADO MV EXPRESS SELF-SERVICE TERMINAL
PARTICIPATION AGREEMENT**

This COLORADO MV EXPRESS SELF-SERVICE TERMINAL PARTICIPATION AGREEMENT (this "SST Participation Agreement") is entered into as of _____, by and between Ouray County, a Colorado County Agency (the "Agency") and Intellectual Technology, Inc. ("ITI"), a Delaware corporation headquartered at 2908 E. Coliseum Blvd., Suite 100, Fort Wayne, Indiana 46805.

WHEREAS, the Agency is interested in participating in the self-service terminals ("SSTs") program established with ITI pursuant and subject to the Agreement, CMS #164563, by and between the Colorado Department of Revenue and Intellectual Technology, Inc., dated as of January 5, 2021 ("Master Agreement"), in order to provide the residents of the Agency's local county with the ability to use SSTs installed in other counties and utilize the services (the "Services") offered by such SSTs; and

WHEREAS, the Agency and ITI both acknowledge that this SST Participation Agreement is subordinate to the Master Agreement, and any right granted to the Colorado Department of Revenue in the Master Agreement shall have priority over any conflicting right granted to the Agency under this SST Participation Agreement, except as provided herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Term. The term of this SST Participation Agreement shall begin on the date hereof and terminate on the last day of the term of the Master Agreement, as extended or earlier terminated in accordance with the Master Agreement. Notwithstanding the foregoing, either ITI or the Agency may terminate this SST Participation Agreement at any time with thirty (30) days written notice.

2. Information Security. The Agency will not have access to any confidential or personally identifiable information generated by the SST transactions. ITI shall be responsible for all data integrity, data transmission and security of all confidential and personal information.

3. Fees. For Services rendered, the Agency agrees to compensate ITI according to the agreed upon conditions defined in accordance with Schedule A under "Service Fees".

4. Independent Contractor. ITI and any and all of ITI's agents and employees shall act as independent contractors and not as agents or employees of the Agency. Nothing herein contained shall be construed as constituting the parties hereto as partners, agents of one another or joint venturers.

5. Confidentiality. The parties understand and acknowledge that in connection with the Services to be performed by ITI and the obligations of the Agency under this SST Participation Agreement, from time to time either or both (the "Disclosing Party") may disclose to the other (the "Receiving Party"), either in writing or orally, information relating to the Disclosing Party's businesses, operations, organizations, financial conditions, plans, designs, marketing strategies and other confidential or proprietary information ("Confidential Information"). The Receiving

Party will use such Disclosing Party's Confidential Information solely for the purpose of performing its obligations under this SST Participation Agreement unless otherwise agreed in writing between the parties. The parties agree that all Disclosing Party Confidential Information shall be and remain the exclusive property of the Disclosing Party, and that the Receiving Party will take, or cause to be taken, all reasonable steps to safeguard Disclosing Party's Confidential Information against unauthorized disclosure, using procedures and standards no less comprehensive than those used to protect Receiving Party's own Confidential Information. Notwithstanding anything set forth herein to the contrary, no information shall be considered Confidential Information, which (i) is or becomes publicly known through no wrongful act of Receiving Party, (ii) is received by the Receiving Party from a third party without similar restriction and without breach of this SST Participation Agreement, (iii) is independently developed by Receiving Party and Receiving Party can reasonably substantiate that the development occurred before disclosure, (iv) is required to be disclosed by law, or (v) is approved for release by the written consent of the Disclosing Party. In the context of this paragraph, ITI expressly recognizes that Agency is subject to the Colorado Open Records Act, C.R.S. § 24-72- 201 *et seq.*, and may be required to disclose records under that law.

6. Consumer Credit Card Confidential Information. ITI shall comply with the Payment Card Industry ("PCI") Data Security Standard, as promulgated and amended by the PCI Security Standards Council, and other applicable payment card industry security requirements with respect to consumer credit card information that is accessed, received or maintained by ITI. If ITI is required to maintain certification pursuant to the PCI Data Security Standard, ITI shall maintain such certification throughout the term of this SST Participation Agreement.

7. Notices. All notices provided under this SST Participation Agreement shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified, postage prepaid, or by an express delivery service (such as UPS), and addressed to such party at its address set forth below. The address to which notices may be given as aforesaid to either party may be changed by written notice given by one party to the other as hereinabove provided.

Notice shall be sent to the following addresses:

(a) If to ITI:

Intellectual Technology, Inc.
2980 E. Coliseum Blvd.
Fort Wayne, IN 46805
Attn: General Counsel
Tel: 260-459-8800
Fax: 260-459-8820
Email: bsmith@iti4dmv.com

(b) If to the Agency:

Agency Name: Ouray County
Attn: County Manager
Address: PO Box C
Address: 541 Fourth Street
Tel: 970-325-7320
Fax: 970-325-0452
Email : chunt@ourayco.gov

8. Service Marks and Trademarks. ITI shall not, without the Agency's prior written consent, use the name, service marks of the Agency or the service marks or trademarks used by the Agency.

9. Publicity. All media releases, public announcements and public disclosures by either party relating to this SST Participation Agreement or the subject matter of this SST Participation Agreement, including promotional or marketing material or signs or posters posted on the SST or elsewhere, but not including announcements intended solely for internal distribution or disclosures to the extent required to meet legal or regulatory requirements beyond the reasonable control of the disclosing party, will be coordinated with and approved by the other party prior to release, which approval such party may withhold in its sole discretion. ITI will ensure that any approved publicity materials referring to the Agency remain current and accurate, and the Agency reserves the right to withdraw a previously granted approval and ITI will cease use of the Agency's name pending ITI's correction of any inaccurate materials.

10. Compliance with Law; Permits; Truces. ITI shall comply with all applicable laws, rules and regulations with respect to the operation, maintenance and use of the SST. ITI will obtain, maintain in effect, and pay the cost of all licenses or permits required for the operation, use and/or maintenance of the SST. ITI will pay all taxes and other payments required to be paid by ITI as a result of any SST transactions.

11. Entire Agreement; Amendment. This SST Participation Agreement, along with the Master Agreement, constitutes the entire agreement between the parties with respect to the subject matter contained in this SST Participation Agreement, and supersedes all prior agreements, whether written or oral, with respect to such subject matter except for the Master Agreement. No modification, waiver, or discharge hereof will be valid unless in writing and signed by an authorized representative of the party against which such change, waiver or discharge is sought to be enforced.

12. Successors and Assigns. The terms of this SST Participation Agreement and the covenants and agreements herein contained shall apply to and bind and inure to the benefits of the permitted heirs, representatives, assigns and successors in interest of the parties hereto.

13. Severability. The invalidity of any provision of this SST Participation Agreement will not affect the validity and binding effect of any other provision and any invalid provision will be severed from this SST Participation Agreement and the remainder of the SST Participation Agreement will be enforced to the maximum extent permitted by applicable law and in keeping with the original intention of the parties.

14. Survival. The provision of this SST Participation Agreement which contemplates performance or observance subsequent to termination or expiration of this SST Participation Agreement will survive termination or expiration of this SST Participation Agreement and continue in full force and effect.

15. Waiver. The failure of a party to insist upon strict performance of any of the covenants or restrictions contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the covenants or obligations contained herein by the same or any other party.

16. Governing Law: Jurisdiction. This SST Participation Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Colorado, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. Venue of any civil action relating to this Agreement shall be in Ouray County.

17. Counterparts/Electronic Signatures. This SST Participation Agreement may be executed in counterparts and delivered by U.S. Mail or established overnight courier service, postage or delivery charge prepaid, each of which counterparts shall be deemed an original and all of which together shall constitute a single instrument, and shall be effective upon execution and delivery of one or more of such counterparts by each of the parties hereto. Electronic signatures (copied, facsimile or PDF) shall be deemed originals for all purposes.

18. Governmental Immunity. Notwithstanding any provision of the Master Agreement, the Agency and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this SST Participation Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Agency and its officers, attorneys or employees.

19. Subject to Annual Appropriation. Notwithstanding any provision of the Master Agreement, any financial obligation of the Agency not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

[Signature Page Follows.]

IN WITNESS WHEREOF, this SST Participation Agreement has been executed by the parties hereto as of the date first written above.

