

STATE OF COLORADO
Colorado Mesa University
State Contract
with

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1. PARTIES

This State Contract dated _____, 2024 (hereinafter called “Contract” or “contract”) is entered into by and between _____, a _____ corporation registered to do business in the State of Colorado (hereinafter called “Contractor” or “_____”), and the STATE OF COLORADO, acting by and through the Board of Trustees of Colorado Mesa University for the use and benefit of **Colorado Mesa University** (hereinafter called the “State” or “University”). Contractor and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Contract shall not be effective or enforceable until it is approved and signed by the University’s Vice President for Finance and Administration or authorized delegate (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date or after the expiration or earlier termination of this Contract.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority to enter into this Contract exists in §23-53-101, *et seq.*, C.R.S., and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies. The Contractor was selected by the State through a Request for Proposal, CMU _____ (the “RFP”).

B. Consideration

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

C. Purpose

Contractor shall provide the University with _____ services in accordance with **Exhibit A**, the Statement of Work.

D. References

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.

4. DEFINITIONS

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

A. Budget

“Budget” means the budget attached hereto as **Exhibit ____**.

B. Business Day

“Business Day” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.

C. Contract

“Contract” means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law and the University’s Fiscal Rules.

D. Contract Funds

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

E. CORA

“CORA” means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.

F. Evaluation

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

G. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

Exhibit A, the Statement of Work;

Exhibit B, Information Technology Provisions; and

Appendix A, the PII Certification.

H. Fiscal Year or FY

“Fiscal Year” or “FY” means the State’s fiscal year, which begins on July 1 of each calendar year and ends on June 30 of the following calendar year.

I. Goods

“Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services that Contractor provides hereunder.

J. Incident

“Incident” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.

K. Party or Parties

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

L. PII

“PII” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501(2), C.R.S., §24-73-101(4)(b), C.R.S., and §24-74-102(1), C.R.S.

M. Review

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

N. Services

“Services” means the required services to be performed by Contractor pursuant to this Contract.

O. State Confidential Information

“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 and State personnel records not subject to disclosure under CORA.

P. State Records

“State Records” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

Q. Subcontractor

“Subcontractor” means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

R. Work

“Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract and Exhibit A, including the performance of the Services and delivery of the Goods.

S. Work Product

“Work Product” means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts. “Work Product” does not include any material that was developed by the Contractor prior to the Effective Date that is used, without modification, in the performance of the Work.

5. TERM

A. Initial Term-Work Commencement

The Parties’ respective performances under this Contract shall commence on the later of either the Effective Date or _____, 2024 and shall terminate on _____, 20__ (the “Initial Term”), unless sooner terminated or further extended as specified elsewhere herein.

B. Renewal Term

The State may require continued performance for a period of four (4) one-year renewal terms (each a “Renewal Term”) ending June 30 at the same terms specified in the Contract. The Initial Term and each Renewal Term are collectively referred to as the “Term.” In the event that the Parties agree to a Renewal Term, then the Renewal Term shall be effective upon the execution by the Parties of a formal written amendment to this Contract to extend the Term and incorporate the annual fees and maximum amounts payable by State Fiscal Year. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five (5) years ending _____, 20__.

C. State’s Option to Extend [version 2]

The State may require continued performance for a period of four (4) one-year renewal terms (each a “Renewal Term”) ending June 30 at the same rates and same terms specified in the Contract. If the State exercises this option, it shall provide written notice to Contractor at least 30 days prior to the end of the current contract term in a form substantially equivalent to Exhibit __, the sample option letter. If exercised, the provisions of the option letter shall become part of and be incorporated into this Contract. The Initial Term and each Renewal Term are collectively referred to as the “Term.” In the event that the Parties agree to revise the terms, then a Renewal Term shall be effective upon the execution by the Parties of a formal written amendment to this Contract to extend the Term and incorporate the new terms. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five (5) years ending _____, 20__.

