**COLORADO STATEWIDE INTERNET PORTAL AUTHORITY**

**AGREEMENT WITH**

**[PROVIDER Name]**

**PREAMBLE**

This is a Contract ("Contract") between [Provider Name] (“PROVIDER") a [State] based corporation with its principal place of business located at [Provider address] and the Statewide Internet Portal Authority ("SIPA") established pursuant to §§ 24-37.7-101 et seq., C.R.S., with its office at 1300 Broadway, Suite 440, Denver, CO 80203.

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# **DEFINITIONS**

“Attachments”. The following are attached hereto and incorporated by reference herein:

* Attachment A – MSA Statement of Work
* Attachment B – EGE Statement of Work
* Attachment C – General Form of Letter of Acceptance
* Attachment D – HIPAA Business Associate Agreement
* Attachment E – Appendix to HIPAA Business Associate Agreement
* Attachment F – Exhibit A, Information Technology Provisions

“CJI” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under § 24-72-302 C.R.S.

“Confidential Information” means any and all records of either party and EGE CUSTOMERS that are not subject to disclosure under CORA. Confidential Information shall include, but is not limited to, PII, PHI, PCI, CJI, and personnel records not subject to disclosure under CORA.

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

“C.R.S.” means Colorado Revised Statutes, as the same may be amended and revised from time to time.

“CUSTOMER” means SIPA in its capacity as a recipient of Electronic Information, Products, and Services, and any entity (e.g., Eligible Governmental Entity (EGE)) that is designated by SIPA to receive Electronic Information, Products, and Services under the Contract as permitted by applicable Law, including §§ 24-37.7-101 et seq., C.R.S.

“Deliverables” means all materials, processes, inventions, work products, and information that PROVIDER develops for or on behalf of SIPA or CUSTOMER, in whole or in part, solely or jointly with others, including all intermediate and partial versions thereof in whatever medium fixed or embodied, and any and all documentation relating thereto, including any code (including source and object), scripts, APIs, interfaces, menus, structures, operational instructions, text, graphics, animation, audio or digital video components, specifications, data, reports, schematics, research, configurations, flow charts, knowledge bases, notes, outlines, formulae, training materials, documentation, manuals, processes, algorithms and the like created in connection therewith, whether or not protected by copyright, patent, trademark law, or any similar intellectual property law and all materials developed or created by PROVIDER for SIPA or CUSTOMER under Statements of Work.

“Electronic Information, Products, and Services” encompasses all such information, products, and services contemplated by §§ 24-37.7-101 et seq., C.R.S., and includes any data, information, product, or service that is created, generated, collected, maintained, or distributed in electronic form by a state agency, local government, or private enterprise to the public, state agencies, or local governments through electronic access.

“Eligible Governmental Entity” or “EGE” means a state agency or local government as those terms are defined in § 24-37.7-101(5) and (6), C.R.S.

“EGE CUSTOMER” means an EGE that is procuring PROVIDER’s Electronic Information, Products, and Services under this Contract.

“HIPAA” means Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) enacted under the American Recovery and Reinvestment Act of 2009 (“ARRA”) Pub. L. No. 111–5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended.

“Intellectual Property Rights” means all (i) patents, patent disclosures, and inventions (whether patentable or not), (ii) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (iii) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (iv) trade secrets and other Confidential Information, and (v) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement or rule of law of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“Letter of Acceptance” means a written document whereby CUSTOMER formally accepts Deliverables or Milestones in a Statement of Work. A template Letter of Acceptance is provided as **Attachment C**.

“Milestone” means an event or task described in an applicable Statement of Work which shall be completed by the relevant date set forth in the Statement of Work.

“Order” means a request for work by an EGE CUSTOMER.

“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.

“PII” (personally identifiable information) means “personal information” as defined in § 6-1-716, C.R.S. (the “Breach Notification Statute”), or any successor statute.

“PHI” means any Protected Health Information including but not limited to any information whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act (HIPAA).

“Quote” means the document sent from SIPA to EGE CUSTOMER containing all details of the requested Electronic Information, Products, and Services, including EGE CUSTOMER pricing.

“Responsible Officer” means an individual responsible for the administration of the obligations of this Contract.