OURAY COUNTY

INTELLECTUAL TECHNOLOGY

By: _____

By: _____

Name: Michelle Nauer

Name: _____

Title: BOCC, Chair

Title: _____

ATTEST:

By: Harlan Thompson, Deputy Clerk

SCHEDULE A (Rev. 02/18)

COLORADO SELF SERVICE TERMINAL PARTICIPATION AGREEMENT

Self-Service Terminal (SST) Services:

Primary service provided is Colorado motor vehicle registration renewals. In future, may add other routine Colorado Department of Motor Vehicle services.

Payment Functionality:

Self-Service Terminals to offer the following payment options: credit / debit cards.

Transaction Service Fees:

- ITI to charge a service fee for each transaction. A transaction is defined as issuance of a vehicle registration certificate and decal(s) for one vehicle. Service fee to be billed either to customer, or to Agency, or can be split between customer and Agency.
- Transaction fee schedule below for motor vehicle registration renewals:
 - \$3.50 per vehicle registration renewal performed at Agency office locations.
 - \$4.50 per vehicle registration renewals performed at 3rd party retail locations that charge a fee for SST space.

* Fee charged to be based on type of service performed. Other routine Colorado Department of Motor Vehicle services added in future shall have different transaction service fee based on type of service and requirements.

Credit Card Processing Fees:

- Credit card processing fees to be paid at 2.30% per total credit/debit transaction value. Credit card fee shall be charged at time of transaction.
- Credit card rates subject to change based on changes in credit card processor rates. Agency to be notified in writing at least 60 days in advance of any credit card fee changes.
- Agency must complete the Automatic Clearing House Authorization form provided by ITI in order to credit Agency's bank account(s).
- Card processing costs can be either charged to customer or agency, check option below:
 - _____ Charge Customer
 - _____ Charge Agency

Reporting:

ITI to provide each Agency with a web-based reporting repository which provides real time access to detailed transactional reporting.

Invoice

In the event Agency pays the transaction service fee (detailed above), the fees will be invoiced monthly. ITI will provide Agency an invoice with the name and address as shown on this SST Participation Agreement along with the contact name and telephone number. Invoice to reference this SST Participation Agreement, time, the number of transactions processed, and the fee per transaction within that given period.

Agency Invoice Contact information required:

Itemized invoices must be paid by Agency within thirty (30) days of receipt when submitted to the address shown below.

To ensure prompt payment, ITI shall submit **all** invoices to:

Name:

Address:

Tel:

Fax:

Email:

SIGNATURE PAGE

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 align="center">CONTRACTOR Intellectual Technology, Inc.</p> <p>By: <u>Drew Nicholson</u> Drew Nicholson, President / COO</p> <p>Date: <u>12/28/2020</u></p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Revenue Mark Ferrandino, Executive Director</p> <p>By: <u>Heidi Humphreys</u> Heidi Humphreys, Deputy Executive Director</p> <p>Date: <u>1/5/2021</u></p>
<p>In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.</p> <p align="center">STATE CHIEF INFORMATION OFFICER Anthony Neal-Graves, Chief Information Officer and Executive Director (Interim)</p> <p>By: <u>Laura Calder</u></p> <p>Printed Name: <u>Laura Calder</u></p> <p>Title: <u>CFO</u></p> <p>Date: <u>1/5/2021</u></p>	<p>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.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: <u>Leila Boulton</u> Leila Boulton</p> <p>Effective Date: <u>1/5/2021</u></p>

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1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the State agency named on the 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 Cover Page for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Cover Page for this Contract (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Extension Terms - State’s Option

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

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in §15, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Contract.

E. 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. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for Breach of Contract by Contractor, which shall be governed by §13.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §15. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

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 §13.A.i.a.

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Contract is less than 60% completed, as determined by the State, the State 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, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. "**Breach of Contract**" means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. "**Business Day**" means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.
- C. "**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.

- D. **“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.
- E. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- F. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **“Deliverable”** means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor.
- H. **“End of Term Extension”** means the time period defined in §2.D.
- I. **“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 Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- J. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- K. **“Extension Term”** means the time period defined in §2.C.
- L. **“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.
- M. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- N. **“Initial Term”** means the time period defined in §2.B.
- O. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.
- Q. **“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. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- R. **“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.
- S. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax

Information, CJJ, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

- T. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- U. **“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.
- V. **“State Records”** means any and all State data, information, and records, regardless of physical form.
- W. **“Subcontractor”** means any third party engaged by Contractor to aid in performance of the Work.
- X. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- Y. **“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, 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 or any intellectual property that Contractor creates during the course of Contractor’s performance of the Work hereunder, except for any intellectual property specifically developed for the Colorado Department of Revenue as provided in a signed writing.

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

4. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

5. PAYMENTS TO CONTRACTOR

This is a no cost Contract. For the entire term of this Contract, including any extensions, there shall be no charges whatsoever to DOR from Contractor. DOR has no financial obligation to Contractor for any Goods or Services provided under this Contract, or for any costs to Contractor associated with implementation or continued operation under the Contract, including, but not limited to, computer hardware or software, equipment, services, subcontracted services, personnel, networks, licenses, travel, insurance, bonds, or administration.

6. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed

by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this 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 on the Cover Page for this Contract.

C. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

i. Performance Outside the State of Colorado

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 §15 and in form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado. Such notice shall specify the type of Services to be performed outside the State of Colorado and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a Breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

ii. Performance Outside of the United States

Contractor shall request written approval from the State, acting through the Office of Information Technology, for Contractor to perform, or subcontract to perform, Services outside the United States. The State may approve or deny such request within the State's sole discretion, whether or not services outside the United States are prohibited or restricted by the Statement of Work or by any Exhibit attached to this Contract. Following written approval from the State, Contractor shall comply with the notice provisions for performance outside the State of Colorado. Any notice provided to the State by Contractor regarding performance outside the United States shall be deemed ineffective if the State has not granted prior written approval for such performance.

7. 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 three 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, the federal government, and any other duly authorized agent of a governmental agency 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 two 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, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State or that governmental entity. 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.

8. 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 applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI. 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 if requested by the State.

C. Use, Security, and Retention

Contractor shall use, hold, and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this 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, Contractor shall notify the State as soon as possible, but in no case later than twenty-four (24) hours and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish by a preponderance of evidence that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. The State may, once per year, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings. Any additional audits shall be at the State's expense if no material negative findings are revealed in such audits.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §24-73-101 *et seq.*, C.R.S.

G. Protection of Contractor Information

Any Contractor information received by the State during the term of this Contract that Contractor believes to be confidential and proprietary shall be clearly identified as such, and the State shall only share this information with State personnel on a need to know basis. Nothing in this provisions shall limit or impair the State's obligation under the Colorado Open Records Act, C.R.S. §§24-72-201, *et al.*

9. 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 Contract.

- D.** Contractor acknowledges that all State employees are subject to the ethical principles described in § 24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of § 24-18-105, C.R.S. with regard to this Contract. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Contractor employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Contractor shall provide a disclosure statement as described in §9.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Contract. Contractor may also be subject to such penalties as are allowed by law.

10. 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. 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 one fire.

C. Automobile Liability

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

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law,

confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

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

E. Professional Liability Insurance

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

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

F. Crime Insurance

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

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

G. Additional Insured

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

H. Primacy of Coverage

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

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §15 within seven days of Contractor's receipt of such notice.

J. Subrogation Waiver

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

K. Public Entities

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

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall

provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven 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 seven 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 seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. LIMITATION OF CONTRACTOR'S LIABILITY TO STATE

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

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

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

12. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §13 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; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

13. 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 §12, shall have all of the remedies listed in this section 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 of Contract

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 the State 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, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. 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.

c. 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, as approved by the State (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

d. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, even where the State does not terminate this Contract as a result of the breach.

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 §12 and the dispute resolution process in §14, shall have all remedies available at law and equity.

14. 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 shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §14.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 Agency named on the Cover Page of this Contract as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

15. NOTICES AND REPRESENTATIVES

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

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, all State Records, 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 information provided by or on behalf of the State to Contractor are 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.

B. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Contract; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. 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 any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance 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.

18. 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 §18.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. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. 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.

J. 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.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

L. 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.

M. 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.

N. Taxes

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

taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §18.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.

P. 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.

Q. 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.

R. 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.

S. 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.

T. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties 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 §8 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 §8.

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 Deliverable, Good or Service, software, or Work Product provided by Contractor under this Contract (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor's obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is (a) provided by Contractor or Contractor's subsidiaries or affiliates; (b) specified by Contractor to work with the IP Deliverables; (c) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (d) is reasonably expected to be used in combination with the IP Deliverables.