6. STATEMENT OF WORK

A. Completion

Contractor shall complete the Work and its other obligations as described herein, including Exhibit A, the Statement of Work. The State shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination or expiration of this Contract.

B. Goods and Services

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

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

7. PAYMENTS TO CONTRACTOR

The State shall, in accordance with the provisions of this §7, pay Contractor in the amounts and using the methods set forth below:

A. Maximum Amount

For the Initial Term, the maximum amount payable under this Contract to Contractor by the State is \$ _____, as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract as set forth in this Section 7 and **Exhibit A**. For the Initial Term, the maximum amount payable by the State to Contractor during each State Fiscal Year of this Contract shall be:

\$	in FY 2024-2025 (year 1)
\$	in FY 2025-2026 (year 2)
\$	in FY 2026-2027 (year 3)

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit A** shall comply with the University's Fiscal Rules and be made in accordance with the provisions of this Contract and its **Exhibit A**. Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current Fiscal Year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State of Colorado appropriations as provided in the Special Provisions. If federal funds are used to fund this Contract, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State of Colorado or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice to Contractor, terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of termination.

iv. Erroneous Payments

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

C. Use of Funds

Contract Funds shall be used only for eligible costs identified herein and/or in the Budget.

8. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three years after the date this Contract expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(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, until such audit has been completed and its findings have been resolved (collectively, 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/or transcribe Contractor's records related to this Contract during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the Term of this Contract, including any extensions or renewals. If the Work fails to conform to the requirements of this Contract, the State may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

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

D. Final Audit Report

If an audit is performed on Contractor's records for any Fiscal Year covering a portion of the Term of this Contract, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with the provisions of this §10 if it becomes privy to State Records in connection with its performance hereunder.

A. Confidentiality

Contractor shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Contractor for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure. Contractor shall not, without prior written approval of the State, use for Contractor's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Contract. Contractor shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Any request or demand by a third party for State Records in the possession of Contractor shall be immediately forwarded to the State's principal representative.

B. Notification

Contractor shall notify its agents, employees, Subcontractors and assigns who may come into contact with State Records and State Confidential Information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

C. Use, Security, and Retention

State Confidential Information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State Records and other State Confidential Information wherever located. State Confidential Information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State. Upon the expiration or earlier 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 after the expiration or earlier termination of this Contract.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. 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. At the discretion of the State, Contractor shall also notify those individuals affected by any breach, disclosure, unauthorized access, misuse of, or intrusion into the individuals' PII at Contractor's sole cost and expense.

E. Disclosure-Liability

Disclosure of State Records or other State Confidential Information by Contractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this §10.

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. In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, unless required by federal or state law or to comply with a court-issued subpoena, warrant or order. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the

certification attached hereto as **Appendix A** on an annual basis. Contractor's duty and obligation to certify as set forth in **Appendix A** shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

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

12. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

B. Legal Authority – Contractor Signatory

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

C. Licenses, Permits, Etc.

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

13. INSURANCE

Contractor shall obtain, 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 policies evidencing the insurance coverage required hereunder shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Workers' Compensation

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

B. Commercial General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket

contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$2,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

C. Automobile Liability Insurance

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. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows: (a) \$1,000,000 each occurrence; and (b) \$1,000,000 general aggregate.

E. Additional Insured

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

F. Primacy of Coverage

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

G. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §16 within seven (7) Business Days of Contractor's receipt of such notice.

H. Subrogation Waiver

All insurance policies secured and maintained by Contractor or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Contractor (where applicable) and the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

I. Certificates

Contractor shall provide the State with certificates showing insurance coverage required hereunder within seven (7) Business Days of the Effective Date of this Contract. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required hereunder within seven (7) Business Days following Contractor's execution of the subcontract. No later than 15 days prior to the expiration date of any such coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the Term of this Contract or any subcontract, Contractor shall, within seven (7) Business Days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the aggrieved Party may exercise any of the remedies set forth in §14(C) or §15, where applicable. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

C. Contractor Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §14(B), shall have all remedies available at law and equity.