“Statement of Work” means the components of an Order that include, but are not limited to an introduction, project objectives, definitions, detailed tasks (and subtasks if needed), measurable Deliverables that correlate with tasks, acceptance criteria, delivery, and payment schedule.

# **Article I: GENERAL TERMS**

1. PROVIDER will provide Electronic Information, Products, and Services to SIPA and EGE CUSTOMERS as provided for in **Attachment A, Master Services Agreement Statement of Work**.
2. **Working with EGEs**

SIPA must approve all requests from EGE CUSTOMERS for Electronic Information, Products, and Services pursuant to an Order under this Contract.

* 1. Each EGE Statement of Work shall specify the work to be performed, objectives, level of effort, third-party activities, appropriate EGE-related IT policies when provided, standards and guidelines, costs, key personnel, Deliverables, acceptance criteria, payment schedule, and performance schedule as needed.
	2. PROVIDER shall draft the EGE Statement of Work consistent with the Order and in consultation with SIPA, based on requirements of EGE CUSTOMER. Proposals shown to EGE CUSTOMER by SIPA or by PROVIDER will utilize EGE pricing shown in **Attachment B, EGE Statement of Work**.
	3. SIPA will prepare the Quote to EGE CUSTOMER based on PROVIDER’s draft EGE Statement of Work.
	4. Once an EGE CUSTOMER accepts Quote from SIPA, SIPA will execute the EGE Statement of Work with PROVIDER. At that time, SIPA will provide a SIPA generated contract number to PROVIDER. SIPA’s financial commitment to PROVIDER shall not be considered valid until SIPA executes the EGE Statement of Work.
	5. Upon negotiation and acceptance of the EGE Statement of Work, PROVIDER warrants that performance will be successfully completed within the time frame and price stated in the EGE Statement of Work, except as performance may be limited or frustrated by a force majeure event (as defined in Article X) or delays beyond the reasonable control of PROVIDER, including but not limited to those resulting from acts or omissions of EGE CUSTOMER.
	6. If mutually agreed, the EGE Statement of Work issued under this Article I may include provisions under which PROVIDER may be liable for liquidated damages as a result of failure to meet specific milestones; provided, however, in no event will such liquidated damages be assessed for delays or failures caused by a force majeure event (as defined in Article X) or delays beyond the reasonable control of PROVIDER, including but not limited to those resulting from acts or omissions of EGE CUSTOMER. If EGE CUSTOMER elects to receive liquidated damages under a Statement of Work, such a remedy shall be in lieu of recovery of actual damages.
	7. In the event of a conflict between any EGE Statement of Work and this Contract, the Statement of Work shall control.
	8. EGE Statements of Work may have additional performance requirements.
	9. PROVIDER shall respond to questions and complaints from EGE CUSTOMER’s designee as specified in the Statements of Work. PROVIDER shall use commercially reasonable efforts to resolve support issues brought to its attention by EGE CUSTOMERS.
	10. PROVIDER shall provide a formal Letter of Acceptance to EGE CUSTOMER in accordance with the EGE Statement of Work. EGE CUSTOMER will execute the Letter of Acceptance and return it to both SIPA and PROVIDER. EGE CUSTOMERs responsibility to notify PROVIDER of defects shall be outlined in EGE Statement of Work. PROVIDER’s ability to cure any defects shall be outlined in EGE Statement of Work.
	11. Termination of EGE Statement of Work. PROVIDER may terminate an EGE Statement of Work for cause, by following the procedures set forth in this Subsection k of this Article I, Section 2. If PROVIDER desires to terminate the EGE Statement of Work for cause (meaning, for purposes of this Subsection k of this Article 1, Section 2, any material breach), it will first give thirty (30) days prior written notice to EGE CUSTOMER, stating the problems constituting cause, procedures to correct such problems, and the date the Statement of Work will be terminated in the event problems have not been corrected, which date shall be at least thirty (30) days from the date of the notice. If such problems have not been corrected in such time, then upon notice, PROVIDER may terminate the EGE Statement of Work.
1. **Licensing and Implementation Work**
	1. PROVIDER offers PROVIDER Electronic Information, Products, and Services at the rates described in **Attachment A**.
	2. Implementation costs may vary depending on the degree of difficulty and level of complexity of the work to be performed for EGE CUSTOMER.
	3. PROVIDER shall provide experienced project management resources for all implementation work associated with the applicable Statement of Work.
	4. PROVIDER shall promptly notify EGE CUSTOMER and SIPA in writing if the project is in jeopardy of not being successfully completed.
2. **Invoicing and Billing**
	1. PROVIDER will invoice SIPA for all EGE CUSTOMER Electronic Information, Products, and Services. PROVIDER shall include the assigned contract number on the corresponding invoice. SIPA’s payment is due to PROVIDER within sixty (60) days of receipt of invoice or the date of provision of Electronic Information, Products, or Services, whichever is later. SIPA will invoice EGE CUSTOMER.
	2. When SIPA is the CUSTOMER, PROVIDER will invoice SIPA for those Electronic Information, Products, and Services purchased by SIPA as CUSTOMER. SIPA’s payment is due to PROVIDER within sixty (60) days of receipt of invoice or the date of provision of Electronic Information, Products, or Services, whichever is later.
	3. Invoices should be sent electronically to accounting@cosipa.gov or mailed to Office Manager, Statewide Internet Portal Authority, 1300 Broadway, Suite 440, Denver, CO 80203.
	4. SIPA shall, within thirty (30) days from the date of receipt of an invoice, notify PROVIDER in writing, including email, of those line items, if any, for which the invoice does not match the relevant Statement of Work or for which a Letter of Acceptance from EGE CUSTOMER has not yet been received. Failure of SIPA to so notify PROVIDER shall be deemed acceptance of the work.
	5. PROVIDER shall provide a single point of contact to SIPA for all invoicing and billing issues.