19. 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), C.R.S., 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 that 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.

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 three 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 three 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.

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EXHIBIT A, STATEMENT OF WORK

This **Exhibit A, Statement of Work ("SOW")**, is part of that certain contract, CMS #164563, by and between Intellectual Technology, Inc. ("Contractor"), and the State of Colorado, acting by and through the Department of Revenue, Division of Motor Vehicles ("State" or "Department" or "DMV"). In the event of a conflict or inconsistency between the Contract and its exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified on the Signature and Cover Page of this Contract. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Contract and its other exhibits.

1. GENERAL DESCRIPTION

Contractor will develop, install, operate, and maintain a network of self-service Kiosks and POD Devices at County and State identified locations, to provide motor vehicle and driver license services to Colorado residents in the Counties opting to participate under this Contract. Contractor will provide a complete turnkey solution which will comply with all design, development, integration, deployment, installation, and maintenance of all components and conditions outlined in this Statement of Work. The State's goal is to offer an alternative service delivery option to DMV customers, in order to reduce the amount of over-the-counter renewals and decrease customer wait times. Services offered will be expanded to include additional capabilities and enhancements as required by the Department, and Contractor will update kiosk systems to include the additional services as they become available.

Contractor's systems will interface with the DRIVES Kiosk web service via an Application Programming Interface (API) established and maintained by Contractor, at Contractor's sole expense. The API will enable real-time access to motor vehicle registration information.

For POD Devices at County and State identified locations, requirements and specifications for such devices shall be provided for through a formal amendment to this Contract. Contractor will not be obligated to provide any POD Devices or related Services until such amendment has been fully executed and signed by both Parties.

2. DEFINITIONS

For purposes of this Exhibit A, Statement of Work, the following terms shall be construed and interpreted as follows:

- A. "**Application Programming Interface**" or "**API**" means a set of commands, functions, protocols, and objects utilized to permit software programs to communicate with one another.
- B. "**Authorized Agent**" means the County Clerk and Recorder in each County, as defined in C.R.S. §42-1-102(5).
- C. "**Completed Transaction**" means a Kiosk or POD Device transaction in which a customer fully concludes the transaction and successfully acquires the desired DMV product(s) or service(s) as intended, and/or is issued a POD document. A Completed Transaction does not include any failed transaction, or a transaction where the customer ends the Kiosk or POD Device interaction before a product or service is purchased and/or a document is issued.
- D. "**Convenience Fee**" means the fee charged by Contractor to a customer for a Completed Transaction.
- E. "**County**" or "**Counties**" means one or more of the sixty-four (64) counties within the State of Colorado.
- F. "**Developer Portal**" the Department's web application designed to allow vendors to manage various accounts, access, and details.
- G. "**DRIVES**" means the Colorado Driver License, Record, Identification and Vehicle Enterprise Solution utilized by DMV through its contractor, Fast Enterprises.

- H. **“Kiosk”** means a machine, to be provided and installed by Contractor in a Department, County, or other identified location, that gives customers the ability to conduct one-stop DMV transactions independently, rather than interacting directly with DMV employees to acquire DMV products and/or services.
- I. **“Kiosk System”** means a kiosk-based software system, provided and maintained by Contractor, that interfaces with the Department’s DRIVES data system for processing of registration renewals.
- J. **“Print On Demand Device”** or **“POD Device”** means a device that can print necessary documents as proof of transactions conducted with the DMV.
- K. **“Qualified Maintenance Personnel”** means technicians retained by Contractor and authorized by the manufacturer to perform maintenance services on Kiosks and POD Devices.
- L. **“Reconditioned”** means a machine or piece of equipment that has been repaired and returned to full and normal operating condition.
- M. **“Registration Product”** means year validation decals, month validation decals, collector ownership decals, emergency vehicle decals, low power scooter decals, person with disability validation decals, special mobile machinery ownership decals, special mobile machinery rental decals, and plug-in electric vehicle decals, with associated registration receipt document.
- N. **“Warranty”** means a promise by Contractor to repair or replace all or part of a product that breaks within a fixed period of time, or to re-perform Work that did not meet required specifications.
- O. **“Web Services”** means a set of commands, functions, protocols, and objects utilized to permit software programs to communicate with one another.

3. **CONTRACTOR RESPONSIBILITIES – GENERAL**

Contractor shall provide the following services under this Contract:

- A. Submit a detailed project plan outlining the entire system design, development, initial testing, acceptance period, training, deployment, and implementation of all hardware and software. The project plan shall include the time frames and resources required for each component of the project. Contractor shall allow a reasonable time for the Department and County to review and approve task completion deliverables, without interrupting Contractor’s continuing progress toward project completion.
- B. Provide a Kiosk and Print On Demand (“POD”) solution to the Department, which must comply with all design, development, integration, deployment, and installation requirements, including, but not limited to, the maintenance of all components as identified in this Exhibit A.
- C. Develop, install, operate, and maintain a network of self-service Kiosks and POD Devices for DMV transactions and associated printing.
- D. Work with the Department and County to determine the deployment timeline and scheduling of POD Devices, and ensure system architecture is scalable and designed to accommodate changes (e.g. future transactions, products, upgrades, etc.) that may result from County or Department rules, legislation, business practices, or updates to the DRIVES system.
- E. Maintain all Kiosks installed at each Department and County location, per the requirements identified in this Contract.
- F. Offer options for current and future products and services as identified by the State. Future products and services may be determined through analysis of product utilization or identified in survey results conducted on current users and stakeholders from the Department, County, and Contractor. Utilization will be measured by the number of successful Completed Transactions validated through receipts and reporting, and will be used for analysis of pricing, based on the most recent Kiosk usage data.

- G. Work with the Department and each County to implement best practices for marketing Kiosks through an integrated marketing campaign that will ensure program awareness and increase customer usage. Contractor's marketing responsibilities include:
- i. Conducting surveys of customers and stakeholders.
 - ii. Coordinating individual marketing campaigns, in conjunction with the larger initiative, to promote Kiosk services, including promotion on Department and County websites, and placement of physical signs at Department and County locations. Marketing services and signage shall be provided by Contractor at no cost to the Department or County.
 - iii. Submitting all marketing content, including multi-media content, graphics, complete screen designs, digitized photographs, printed information, or other marketing content to the Department and County for approval prior to implementation.
- H. Provide a signage area on the front of the Kiosk to display Department or County related information and graphics. All Kiosk signage must be displayed in both English and Spanish, as required by each County. Before implementation, Contractor must obtain approval of all artwork, proposed signage, and housing.
- I. Ensure Kiosks bear no company names or logos, except those of the Department, the appropriate County Clerk and Recorder's Office, and/or authorized credit card companies, unless otherwise authorized by the Department.
- J. Ensure web application screens and voice assistance are available in both English and Spanish, and that additional language support can be added as required by the Department. Contractor shall provide the Department with written certification of the accuracy of the Spanish translation.
- K. Contractor shall provide the Department with no less than sixty (60) days written notice if its business will be acquired by another company to allow for execution of a formal Contract assignment between the Department, Contractor, and the acquiring company.

4. CONTRACTOR COUNTY AND RETAILER AGREEMENTS

- A. Contractor must enter into a separate agreement with each participating County for the services and terms identified in this Contract.
- B. Contractor will conduct business with each County individually. The County will place its own individual orders, and Contractor will invoice the County directly for such orders. The County will make payment directly to Contractor, and will provide Contractor with its own County exemption certification. The Department is not responsible for any payments due to Contractor by a County, for assisting Contractor with collecting any monies due from a County, or for enforcing any payment agreement made between the County and Contractor.
- C. Contractor will work with the County to determine any applicable Convenience Fees and/or transactional charges. Contractor may not set any fees without prior approval of the County.
- D. Contractor will enter into a separate contract with each individual retailer for rent of retail space. All rental fees and volume revenue shares will be covered by Contractor through the allowed Convenience Fee. Contractor is responsible for all costs associated with providing services to individual retailers, including, but not limited to, necessary wiring and/or internet service, site maintenance, awareness programs, and site reviews.

5. CONVENIENCE FEES

- A. Contractor may charge Kiosk customers a Convenience Fee for each completed Kiosk transaction, in an amount agreed upon by Contractor and the County.
- B. Customers shall not incur a charge, and Contractor will not collect a fee, for any transaction that is not a Completed Transaction as defined herein.
- C. Kiosk transactions pertaining to vehicles, owners, and license plates that are exempt from taxes and fees pursuant to Colorado law shall not be assessed a Convenience Fee by Contractor.