15. STATE REMEDIES

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

A. Termination for Cause and/or Breach

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

i. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State's property.

ii. Payments

The State shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

iii. 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 by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Termination for Convenience

The State may terminate this Contract for any reason, at any time, and without penalty or liability thereto. The State shall effect such termination by giving written notice of such termination to the Contractor and specifying the effective date thereof, but no less than ninety (90) days before the effective date of such termination. The State shall reimburse Contractor for accepted performance up to the date of termination.

C. Early Termination in the Public Interest

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part without penalty or liability. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

If this Contract is terminated by the State pursuant to this §15(C), the State shall reimburse Contractor only for accepted performance up to the date of termination.

D. Remedies Not Involving Termination

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

i. Suspend Performance

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

ii. Withhold Payment

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

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

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

16. NOTICES and REPRESENTATIVES

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

A. State:

Kent Marsh Vice President of Campus Operations
Colorado Mesa University 1100 North Avenue Grand Junction, Colorado 81501
Email: kmarsh3@coloradomesa.edu

B. Contractor:

Email:

17. RIGHTS IN DATA & DOCUMENTS

Any research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State and all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

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

19. GENERAL PROVISIONS

A. Assignment and Subcontracts

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

B. Binding Effect

Except as otherwise provided in §19(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification

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

G. Jurisdiction and Venue

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

H. Modification

i. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by the Parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and the University's Fiscal Rules.

ii. By Operation of Law

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

I. Order of Precedence

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

- i. Special Provisions, Section 20 hereof;
- ii. The provisions of the main body of this Contract;
- iii. **Exhibit A**, the Statement of Work;
- iv. **Exhibit B**, _____;
- v. **Appendix A**, the PII Certification.

Colorado law and the University’s Fiscal Rules prohibit the University from contractually agreeing to certain provisions, including but not limited to provisions that require the University to indemnify, defend, save or hold harmless any party, be governed by or subject to any venue or choice of state law other than Colorado, agree to binding arbitration, or limit Contractor’s liability for damages resulting from death, bodily injury or damage to tangible property. Any such provision or provisions in the Exhibits attached to this Contract or appearing on Contractor’s website(s) or online agreement(s), as hereinafter amended, or subsequently incorporated into the Contract are null and void. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109, C.R.S.

J. Severability

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

K. Survival of Certain Contract Terms

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

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 and from all State of Colorado and local government sales and use taxes under CRS §§39-26-704(1), et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

M. Third Party Beneficiaries

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 the Contract, and do not create any rights for such third parties.

N. Waiver

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

O. CORA Disclosure

To the extent not otherwise prohibited by federal law, this Contract is subject to public release and disclosure through CORA.

20. SPECIAL PROVISIONS

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

A. VICE PRESIDENT AND UNIVERSITY CONTROLLER APPROVAL.

This Contract shall not be valid until it has been approved by the University’s Vice President for Finance and Administration and the University Controller or their authorized delegates.

B. FUND AVAILABILITY.

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

C. GOVERNMENTAL IMMUNITY.

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, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 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 University. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the University and the University shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the University to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the University, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and state laws, University policies, procedures, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW.

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

G. BINDING ARBITRATION PROHIBITED.

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

H. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.

See CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the University 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.

I. VENDOR OFFSET.

[Not applicable to intergovernmental agreements]

If required by CRS §24-30-202.4 (3.5), the University Controller may withhold payment under the state's vendor offset intercept system for debts owed for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the state as a result of final agency determination or judicial action.

21. SIGNATURE PAGE

Contract Routing Number

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p style="text-align: center;">CONTRACTOR</p> <p style="text-align: center;">a _____ Corporation</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">Jared S. Polis, Governor acting by and through the Board of Trustees of Colorado Mesa University for the use and benefit of Colorado Mesa University</p> <p>_____</p> <p style="text-align: center;">By: William Raimer, University Controller or Authorized Delegate</p> <p>Date: _____</p>
	<p style="text-align: center;">LEGAL REVIEW</p> <p style="text-align: center;">Philip J. Weiser, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Assistant Attorney General</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE UNIVERSITY'S VICE PRESIDENT FOR FINANCE AND ADMINISTRATION

The University's Fiscal Rules require the University's Vice President for Finance and Administration to approve all Contracts. This Contract is not valid until signed and dated below by the University's Vice President for Finance and Administration or authorized delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the University is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.