# **Article II: DURATION, RENEWAL, AND EXCLUSIVITY OF CONTRACT**

The effective date of this Contract shall be the date signed by both parties. Subject to the rights of either of the parties to terminate this Contract as elsewhere set forth herein, the initial term of this Contract shall continue for three (3) years from the effective date of this Contract unless renewed by SIPA and PROVIDER as provided herein. So long as there are active Orders or Statements of Work being performed pursuant to this Contract, this Contract will not expire. This Contract may be renewed by mutual written agreement of the parties for up to three (3) additional years. SIPA agrees to give not less than ninety (90) days prior to the expiration of the initial term or the then-current renewal term of its decision to exercise such renewal.

During the term of this Contract, PROVIDER will not directly or indirectly solicit any work for an EGE CUSTOMER under a separate contract for Electronic Information, Products, and Services that are within the scope of this Contract.

Changes to terms, conditions, prices specified, or other provisions of this Contract shall be completed by formal amendment and signed by SIPA and PROVIDER.

# **Article III: TAXES AND DUTIES**

1. SIPA is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code and from all state and local government sales taxes [§ 39-26-704, C.R.S., as amended]. These taxes will not be reimbursed by SIPA.
2. PROVIDER shall be responsible for, and shall hold SIPA harmless from, all taxes, duties, and similar liabilities of PROVIDER arising under federal, state, or local laws, and which become due by reason of the performance of the work under this Contract or any subcontract hereunder, and shall comply with any requirements of such laws as may be necessary to effectuate this Contract.

# **Article IV: WARRANTY**

1. **Work Standards**. PROVIDER represents, warrants, and covenants that (i) Electronic Information, Products and Services shall be rendered with promptness, due care, skill, and diligence; (ii) Electronic Information, Products and Services shall be executed in a professional and workmanlike manner, in accordance with the Service Levels and accepted industry standards of first tier providers of services that are the same as or similar to the Services; (iii) PROVIDER shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence, and skill to perform the Electronic Information, Products and Services; (iv) PROVIDER shall provide such individuals with training as to new Electronic Information, Products, and Services prior to the implementation of such Electronic Information, Products, and Services in SIPA’s and EGE CUSTOMER’s environments; and (v) PROVIDER shall have the resources, capacity, expertise, and ability in terms of Equipment, Materials, know-how, and personnel to provide the Electronic Information, Products, and Services.
2. **Maintenance**. PROVIDER represents, warrants, and covenants that, unless otherwise agreed and to the extent it has operational responsibility under this Contract, it shall maintain equipment and software so that they operate substantially in accordance with service levels and specifications, including (i) maintaining equipment in good operating condition, subject to normal wear and tear, (ii) undertaking repairs and preventive maintenance on equipment in accordance with the applicable equipment manufacturer’s recommendations and requirements, and (iii) performing software maintenance in accordance with the applicable software supplier’s documentation, recommendations, and requirements.
3. PROVIDER represents and warrants to SIPA that (i) PROVIDER is a [state] [Organization type] in good standing and authorized to do business in Colorado; (ii) PROVIDER has the power and authority to enter into this Contract and to perform fully its obligations hereunder; (iii) PROVIDER is under no Contractual or other legal obligation which shall in any way interfere with its prompt and complete performance hereunder; and (iv) the performance under this Contract will not violate the rights of any third party.