6. GENERAL KIOSK REQUIREMENTS

Contractor shall ensure all Kiosks:

- A. Are placed in ADA-compliant locations that allow for required clearance and accessibility.
- B. Can be cleaned on all areas and surfaces to meet local, State, and federal health and environmental standards for cleaning and decontamination. Contractor agrees to allow the Department to conduct random, unscheduled inspection to ensure compliance.
- C. Do not have components that can be easily grasped, or crevices that would prevent the Kiosk from being properly cleaned, or render it inoperable if it were subjected to any dropped or spilled substances.
- D. Can withstand heavy and continuous use in an unattended environment.
- E. Be adequately ventilated and cooled to support normal operations.
- F. Have internal components that are mounted to allow ease of service, and access to all cables, connectors, and consumable items.
- G. Allow secure access for service personnel in order to facilitate maintenance and allow access to required systems and troubleshooting.
- H. May be anchored to the floor and/or wall.
- I. May be easily detached from the floor or wall by authorized personnel.
- J. Are self-contained and fully-integrated units with housing that is secure and reinforced to deter tampering and theft.
- K. Have heavy-duty locking mechanisms, hinges, and door mechanisms to resist vandalism and theft attempts.
- L. Contain battery-backed alarms with detectors on all openings where forced entry might occur.
- M. Have enclosures that are resistant to marks/scuffs, and control ambient and reflective light, allowing screens to be seen by the customer without visual impairment from indoor or outdoor lighting.

7. TESTING

Contractor shall provide and assist the Department with the following types of testing:

A. Evidence of Acceptability

Contractor shall provide evidence of testing to requirements as described and as included in additional development to validate the capability of the Kiosk and POD Devices within the agreed upon dates identified in each of the County Installation contracts.

B. Transactional Testing

Contractor shall provide a valid and active credit card, debit card, and checking account for payment certification testing purposes. The payment charged to the accounts will be reversed back to the card or account. Contractor shall also provide cash for testing purposes.

C. Kiosk Testing

- i. Contractor will deliver test Kiosk(s) for installation at the Department's facility. Department personnel will transport the test Kiosk and POD Device to their installation site for testing. The Department shall not be responsible for any damage occurring during transport, or for any reasonable wear and tear to the Kiosk or POD Device that occurs while being tested and operated.
- ii. Following installation and start-up of the test Kiosk and POD Device, Contractor shall provide training in the operation of the test Kiosk and POD Device. The Department shall be permitted to have any number of personnel attend the training. Upon completion of training, Contractor shall provide two (2) operations and maintenance manuals or other desk references that include a troubleshooting guide covering general system issues. The

manuals and other reference materials should be written in a manner that can be easily understood by general office personnel. At the Department's request, Contractor shall also provide test paper and materials for testing, at no cost to the Department.

- iii. The test Kiosk and POD Device will be tested by the Department to ensure they are capable of operating in accordance with the requirements of this Contract.
- iv. The Department is not responsible for any loss of data related to the Kiosk or POD Device as a result of the conducted testing.
- v. The Department may conduct testing for any amount of time deemed necessary to ensure the Kiosk and POD Device are capable of performing accurate and timely processing of transactions.
- vi. The Department shall notify Contractor in writing upon completion of testing. Thereafter, Contractor shall uninstall its equipment, or may request Department personnel to do so. Department personnel will transport the equipment to the loading dock area for pick-up by Contractor or its authorized agent. Contractor will remove all equipment within ten (10) days of the Department's notice, unless otherwise agreed to in writing by the Parties.
- vii. Contractor is responsible for ensuring that the test Kiosk and POD Device are properly sanitized to ensure data cannot be retrieved from media prior to disposal, replacement, reuse, or removal. Acceptable methods of sanitization include software to overwrite data on computer media, degaussing, or physical destruction. File deletion and formatting media are not acceptable methods of sanitization. Contractor shall provide a written statement on company letterhead verifying the means of sanitization within ten (10) days of the date the equipment is uninstalled.

8. TECHNICAL REQUIREMENTS – HARDWARE

Contractor shall provide:

- A. Kiosks and POD Devices that have the capability to securely interface with Contractor's web services and the DRIVES application in order to process all requested transactions. Contractor must ensure its system remains compatible with any DRIVES system upgrades, and shall be solely responsible for any associated costs.
- B. Application server logs for all transactions, compliant with data security requirements and protocol for storage and retrieval of data required to satisfy audit requests, transactional validation, utilization and operational reporting.
- C. Server Logs must provide unique identifiers of each transaction for audit and control purposes.
 - i. At no time will sensitive information be stored in the Kiosk or server(s), as defined by the Department and by Payment Card Industry (PCI) Merchant Level.
 - ii. Contractor must immediately and securely dispose of any residual information on printout ribbons or in any other format.
 - iii. Contractor will provide the Department with documentation confirming its disposal of information.
- D. Kiosk applications that are capable of detecting logical errors in data entered by a customer, or a customer's failure to enter required data.
- E. Partnership with the Department to define the business rules for proper validation of all screen inputs and screen fields.
- F. Touch-screen technology utilizing ADA complaint interface requirements and capabilities.
- G. Heuristic interface design utilizing prompt-driven navigation following an intuitive sequence of decisions and the ability to identify where the user is in the application, how to go back in the process (i.e. "breadcrumbs"), and other techniques that will minimize the customer's need for assistance while conducting transactions.

- H. The option for the customer to process transactions in either English or Spanish and/or request use of gender-neutral terms for voice assistance, prompts, messages, and errors.
- I. Clear and concise Kiosk application instructions, help, and support to ensure unassisted transactions can be completed as measured through quarterly surveys.
- J. The ability for each Kiosk to ascertain when an application is not available and automatically notify the customer. The notification should also inform the customer which service(s) are available and allow them to continue the Kiosk transaction utilizing an available service if desired.
- K. An educational demo screensaver that will be activated when the Kiosk is unattended for a specified time.
- L. A Kiosk web application that:
 - i. Is intuitive, enabling first-time users to find the desired information and complete the desired transaction quickly.
 - ii. Prevents transaction duplication in the event of an unexpected power failure, lost connection, or reboot.
 - iii. Ensures the Department, Counties, and DRIVES do not receive transaction data until the transaction is fully complete.
- M. A disaster recovery plan, including redundant capability, to ensure uninterrupted transactional processing and restoration in the event of failures, including data recovery services.
- N. Kiosks and POD Devices that are configured to electronically notify Contractor's technical support whenever there is an equipment malfunction, interface disruption, or maintenance issue.

9. TECHNICAL REQUIREMENTS – SOFTWARE

- A. Contractor, OIT and the DRIVES development team will develop a functional design of all proposed software applications. The design must be reviewed and approved by the Department and OIT prior to development. Contractor shall prepare sample screens and graphics as part of the functional design, which must include the Department's logo, the County's logo, welcome screens, menu screens, transaction screens, error situations, and other necessary elements as requested by the Department.
- B. Contractor agrees to utilize industry-accepted design and coding standards for the Kiosks, POD Devices, and server-based applications.
- C. Contractor will ensure all Kiosk and POD Device transactions integrate with current architectures, as identified by the Department, OIT, and the DRIVES application.
- D. During the entire term of this Contract, Contractor shall provide the Department and County with all software upgrades as they become available. Contractor shall provide in writing its proposed plan for updating all sites with the new software releases.
- E. Before Contractor incorporates any new software releases or updates, Contractor shall send them to the Department and Fast Enterprises for validation in the DRIVES test environment.
- F. For software enhancements or modifications initiated by OIT and the Department, Contractor shall work with the Department to establish a mutually agreed upon delivery date for the enhancement or modification.
- G. Contractor will make available to the Department, Fast Enterprises, and the County, a method to track and audit all software changes applied to the System, including version numbers, descriptions, reason for the change, staff involved, requestor, party responsible for the modification, and the date and time the change was implemented.
- H. Contractor will track all software modifications with full detail as to why the change was requested, approval of the change, description of the change, staff involved, testing involved, initiation dates, completion, release, and verification dates.