<p style="text-align: center;">VICE PRESIDENT FOR FINANCE AND ADMINISTRATION</p> <p style="text-align: center;">Michelle Quinn</p> <p>By: _____</p> <p style="text-align: center;">Michelle Quinn or Authorized Delegate</p> <p>Date: _____</p>

Colorado Mesa University
Information Technology Provisions
Exhibit B

This Exhibit regarding **Information Technology Provisions** ("Exhibit") is an essential part of the Contract 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.

In consideration of the mutual covenants and promises contained herein, the Parties agree to amend the Contract as follows:

1. Definitions

- 1.1. "Confidential Information" means data, information, and Records, regardless of form, including but not limited to: (a) CMU Data; (b) specifications, data, standards, records, and other information relating to CMU information technology; and (c) any other information of CMU that is not subject to disclosure under the Colorado Open Records Act.
- 1.2. "Education Records" means records, files, documents, and other materials that (a) contain information directly related to a student, and (b) are maintained by CMU, or by a party acting for CMU, such as Contractor.
- 1.3. "Incident" means any accidental or deliberate event that results in or constitutes a suspected, attempted, or imminent threat of unauthorized access, use, loss, disclosure, modification, disruption, destruction, or compromise to, of, or involving CMU Data. Incidents include, without limitation, (a) successful attempts to gain unauthorized access to CMU Data regardless of where such information is located, (b) unwanted disruption or denial of service; or (c) the release or disclosure of any data that is not properly de-identified or aggregated.
- 1.4. "CMU Data" means any Personally Identifiable Information, Record, Education Record, Research Record, Personnel Record, and all Personally Identifiable Information included therein or derived therefrom that is not intentionally made generally available by CMU on public websites or publications but is made by CMU, directly or indirectly, to Contractor or that is otherwise collected or generated by Contractor in connection with the performance of the Services. For the avoidance of doubt, CMU Data shall not include any data that has been de-identified in accordance with applicable law.
- 1.5. "Personnel Records" means and includes home addresses, telephone numbers, financial information, a disclosure of an intimate relationship filed in accordance with the policies of CMU, other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure under part 2 of the Colorado Open Records Act, C.R.S. § 24-72-101 *et seq.*, or any other applicable law.
- 1.6. "Personally Identifiable Information" or "PII" means information and metadata that, alone or in combination, is linked or linkable to a specific individual so as to allow a reasonable person in the community, who does not have personal knowledge of the relevant circumstances, to identify that individual with reasonable certainty. Personally Identifiable Information includes but is not limited to: (a) the individual's name; (b) the names of the individual's parent, spouse, or other family members; (c) the address or phone number of the individual or individual's family; (d) personal identifiers such as a state- or university-assigned student identifier, social security number, student or employee number, or biometric records; (e) indirect identifiers such as the individual's date of birth, place of birth, or mother's maiden

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name; and (f) demographic attributes, such as race, socioeconomic information, sex, gender, and gender identity. To the extent not already included in the definition above, PII also includes, but is not limited to, all information defined as personally identifiable information in § 24-72-501 and 24-73-103, as well as “personally identifiable information” as defined in the Colorado Open Records Act, C.R.S. § 24-72-102 *et seq.*; personally identifiable information contained in student “education records” as that term is defined in the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