- I. From time to time, Contractor may develop a new optional module for existing software, which adds a significant amount of new functionality to the software. In such case, Contractor must deliver and support such optional software if the Department elects to include the new module in the System.
- J. Contractor will provide an application log server for all transactions that does not contain sensitive customer information, including PII, PCI, or driver license number. For audit and control purposes, the log server should provide a unique identifier for each transaction.
- K. Contractor shall maintain and provide to the Department and County transaction logs from each Kiosk and POD Device.
- L. The Kiosk and POD Device application must allow the Department and County to conduct real-time reports for all transactions without affecting the System's performance.
- M. The Kiosk and POD Device application shall provide a "shopping cart" feature to allow customers to combine multiple transactions (e.g. registration renewal for more than one vehicle at a time), and may be charged the allowed Convenience Fee for each service.
- N. Contractor represents and warrants that it is the sole owner of the software, or, if not the owner, has received all legally required authorizations to license the software from the software owner. Contractor further warrants that it has full authorization to grant the necessary software licensing rights to the Department and Counties, and that use of the software does not infringe upon any patent, copyright, trade secret, or other intellectual property rights of another person or organization.
- O. Contractor shall immediately notify the Department in writing if a third party acquires its intellectual property rights or assets.

10. KIOSK CAPABILITIES

Contractor will ensure the Kiosks provided have the following functionalities:

A. Payment Options

Kiosks, at a County's option, must have the ability to process cash, credit cards, and e-check transactions, or any combination thereof.

i. Credit/debit card reader requirements:

- a) The reader must be capable of reading chip cards and magnetic strips for all major credit and debit cards, in accordance with federal law.
- b) The reader shall not display credit/debit card information at any time, allow for manual entry of credit/debit card numbers, or store credit/debit card information.
- c) The device and payment application must meet all current and future Payment Card Industry (PCI) and Data Security Standard 3.1 (DSS) requirements.
- d) The reader must have the ability to read cards that conform to common International Standards (ISO) and American National Standards Institute (ANSI) standards.
- e) Contractor shall be responsible for all general and preventative maintenance for the credit/debit card readers.
- f) Neither Contractor, the Department, nor the County will be responsible for any applicable credit/debit card merchant fees.

ii. E-check reader requirements:

- a) The reader must have the ability to identify the check number, account number, and routing number of the personal or business-sized check provided by the customer.
- b) The check data must convert into a one-time electronic payment from the customer's checking account (an electronic funds transfer from an automated clearinghouse).

- c) Customers who select the e-check payment must receive a Department-approved dialog box explaining the terms and conditions for using the e-check payment option, such as: “When you provide a check as payment, you authorize the Colorado DMV to use the account information from your check to make a one-time electronic funds transfer from your account.”
 - d) As the check itself will not be the method of payment, it should be returned to the customer after it is processed by the reader. The returned check should be unmarked and unaltered and should not be printed on or voided.
 - e) The e-check reader shall not store any customer or check information, and customers shall not have the ability to create an account to use checking account information for future payments.
 - f) Neither Contractor, the Department, nor the County will be responsible for any applicable e-check fees.
- iii. Cash payment acceptor/dispenser requirements:
- a) Kiosks must have cash bill acceptors and dispensers, or cash bill recyclers, capable of high volume retail transactions.
 - b) The cash acceptor must be capable of accepting, validating, sorting, and stacking U.S. currency in denominations of \$1.00, \$5.00, \$10.00, \$20.00, \$50.00, and \$100.00 bills. Cash dispensers or recyclers must be capable of dispensing U.S. currency in denominations of \$1.00, \$5.00, and \$20.00 bills, in addition to coins.
 - c) There must be a validation method for cash accepted to ensure accurate payment was received. Kiosks should not accept additional currency once customer deposits have met the total amount due for the transaction.
 - d) There must be an electronic display that shows the amount of cash accepted and dispensed, as applicable.
 - e) The Department and/or County will be responsible for managing the cash drawer, providing a cash bank to begin the day, and removing cash from Kiosks at the end of each day. The County will be responsible for ensuring cash transactions are managed and overseen by County personnel or an authorized agent, and will be responsible for the collection of the cash drawer and secure delivery to the armored car service for deposit at a financial institution.
 - f) There must be a notification system that is capable of alerting Department and County personnel when the currency dispenser or recycler reaches a level that cannot sustain normal transactional volumes.
 - g) The Kiosk must automatically disable the cash functionality if the acceptor or dispenser are either improperly secured, or are unable to dispense sufficient funds. E-check and credit/debit payment options shall remain available even if the cash functionality is disabled.
 - h) Authorized Department and County staff must have the ability to remove cash from the Kiosk totals in order to issue refunds. A log-in and password entry must be required for use of this functionality.
 - i) There must be validation to ensure cash accepted is not counterfeit, and is legal U.S. tender only. Cash acceptors must detect and physically reject counterfeit or foreign currency, and a message should be displayed informing the customer that the cash submitted is not acceptable currency.
- iv. Should the Kiosk allow any transaction to be completed where the customer has not paid the full amount due, Contractor shall be responsible for paying the Department and/or County for the remainder of the balance owed for the transaction.

B. Displays

Contractor shall ensure Kiosk displays:

- i. Are high-resolution capacitive touchscreens with a privacy filter that is capable of displaying high-resolution digitized photographs, graphics, and videos that are compliant with all State and federal requirements for usability and accessibility.
- ii. Are treated to eliminate parallax distortion and minimize reflections and glare. An “overlay” or “membrane” should not be used.
- iii. Include a privacy filter that helps prevent anyone but the user from reading the screen in order to protect the privacy of information accessed and payments processed.
- iv. Have a screen that is highly durable, is not vulnerable to surface damage, is scratch-resistant, and is capable of maintaining normal functionality with heavy use in a public environment.
- v. Can sustain continuous cleaning to ensure compliance with applicable federal and State health requirements and recommendations.

C. Barcode Scanners

Contractor shall ensure Kiosks have integrated scanning technology that can reliably and rapidly scan and interpret 1-dimensional, 2-dimensional, and linear barcodes that are printed on documents, such as vehicle registration renewals or reinstatements and identification cards utilizing AAMVA Bar Code Data Encoding Requirements.

D. Storage

Contractor shall ensure Kiosks have:

- i. Sufficient capacity to support all applications and software products, including graphics, digitized photographs, informational screens, and other application requirements.
- ii. Memory and storage space to support future software upgrades, enhancements, and additional Kiosk requirements.
- iii. The capacity to store usage statistics for at least one hundred eighty (180) days. Stored data shall not include any sensitive or confidential data, such as PII and PCI.
- iv. Storage security that meets all Federal, State and County requirements for data storage, including compliance with PCI and OIT Data Security Standards (DSS).

E. Kiosk Multi-Media Presentation Application

Contractor shall ensure Kiosks include:

- i. Multi-media capability (audio, video, high-resolution graphics, digitized photographs, etc.).
- ii. A media attractor loop (audio, video, high-resolution graphics, digitized photographs, etc.) to engage and guide users through the phases of their transaction, validate the outcome of the transaction, and produce a printed document itemizing the transaction and its status.
- iii. Capability for users to interact with the interface by touching the screen, including options to cancel or stop the transaction at any time.
- iv. A notification to the customer if the credit/debit card is not readable, and the ability for the customer to select another form of payment.
- v. Time out settings in the application so that no screen image will be displayed on the Kiosk long enough to burn images on the screen or allow customer information to be visible to others.

F. Customer Interaction Messages

Contractor shall include the following messages and voice prompts to communicate with customers during Kiosk transactions:

i. Transaction Processing Messages

Screen messages and voice prompts that communicate “pause points” during the transaction:

- a) “Please wait while we retrieve your information.”
- b) “Please wait while we process your transaction.”

ii. Transaction Error Messages

Screen messages and voice prompts that communicate malfunctions/errors to the customer during a transaction:

- a) “The kiosk printer is experiencing technical difficulties. Please see a customer service representative.”
- b) “The scanner cannot read your barcode. Please try again or utilize the manual data entry option.” After three consecutive failed attempts, the application should prompt the user to, “Please utilize the manual data entry option.”
- c) “The scanner cannot read your credit/debit card. Please try again.” After three consecutive failed attempts, the application should prompt the user to:

- “Please use another form of payment or see a customer service representative.”; or
- “The check reader cannot read your check. Please try again.”

After three consecutive failed attempts, the application will prompt the user to:

- “Please use another form of payment or see a customer service representative.”; or
- “The kiosk is experiencing technical difficulties. Please see a customer service representative.”

- d) Customized error messages for kiosk in County/partner locations.
- e) Error messages that include the phone number and directions to the nearest Department or County DMV office.
- f) Messages that include instructions to remedy errors encountered during key steps of the transaction, along with visual location indicators:
 - “Please insert your credit card.”
 - “Please insert cash.”
 - “Please insert your check.”
 - “Please take your change.”
 - “Please take your receipt.”
 - “Please take your registration certificate and decal.”

11. MAINTENANCE

A. General

- i. At the time of installation, all equipment provided by Contractor shall be of new manufacture and in good working condition. Contractor is responsible for making all adjustments, repairs, and replacements necessary to maintain each system component in good working order for the entire term of this Contract, at no additional cost to the Department or County. Contractor shall ensure a 98% effective performance level.

- ii. The Department or County shall allow Contractor access to the equipment requiring maintenance, subject to the site's security regulations, at a mutually agreeable date and time.
- iii. Contractor shall perform all on-site remedial and preventative maintenance of Kiosks and POD Devices. Contractor is solely responsible for all costs associated with performing maintenance, including, but not limited to parts, labor, travel, hardware, software, shipping, and/or insurance.
- iv. Contractor is responsible for providing and replenishing Kiosk and POD Device consumables (ribbons, printer rolls, paper, registration forms and decals, registration products, etc.) at all Department and County offices and other locations. Contractor must work with the Department and Colorado Correctional Industries (CCI) to acquire all paper and decal materials for Kiosks and POD Devices. Department and County personnel shall be permitted to replenish the consumables provided by Contractor, and to provide low-level maintenance, such as checking printers and clearing paper jams.
- v. Contractor shall provide all items necessary for the Kiosk and POD Devices to function, including, but not limited to, batteries, where applicable.
- vi. Contractor shall provide all support services, repairs, and maintenance of all equipment, including the cleaning of screens, shelves, fascia, etc., at no cost to the Department or County.
- vii. Contractor shall use best efforts to remove all graffiti on Kiosk and POD Devices within five (5) business days.

B. Preventative Maintenance

- i. Contractor's preventative maintenance work shall be done at a date and time that minimizes impact on the normal business operations of each Kiosk location. Preventive maintenance will be performed at a mutually agreeable date and time.
- ii. Contractor must provide the Department and County with a detailed preventative maintenance plan in writing. At a minimum, the maintenance plan must include:
 - The periodic maintenance schedule for each Kiosk and POD Device, including software, servers, firewalls, hardware, and consumables.
 - Maintenance tasks, schedules, time allotments, and personnel required.
 - The method Contractor will use to coordinate any maintenance visits with the Department and County.
 - Instructions on how the Department or County can notify Contractor of Kiosk or POD Device problems and request maintenance.
- iii. Contractor will ensure that the Kiosk and POD Device application can identify a system error, such as a hardware malfunction or interface disruption, and immediately alert Contractor's technical support team, along with Department and County system administrators.
- iv. Contractor must securely dispose of any residual information on printout ribbons, etc., and will provide the Department with written documentation confirming proper disposal of such information.

12. SERVICE LEVEL AGREEMENT

Contractor shall provide the following levels of service:

A. General

- i. Contractor shall provide a single point of contact that the Department and County can notify for all maintenance, equipment, and/or software issues.
- ii. Contractor shall provide a helpdesk, and shall display a toll-free helpdesk telephone number on each Kiosk. The helpdesk will initiate any troubleshooting, and/or required maintenance or service.

B. Kiosks

- i. Contractor shall ensure that each Kiosk performs at an effectiveness level of 98% or better during any thirty (30) day period. The effectiveness level is the percentage of scheduled production time during which a Kiosk is fully operational.
- ii. If a Kiosk is inoperable for more than three (3) consecutive business days, or if the Kiosk requires more than three (3) service calls due to mechanical failure within a sixty (60) day period, Contractor shall provide a replacement Kiosk to the Department or County at no additional cost.
- iii. Contractor shall ensure that equipment provided does not require reconditioning when it has been under warranty or a continuous maintenance contract since the date of acceptance.
- iv. Contractor shall ensure all equipment provided is covered by a warranty throughout the entire term of this Contract.

C. Software

- i. Contractor will support the releases of its software under the terms of this Contract, and will be responsible for correcting defects in the software.
- ii. When reporting a problem to Contractor, the Department shall provide reasonable information and access to the Department's system so Contractor's engineers can reproduce and diagnose the problem. Contractor will provide the Department with templates and requirements lists as needed to support this effort.
- iii. Contractor shall complete all software maintenance needed to restore services, and shall react immediately to restore services to sites where systems are not functioning properly.
- iv. Service necessary to maintain software operation in accordance with Contractor's warranty shall include, at a minimum, toll-free phone support from 7:00 a.m. to 8:00 p.m. Mountain Time, detection and correction of errors, and updates to all licensed software to ensure systems are operating with the most updated version of the operating software.

D. Maintenance

- i. Contractor shall respond to all service calls received from the Department or County within thirty (30) minutes, and maintenance personnel must be on site within four (4) hours for metropolitan areas and within six (6) hours in rural areas.
- ii. If replacement parts are required, installation of the new components shall be conducted no later than twenty-four (24) hours from the initial diagnosis. To ensure adherence to this response time, Contractor shall keep all necessary parts on hand.
- iii. Contractor will maintain POD Device replacement stock at each Department and County location to allow Department and County personnel to replace a POD Device when it is defective or fails. Contractor must recover the faulty POD Device at Contractor's sole expense and within the timeframe determined by the Department or County location.
- iv. All of Contractor's maintenance technicians shall be authorized and/or certified by the equipment manufacturer to perform maintenance services. The Department or County may require Contractor to provide proof of such certification at any time.

E. Downtime

- i. A Kiosk shall be considered “down” if it is unavailable for customer use. A POD Device shall be considered “down” if it is unavailable to the Department or County for printing use.
- ii. Downtime shall commence when a malfunction is initially reported to Contractor and shall end when the Kiosk becomes available for customer use, or a POD Device becomes available for printing.
- iii. Downtime does not include interruptions in service due to power outages, problems with DRIVES, or other factors out of Contractor’s control.

13. POWER SUPPLY AND ACCESSORIES

- A. Contractor shall provide all electrical equipment necessary to operate Kiosks and POD Devices. Electrical equipment must be approved for electrical safety by Underwriter's Laboratory or equivalent, and certified by a Nationally Recognized Testing Laboratory to be compliant with FCC regulations.
- B. Contractor is solely responsible for all costs associated with obtaining and maintaining tamper-proof power and data connections.
- C. Contractor shall provide a power supply with a master switch that controls all equipment. The master switch must be easily accessible to authorized personnel only.
- D. For each Kiosk, Contractor shall provide one (1) Uninterrupted Power Supply (UPS) backup that is line interactive, and has LED indicators and an audible alarm to provide indicators of the unit's operation status, and a minimum of fifteen (15) minutes of continuous power backup. In the event of a complete power failure to the Kiosk lasting longer than fifteen minutes, Contractor shall ensure the Kiosk has the ability to return to the application upon restoration of power without requiring action by personnel or a system administrator.
- E. Contractor shall ensure each Kiosk has adequate surge protection.
- F. Contractor shall provide all other needed power sources (e.g. batteries) as applicable, including spares.

14. KIOSK DELIVERY, INSTALLATION, AND MOVEMENT

A. Delivery and Installation

- i. Contractor is solely responsible for delivering, installing, and deploying Kiosks and POD Devices to the locations mutually agreed upon by the Department, County, and Contractor.
- ii. Except as otherwise expressly provided for herein, “delivery” includes, and shall not be considered complete until, Contractor confirms approval of the installation of a Kiosk and/or POD Device.
- iii. “Installation” shall include shipping to a specified location, all unpacking, positioning, securing kiosks to the wall and/or floor, and connecting equipment to utility services to render them ready for acceptance testing. Contractor is responsible for removing all shipment crating and other debris from the premises.
- iv. Equipment installations shall comply with Department and County building and facilities standards.

B. Site Preparation and Modifications

No less than thirty (30) days prior to installation, Contractor shall work with the Department and County to implement all site modifications necessary to accommodate Kiosk and POD Device installation, including all peripherals and options, such as:

- Cabling of the location and/or any electrical work required at the facility.
- Relocation of electrical service, furniture, or existing cabling.

- Removal or installation of walls or doors, or other improvements needed to support the Kiosk and POD Devices.

Contractor shall be solely responsible for all costs associated with a delay or additional site preparations needed due to Contractor's erroneous or incomplete environmental specifications.