- 1.7. “Record” means any information recorded in any way, including, but not limited to, handwriting, print, digital and electronic media, video or audio tape, film, microfilm, and microfiche.
- 1.8. “Research Records” means records, files, documents, and other materials that contain information that has been collected, observed, generated, or created to validate original research findings.
- 1.9. “Securely Destroy” means to remove CMU Data from Contractor’s systems, paper files, records, databases, and any other media regardless of format, in accordance with the standard detailed in National Institute of Technology (“NIST”) SP 800-88 Guidelines for Media Sanitization so that CMU Data is permanently irretrievable in Contractor’s and Subcontractor’s normal course of business.
- 1.10. “Security Breach” means an event in which CMU Data is exposed to unauthorized disclosure, access, alteration or use or a system configuration that results in a documented unsecured disclosure, access, alteration or use, in a manner not permitted in this Exhibit, which poses a significant risk of financial, reputation, or other harm to the affected individuals or CMU.
- 1.11. “Services” has the meaning set forth in the Contract.
- 1.12. “Subcontractor” means Contractor’s subcontractors, or agents, identified on Schedule 1, as updated by Contractor from time to time in accordance with the requirements of this Exhibit, who Contractor has engaged to enable Contractor to perform its obligations under the Contract.

2. Rights and License in and to the University Data

CMU owns all rights, title, and interest in and to CMU Data and any and all now known or hereafter existing intellectual property rights associated therewith, and any derivative works thereof or modifications thereto provided that de-identified data shall not be considered a derivative work or modification of CMU Data. CMU hereby grants to Contractor a limited, nonexclusive license to use CMU Data solely for the purpose of performing its obligations as specified in the Contract or as otherwise by this Exhibit. Contractor shall have no rights, title, or interest implied or otherwise, to CMU Data, except as expressly stated in the Contract or Exhibit.

3. Data Privacy

- 3.1. Use of CMU Data. Contractor shall, and shall cause its Subcontractors, to use CMU Data only for the purpose of performing the Services and fulfilling its duties under the Contract.

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3.2. Prohibited Uses of CMU Data. Contractor shall not:

- a) Use, sell, rent, transfer, distribute, or disclose CMU Data (including metadata) to any third party without the prior written consent of CMU, except as may be required by law;
- b) Modify, alter, translate, search, analyze, extract, or otherwise mine or scan CMU Data, including metadata, unless set forth in the Contract or otherwise permitted by CMU in writing;
- c) Use CMU Data for its own commercial benefit, including but not limited to, advertising or marketing of any kind directed toward CMU's students or CMU's employees, or their families, unless such use is specifically authorized by the Contract or this Exhibit or otherwise authorized in writing by CMU;
- d) Use CMU Data in a manner that is inconsistent with Contractor's privacy policy;
- e) Use CMU Data to create a personal profile of a student or employee, except as expressly authorized by CMU under the Contract, or with the express consent of the student (if over the age of 18), the student's parent or legal guardian, or the employee.
- f) Allow remote access to CMU Data from outside the United States, including access by Contractor's employees or agents, without the prior express written approval of CMU, which may be denied by CMU in its sole discretion;
- g) Disclose or share any PII contained within CMU Data to third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement, unless required by federal or state law or to comply with a court-issued subpoena, warrant, or order, subject to Section 7;
- h) Store CMU Data outside the continental United States without the prior express written consent of CMU; and
- i) Permit Subcontractors to engage in any of the prohibited uses and activities specified in this Section 3.2.

3.3. Qualified FERPA Exception. If Contractor will have access to Education Records, Contractor acknowledges that for the purposes of the Contract and this Exhibit, pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations, 34 C.F.R. Part 99 ("FERPA"), Contractor shall be deemed a "school official," as defined under FERPA. Such Education Records are subject to the FERPA non-disclosure requirements and are considered confidential under the Contract and this Exhibit. Contractor shall not use Education Records for any purpose other than in performance of the Contract and in compliance with this Exhibit. Contractor shall ensure that access to Education Records is limited to those employees of Contractor that

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are essential to the performance of the Contract and this Exhibit. Any Education Records held or stored by Contractor will be made available to CMU upon request.