C. Damage to Work Site or Contractor Property

- i. Any damage to a work site caused by Contractor during Kiosk installation, service, or removal of equipment shall be repaired to original condition, and to the Department or County's satisfaction, at Contractor's sole expense. Any non-agreed upon change to the original site as it existed prior to Contractor's work was conducted shall be considered "damage".
- ii. Contractor shall be solely responsible for any loss or damage to Contractor materials, supplies, equipment, or other property, including the personal property of its employees.

D. Kiosk Relocation

If the Parties agree that a Kiosk should be transferred to a different location, Contractor shall remove, relocate, and install the equipment at the new location at no cost to the Department or County.

15. TECHNICAL SYSTEM DOCUMENTATION

Prior to implementation, Contractor will provide:

- A. Detailed technical system documentation, detailed system design specifications, descriptions of all proposed Kiosk and POD Device hardware and software, operating instructions, footprints, power and environmental requirements, ADA compliance, model numbers, makes, serial numbers, electrical and grounding requirements, temperature and humidity ranges, software components and features.
- B. Technical documentation that describes all system component operation, including interfaces to DRIVES or other third party systems. Documentation is due within sixty (60) days of deployment to production and must include:
 - System architecture diagrams and data flow overlay with ports and services.
 - System Security Plans ("SSP"), including network topologies, accreditation boundary diagrams, system interface specifications, and system schemas.
- C. Contractor and Department incident response plan, per P-CISP-008 Incidence Response.
- D. Environmental specifications, in writing, for any equipment to be delivered, in sufficient detail to permit all installed equipment, both inside and outside, to function efficiently from an environmental perspective.

16. TRAINING PLANS AND MANUALS

Contractor shall provide the Department and County with the following training and materials:

- A. Contractor will provide a detailed, screen-oriented, workflow-based training manual to the Department, County, and OIT staff. The manual must describe all procedures necessary for successful operation and interaction with the Kiosk and POD Device System, including:
 - i. System operation with an overview of:
 - System hardware and software architecture and connectivity
 - Hardware components and system installation
 - Hardware and software problem diagnosis and resolution (troubleshooting)
 - Remote system monitoring

- Administrative functions, including how to change passwords and other routine management tasks
 - Preventative maintenance tasks (e.g. cleaning and disinfecting)
 - ii. How Contractor will train County staff on the new Kiosk and POD Device Systems and software, along with associated timeframes.
 - iii. A training schedule, as mutually agreed upon by the Department, County and Contractor, which must coincide with the Kiosk and POD Device installation schedule.
- B. On-site system management and operations training sufficient to provide basic knowledge and daily operational proficiency. Training must include, but is not limited to:
 - System operation
 - Troubleshooting and monitoring
 - Preventative maintenance tasks (e.g. cleaning)
 - Standard report printing
 - On-demand reporting
- C. Customized training plans that the Department and County may use for its internal training purposes, including, but not limited to:
 - Method of training
 - Length of training (estimated number of hours for each type of employee)
 - Scope of training
 - List of training materials and samples
 - A detailed description of the training
 - A detailed outline of each training session
- D. Qualified technical staff to facilitate any changes or diagnose issues or enhancements to the Kiosk software or hardware.

17. OPERATIONAL STATISTICS AND REPORTING

- A. Contractor shall provide a solution for centrally collecting, storing, and reporting Kiosk and POD Device usage/performance statistics in real time. No sensitive customer information, such as PII and PCI, shall be stored on Kiosks.
- B. Contractor shall maintain servers that collect data from Kiosks and POD Devices at the end of each transaction, whether the transaction was completed or not. The servers should connect to Contractor's network. The Kiosks must not connect to Department or County IT network systems.
- C. Contractor shall provide:
 - i. An intuitive interface for looking up transactions and providing various reports, including on-demand reports.
 - ii. The capability of producing various reports sorted by transaction type, within date range, and by Kiosk and POD Device location.
 - iii. The capability to produce the following types of reports:
 - Auditing reports
 - Accounting reports
 - Use and statistical reports
 - Maintenance reports
 - State-of-health reports
 - Consumable inventory reports

- Repair and downtime reports
- Response time reports, including transaction times per type, payment method, etc., and time measurements for each screen
- Transaction Detail and Error Reports
- Payment Error Reports
- Cash-Out Receipt Reprint
- Real-Time Search Reports
- Manual Cash Refunds
- Customer session statistics and summaries, including transaction performed, date and time, length of session, language used, payment method, system errors encountered, component failures encountered, and amount tendered
- Detailed transaction statistics and summaries
- Transactions by payment method
- System errors and summaries
- Component failures and summaries
- Time of day statistics
- Monies count reconciliation reports
- Survey results
- Session results, including aborted or canceled transactions and the screen it was on, timed-out transactions and the screen it timed-out on, completed transactions, and unsuccessful transactions and reasons

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EXHIBIT B, SAMPLE OPTION LETTER

State Agency Department of Revenue	Option Letter Number
Contractor Intellectual Technology, Inc.	Original Contract Number CMS #
Current Contract Maximum Amount Initial Term	Option Contract Number CMS #
State Fiscal Year 2021 \$0.00	Contract Performance Beginning Date
Extension Terms	
State Fiscal Year 2022 \$0.00	Current Contract Expiration Date
State Fiscal Year 2023 \$0.00	
State Fiscal Year 2024 \$0.00	
State Fiscal Year 2025 \$0.00	
Total for All State Fiscal Years \$0.00	

1. OPTIONS:

A. Option to extend for an Extension Term

2. REQUIRED PROVISIONS:

A. In accordance with Section(s) 2.C of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

3. OPTION EFFECTIVE DATE:

A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p>STATE OF COLORADO Jared S. Polis, Governor Department of Revenue Mark Ferrandino, Executive Director</p>	<p>In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p>
<p>By: _____ Heidi Humphreys, Deputy Executive Director</p> <p>Date: _____</p>	<p>By: _____ Jason Grothaus, DOR Controller</p> <p>Option Effective Date: _____</p>

EXHIBIT C, INFORMATION TECHNOLOGY PROVISIONS

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

1. PROTECTION OF SYSTEM DATA

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

- E. All of Contractor's employees, agents, officers, temporary or seasonal employees, or any other personnel that will or may have access to the System or Records within the System (electronic, printed, or otherwise), shall, prior to being granted access to the System or Records, successfully pass an annual Department background check. The following procedures and requirements shall apply to all background checks:
- i. Contractor understands and agrees that, before Contractor or any Subcontractor may perform any Work under this Contract, the State must perform background checks on all Contractor and Subcontractor employees and agents performing Work or having access to State Records under this Contract. The background check may include, at the State's sole discretion, any or all of the following: a nationwide criminal history check, fingerprint-based criminal history records check, tax check, reference check, citizenship/residency check, or other check as may be deemed necessary by the State.
 - ii. Prior to conducting a background check, the State will provide Contractor with the appropriate consent form(s) permitting the State to conduct a background check for an identified employee. Contractor shall return signed consent forms for each employee or Subcontractor employee who will perform Work and/or have access to State Records under this Contract. If any employee refuses to sign the consent form(s), provide fingerprints, or provide any other information necessary to complete the background check, the employee will be disqualified from performing any Work under this Contract.
 - iii. Based on the results of the background check, the State will make the sole determination on the suitability of a Contractor or Subcontractor employee to perform Work under this Contract. If information is revealed during a fingerprint-based criminal history records check that would disqualify the employee from performing Work under this Contract, the employee will be notified in writing by the State and will be afforded the opportunity to provide evidence refuting the finding and to correct the information as set forth in 28 C.F.R §16.34.
 - iv. If, after a successful background check has been performed, any Contractor or Subcontractor employee performing Work under this Contract is criminally charged with a felony, misdemeanor, petty offense, alcohol or drug-related driving offense, misdemeanor traffic offense, or any other offense which has the potential to impact the employee's ability to perform the Work, the criminal charges must be reported by Contractor to the State within two (2) business days of the filing of charges.
 - 1) Upon final judgment on a verdict of guilty, a plea of guilty, or a plea of nolo contendere to any of the above criminal offenses, the conviction shall be reported to the State within two (2) business days of the verdict or plea.
 - 2) Either the disclosure, or failure to report criminal charges or convictions as required herein, will subject the Contractor or Subcontractor employee to a new background check and the State may, at its discretion, prohibit the employee from performing Work under this Contract.
 - v. If a Contractor or Subcontractor employee falsifies information or documents pertaining to a background check conducted by the State, the State may, at its discretion, disqualify the employee from performing Work under this Contract.