- 3.4. Subcontractor Use of CMU Data. To the extent necessary to perform its obligations specified in the Contract, Contractor may disclose CMU Data to Subcontractors pursuant to a written agreement, specifying the purpose of the disclosure and obligates the Subcontractor to substantially the same protections as required of Contract in this Exhibit.

4. Data Security, Integrity, and Confidentiality

- 4.1. Data Security. Contractor shall provide for the security of CMU Data and shall implement security controls no less rigorous than those prescribed by the NIST Cybersecurity Framework to the extent applicable and commercially reasonable, and which additionally meet all applicable legal and regulatory compliance standards and controls set forth for the respective data or records in scope of this Contract, including without limitation, CMU's non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, network firewalls, intrusion detection (host and network), data security logging and monitoring systems, and audits. Contractor shall be deemed a "Third-Party Service Provider" as defined in C.R.S. § 24-73- 103(1)(i) and shall maintain security procedures and practices consistent with C.R.S. §§ 24-73- 101 *et seq.*, as amended. Contractor shall use reasonable, appropriate industry-standard and up-to-date security tools and technologies in providing the Services under the Contract. Contractor shall cause its Subcontractors to adhere to the requirements set forth in this section.

- 4.2. Confidentiality. Contractor and Contractor's employees shall keep confidential at all times all CMU Confidential Information and shall comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for CMU Confidential Information in the possession of Contractor shall be immediately forwarded to CMU's Contract Manager.

5. Contractor's Employees; Certification

- 5.1. Authorized Employee Access. Contractor shall implement strong access controls to ensure that only authorized Contractor employees have access to CMU Data. Contractor employees who are authorized to have access to CMU Data shall be education on the use and confidentiality restrictions set forth in this Exhibit. Contractor shall promptly disable access privileges to CMU Data for any Contractor employees whose employment is terminated for any reason.
- 5.2. Employee Background Checks. Contractor shall perform background checks at the time of hire for all employees including the following: Social Security Number trace, Criminal record search (7 year address history; types of records include felony, misdemeanor, gross misdemeanor, criminal traffic), DOJ sex offender search, County Criminal Record Search, Enhanced Nationwide Criminal Search.

6. Security Incident and Security Breach

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- 6.1. Security Incident Evaluation. In the event of an Incident, Contractor shall follow industry best practices to fully investigate and resolve the Incident, and take steps to prevent developments that may result in the Incident becoming a Security Breach at Contractor's expense in accordance with the applicable privacy laws.
- 6.2. Response and Notice to CMU. Upon becoming aware of a Security Breach involving CMU Data, Contractor shall promptly (but in no event more than 72 hours) notify CMU in writing, consistent with applicable state or federal laws, fully investigate the Security Breach, cooperate fully with CMU's investigation of and response to the incident, and use best efforts to prevent any further Security Breach at Contractor's expense in accordance with applicable privacy laws. Except as otherwise required by law, Contractor shall not provide notice of an actual Security Breach directly to (a) individuals whose Personally Identifiable Information was involve, (b) regulatory agencies, or (c) other entities, without the prior written permission of CMU.
- 6.3. Security Breach Report. If CMU reasonably determines that Contractor has committed a Security Breach, then CMU may request Contractor to submit, within seven (7) calendar days from discovery of such breach, a written report, and any supporting documentation, identifying to the extent known (i) the nature of the Security Breach, (ii) the steps Contractor has executed to investigate the Security Breach, (iii) what CMU Data or PII was involved or disclosed, (iv) who or what was the cause of the Security Breach, (v) what Contractor has done or shall do to remediate any deleterious effect of the Security Breach, and (vi) what corrective action Contractor has taken or shall take to prevent a future Incident or Security Breach. To the applicable and commercially reasonable, Contractor shall make good faith efforts to provide CMU with an opportunity to consult with Contractor regarding its remediation plans, and will consider CMU's requests in good faith, consistent with contractor's requirements for an expedient and uniform response across Contractor's customer base.
- 6.4. Liability for Security Breach. Contractor shall be responsible for all actual costs to the extent required by law related to the unauthorized access, use, or disclosure of CMU Data to the extent caused, in whole or in part, by Contractor or Contractor's Subcontractors. In addition to any other remedies available to CMU under law or equity, the Contractor shall reimburse CMU in full for all actual costs not covered by Contractor's insurance incurred by CMU in the investigation and remediation of any Security Breach to the extent caused, in whole or in part, by Contractor or Contractor's Subcontractors, to the extent required by law, which may include but not limited to: (i) providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; (ii) providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identify theft; and (iii) the payment of reasonable legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners against CMU as a result of the Security Breach.