2. DATA HANDLING

- A. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any

data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.

- B. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- C. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State data.
 - i. This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
 - ii. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.
- D. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract.

3. DELIVERY AND ACCEPTANCE

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

4. WARRANTY

- A. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
- B. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the State to ascertain the feasibility, risks, and impacts of each recommendation. The State's remedy for such defect or material nonconformity shall be:
- i. Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or
 - ii. Contractor shall refund to the State all amounts paid for such Work or Deliverable, as well as pay to the State any additional amounts reasonably necessary for the State to procure alternative goods or services of substantially equivalent capability, function, and performance.
- C. Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.

5. COMPLIANCE

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

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

6. TRANSITION OF SERVICES

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

7. LICENSE OR USE AUDIT RIGHTS

- A. To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
- B. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.
- C. If upon receipt of the State's Audit Certification, the Parties reasonably determine that: (i) the State's use of licenses, use of software, use of programs, or any other use during the audit period

exceeded the use restrictions and limitations contained in this Contract (“Overuse”) and (ii) the State would have been or is then required to purchase additional maintenance and/or services (“Maintenance”), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.

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EXHIBIT D, FORM OF CONTRACTOR NOTIFICATION STATEMENT

State of Colorado Contract Management Information Contractor Notification Statement Colorado Revised Statutes § 24-102-206(1)(b)

Notification pursuant to "Keep Jobs in Colorado Act of 2013"

This Notification Statement is NOT required for (1) contracts under Medicare, the "Colorado Medical Assistance Act," Articles 4 to 6 of Title 25.5, CRS, the "Children's Basic Health Plan Act," Article 8 of Title 25.5, CRS, or the "Colorado Indigent Care Program," Part I of Article 3 of Title 25.5, CRS; or (2) contracts that receive federal funds.

RE: Contract CMS #: 164563 (the "Contract")
Contractor Name: Intellectual Technology, Inc.
Date of Notice: _____

Section 6.C of the Contract states:

A. OIT Approval Required for IT Projects

For IT Projects and following OIT's prior written approval, Contractor may perform, or subcontract to perform, Services outside the State of Colorado and/or the United States. OIT shall approve or deny any such Contractor request on a case by case basis. Following such written approval, Contractor shall follow the notice provision listed in §6.C.

B. Performance outside the State of Colorado and/or the United States

[Not applicable if Contract Funds include any federal funds] Following the Effective Date, and with OIT's prior written approval, Contractor shall provide written notice to the State, in accordance with §14 and in form substantially equivalent to Exhibit C, within twenty (20) days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this §6.C shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this §6.C shall constitute a material breach of this Contract.

Pursuant to CRS § 24-102-206(1)(b), this Contractor Notification Statement shall serve as written notice to the State of Colorado (the "State") Department of Personnel & Administration that the Contractor listed below anticipates services under the above-referenced Contract or any subcontract services may be performed outside the United States or the State during the term of the Contract. Services to be performed outside the United States or the State include:

Performance of such services outside the United States or the State is necessary or advantageous to the State for the following reasons:

Contractor Company Name: _____

Representative Signature: _____

Print Representative Name and Title: _____

AMENDMENT #3 TO AGREEMENT FOR SERVICES

This is Amendment #3 (“Amendment #3”) to the Agreement For Services dated July 6, 2017 by and between Board of County Commissioners of Fremont County Colorado (“County”) and Intellectual Technology, Inc. (“Contractor”) (as amended on December 12, 2017 and December 1, 2019 collectively the “Service Agreement”) is effective as of January 31, 2021 (“Effective Date”)

Recitals

Whereas, the Parties entered into an agreement for Contractor to provide professional Services, which is subject to the Master Agreement between Contractor and Board of County Commissioners of Arapaho County Colorado (“Initial Master Agreement”);

Whereas, on January 5, 2021 the Colorado Department of Revenue entered into a contact with Contractor to provide a network of self-service Kiosks to offer motor vehicle and driver license services to Colorado residents at DMV offices (“State Master Agreement”);

Whereas, since the Initial Master Agreement terminates as of January 31, 2021, the Parties desire to extend the Service Agreement and replace the Initial Master Agreement with the State Master Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants, and agreements contained herein, the parties, intending to be legally bound, agree as follows:

A. The parties agree to amend the Service Agreement as follows:

1. As of February 1, 2021, all references in the Service Agreement to the “Master Agreement” shall refer to the State Master Agreement and all references to “pilot project” shall be replaced with “kiosk project.”
2. Section 1 of Exhibit A is deleted and replaced with the following:
 1. **Scope of Services**. The Contractor hereby agrees to accept responsibility to perform the following services:

To develop, install, operate, and maintain a network of motor vehicle self-service kiosks for the County in compliance with the terms of this Agreement and RFP 16-53, subject to the terms of the Master Agreement. The Contractor will provide a complete turnkey kiosk solution to the County which will comply with all design, development, integration, deployment, installation, and maintenance of all components and special conditions outlined below. The County's ultimate goal is to offer an alternative service delivery option to customers for motor vehicle renewals so as to reduce the amount of over-the-counter renewals and decrease customer wait times. It is the parties' intent that the use of the kiosks will eventually be expanded to include additional transaction capabilities and enhancements. The Contractor's RFP submittal and answers to the clarification questions are hereby incorporated by reference. In the event of any conflicts between this Agreement and any attached solicitation documents, this Agreement shall control.

The parties are entering into this Agreement under the authority of C.R.S. 42-1-231. The intent of the kiosk program is for the Contractor to deploy as many kiosks as determined based on each county's model and goals to county motor vehicle offices, as well as other areas, including centers of business, large retail centers, and rural communities. The Contractor shall recognize and follow the Colorado Department of Revenue's vision for the kiosk program.

The County agrees to allow Contractor to implement best practices for marketing kiosks to ensure program awareness and faster customer adaptation. The County agrees to promote market kiosk services on their web site, place visible signs in offices, redirect customers from the counter to the kiosks when possible, and consider implementing best marketing practices provided by Contractor. Further, County will assist Contractor with:

- a. Conducting surveys of customers and stakeholders; and
- b. Coordinating individual marketing campaigns, in conjunction with the larger initiative, to promote Kiosk services, including promotion on County websites, and placement of physical signs at County locations.

Marketing services and signage shall be provided by Contractor at no cost to County, unless expressly authorized by County. Additionally, all marketing content performed by Contractor, including multi-media content, graphics, complete screen designs, digitized photographs, printed information, or other marketing content, shall be submitted to County for approval prior to implementation.

The signage area on the front of the Kiosk will display Department or County related information and graphics. All Kiosk signage must be displayed in both English and Spanish, as required by the County.

3. Section 2 of Exhibit A entitled "Time of Performance" is deleted and replaced with the following:
 2. Term. The term of this Agreement commenced as of commenced on July 6, 2017 and will terminate on the last day of the term of the Master Agreement, as extended, superseded, or earlier terminated in accordance with the Master Agreement or as provided herein.
4. Section 7.D.4. of Exhibit A is deleted and replaced with the following:
 - a. The Parties must agree whether any kiosks deployed after January 31, 2021 will feature an e-check reader for processing checks. For kiosks with an e-check reader, a check will be used as a source of information whereby the e-check reader performs a magnetic read for the check number, account number, and routing number. This data is then used to make a one-time electronic payment from the bank checking or savings account (an electronic fund transfer from an automated clearinghouse). The check itself is not the method of payment and it will be returned to the customer after it has been processed by the reader. The check reader shall accommodate personal and business-size checks.

5. Section 7.G.1. of Exhibit A is deleted from the Service Agreement.
- B. Capitalized terms used but not defined herein shall have the meanings provided in the Service Agreement.
 - C. Except as expressly set forth in this Amendment #3, the terms and conditions of the Service Agreement shall continue unmodified and in full force and effect. In the event of any conflict between this Amendment #3 and the Service Agreement, this Amendment #3 shall control.

[The Remainder of the Page Intentionally Blank. Signature Page to Follow.]

IN WITNESS WHEREOF, this Amendment #3 to the Service Agreement has been executed by the parties hereto as of the Effective Date.

Intellectual Technology, Inc.

Fremont County, Colorado

DocuSigned by:
Signature: Drew Nicholson
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Signature: Dwight McFall

Name: Drew Nicholson

Name: Dwight McFall

Title: President/COO

Title: BoCC Chairman