7. Response to Legal Orders, Demands, or Requests for Data

- 7.1. Received by CMU. If CMU receives a subpoena, warrant, or other legal order, demand, or request seeking CMU Data maintained by Contractor, CMU will promptly provide a copy to Contractor. Within twenty (20) business days,

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Contractor will supply CMU with copies of data required for CMU to respond and will cooperate with CMU's reasonable requests in connection with its response.

7.2. Received by Contractor. Except as otherwise expressly prohibited by law, Contractor shall:

- a. promptly notify CMU of any subpoenas, warrants, or other legal orders, demands, or requests received by Contractor seeking University data;
- b. Consult with CMU regarding Contractor's response;
- c. Cooperate with CMU's reasonable requests in connection with efforts by CMU to intervene and quash or modify the legal order, demand, or request; and
- d. Upon CMU's request, provide CMU with a copy of its response.

7.3. Request by Individual. Contractor shall use reasonable and good faith efforts to assist CMU in fulfilling requests from individuals to review or correct their PII stored or processed on Contractor's systems.

7.4. Access to CMU Data. At all times during the term of this Exhibit, CMU retains the right to access any or all CMU Data stored by or in possession of Contractor upon written notice to Contractor. If another timeline for response is provided herein, then that more specific deadline shall control. Otherwise, Contractor shall make CMU Data available to CMU within five (5) business days from the date of request.

8. Term; Termination

8.1. Term. This Exhibit becomes effective upon mutual execution by the Parties and shall automatically terminate without any further action of the Parties upon the termination or expiration of the Contract or the successful completion of the Services, unless earlier terminated as set forth herein.

8.2. Breach as Grounds for Termination. CMU may immediately terminate the Contract if, at any time, CMU determines in its reasonable discretion, that Contractor has materially breached any of the requirements of this Exhibit. Further, any Security Breach that results in the unauthorized access, use or disclosure of CMU Data is a material breach of this Exhibit and University may immediately terminate this Exhibit and the Contract by giving written notice to Contractor. If CMU terminates this Agreement due to a material breach of the requirements of this Exhibit, including a Security Breach by Contractor, CMU shall be entitled to a refund of any monies paid in advance under the Contract, prorated to the effective date of termination. Contractor acknowledges that, as a result of a Security Breach, CMU may elect to disqualify Contractor and its Subcontractors from future contracts with CMU.

9. Data Transfer or Destruction Upon Termination or Expiration

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- 9.1. Contingency Plan for Business Cessation. Contractor shall notify CMU of impending cessation of its business or that of a Subcontractor holding or maintaining CMU Data as authorized under this Exhibit and any contingency plans. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to CMU.
- 9.2. Data Availability After Termination or Expiration. Upon written request following the termination or expiration of the Contract or this Exhibit, Contractor shall ensure that all CMU Data and Personally Identifiable Information that Contractor collected, generated, or inferred pursuant to the Contract ("Contract Data") is securely returned or securely destroyed, as mutually agreed upon by Contractor and CMU. If CMU requests destruction of CMU Data and Contract Data, Contractor shall securely destroy all Contract Data that is in its possession and cause its Subcontractors to securely destroy all Contract Data that is in the possession of any Subcontractors. If CMU requests return of the Contract Data or transfer to a third-party designated by CMU, Contractor shall securely return or transfer all CMU Data and Contract Data to the authorized person specified by CMU, using the methods mutually agreed upon by Contractor and CMU. Such return or transfer of CMU Data shall occur within a reasonable period of time, and without significant interruption in service.
- 9.3. Download File. Upon request by CMU made any time prior to sixty (60) days following the termination of the Contract or this Exhibit for any reason, Contractor shall, make available to CMU a complete download file of all CMU Data. This download file shall be made available to CMU within ten (10) business days of CMU's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all CMU Data, including metadata.
- 9.4. Certification of Return or Destruction. Upon written request following the destruction or return of CMU Data and Contract Data, the Contractor shall promptly certify in writing to CMU that CMU Data and Contract Data has been securely disposed of or returned to CMU.

10. Audits

- 10.1. CMU Right to Audit. Upon ten (10) days notice and during normal business hours, CMU reserves the right in its sole discretion to perform audits of Contractor to ensure compliance with the terms of this Exhibit. Contractor shall reasonably cooperate in the performance of such audits and shall provide CMU with information reasonably required to assess Contractor's compliance, once per year, including the following:
- a) Upon written request, Contractor shall provide CMU with the SOC1 Type II and SOC2 Type II independent service auditor's report on an annual basis.
 - b) The performance of security audit, vulnerability scans, and penetration tests, all conducted by a third-party, as required by CMU.

11. Compliance with Applicable Law

- 11.1. Applicable Laws and Industry Standards. Contractor shall comply with all applicable state, and federal, laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding, and destruction of CMU

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Data, which may include to the extent commercially reasonable and applicable, but not limited to the, NIST Special Publication 800-171, DFARS Clause 252.204-7012, CMS Minimum Acceptable Risk Standards for Exchanges.

- 11.2. Contractor Compliance. Contractor warrants that it shall implement and maintain commercially reasonable administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under this Exhibit and the Contract.

12. Indemnification

- 12.1. Indemnification. Contractor shall indemnify and hold CMU, the State of Colorado, and their respective board members, officers, directors, employees, and agents (collectively, the "Indemnified Parties") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, award, penalties, fines, costs or expenses, including attorneys' fees, the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, to the extent arising out of or resulting from any third-party claim against the Indemnified Parties to the extent arising out of or resulting from Contractor's material breach of this Exhibit. Contractor's indemnification obligations under this section shall survive the termination or expiration of this Exhibit.

13. Insurance

- 13.1. Network Security & Privacy Liability Coverage. In addition to the coverage types and amounts Contractor is required to maintain pursuant to the terms of the Contract, Contractor shall also procure and maintain at all times during the term of this Exhibit, Network Security and Privacy Liability insurance, covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure (including but not limited to unauthorized access to, use of or tampering with computer systems, including hacker attacks, introduction of virus, malware, spyware, or ransomware, or inability of an authorized third party to gain access to Contractor's services including denial of service), 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 CMU Data, with minimum limits as follows: \$1,000,000 per occurrence, and \$2,000,000 general aggregate.
- 13.2. Additional Requirements. In addition to the foregoing requirements, the policy shall provide a waiver of subrogation in favor of CMU and shall include "The Board of Trustees of Colorado Mesa University, for and on behalf of Colorado Mesa University" as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor. Contractor shall provide CMU with a certificate of insurance evidencing the requirements set forth in this Section 13 within thirty (30) days of signing this Exhibit.
- 13.3. Exclusion of Insurance Proceeds from Limitation of Liability. Any limitation of liability applicable to Contractor under the Contract is modified to specifically exclude any insurance proceeds payable to either Contractor as named insured or to CMU as an additional insured for claims filed under Contractor's Cyber/Network Security and Privacy Liability insurance coverage.

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14. Miscellaneous

- 14.1. Survival. Upon expiration or termination of this Exhibit, the obligations which by their nature are intended to survive expiration or termination of this Exhibit shall survive.

**APPENDIX A
PII CERTIFICATION**

**STATE OF COLORADO
THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

Pursuant to §24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of entity / organization) (the "Organization"), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by §24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: _____
Printed Name: _____
Title: _____
Date: _____