# **Article V: RIGHTS IN DATA AND SOFTWARE**

1. **Data Ownership.** All data are owned by CUSTOMER (“CUSTOMER Data”). When CUSTOMER is an EGE CUSTOMER, neither SIPA nor PROVIDER owns any of EGE CUSTOMER’s data stored within PROVIDER’s platform. PROVIDER shall not share CUSTOMER Data with others except as required to fulfill their respective duties and obligations under a Statement of Work. Access to CUSTOMER Data shall be solely governed by CUSTOMER at CUSTOMER’s discretion based on the appropriate level of access.
2. **Software Rights.** Unless otherwise negotiated in a Statement of Work, to the extent PROVIDER develops any software code as part of the Electronic Information, Products, and Services or Deliverables for the exclusive use of SIPA or EGE CUSTOMER, SIPA or EGE CUSTOMER shall retain ownership of the Intellectual Property Rights thereto, including but not limited to all copyrights to such software code.
	1. Reservation of Rights. If PROVIDER has provided software to CUSTOMER whereby payment was exchanged for such provision of software, then CUSTOMER shall have the right to continue the use of said software throughout the License term or until the software is no longer operational.
	2. CUSTOMERS procuring the Electronic Information, Products, and Services described in this Contract are subject to PROVIDER’s schedule for software maintenance, updates, enhancements, and modifications. Maintenance, updates, enhancements, and modifications that are regularly made to the software to increase the functionality of the software must be communicated to CUSTOMER.
	3. Following the termination or expiration of this Contract, PROVIDER shall have no responsibility or liability for the maintenance, updates, or modifications to the solutions, and shall not be responsible for any changes to the solution(s) or the environment(s) upon which it is run made by SIPA or an EGE CUSTOMER.

# **Article VI: NON-INFRINGEMENT**

1. **Performance of Responsibilities**. Except as otherwise provided in this Contract, each party represents, warrants, and covenants that it shall perform its obligations and responsibilities under this Contract in a manner that does not infringe or misappropriate, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other intellectual property, proprietary or privacy rights of any third party; provided, however, that the performing party shall not have any obligation or liability to the extent any infringement or misappropriation is caused by (i) modifications made by the other party or its PROVIDERS or subcontractors, without the approval of the performing party, (ii) the other party’s combination of the performing party’s work product or materials with items not furnished, specified, recommended, or approved by the performing party or contemplated by this Contract, (iii) a breach of this Contract by the other party, (iv) the failure of the other party to use corrections or modifications provided by the performing party offering equivalent features and functionality, (v) adherence to detailed specifications provided by the other party that the performing party is required to comply with (provided the performing party notifies the other party of the possibility of infringement or misappropriation if and to the extent it knows or reasonably should know of such possibility), or (vi) third-party materials, except to the extent that such infringement or misappropriation arises from the failure of the performing party to obtain the necessary licenses or required consents or to abide by the limitations of the applicable third-party materials licenses. Each party further represents, warrants, and covenants that it shall not use or create materials in connection with the Electronic Information, Products, and Services which are libelous, defamatory, or obscene.
2. **Third-party Materials Indemnification**. In addition, with respect to third-party materials provided by PROVIDER pursuant to this Contract, PROVIDER covenants that it shall either indemnify, defend, and hold SIPA and EGE Customers harmless from and against any losses arising out of or relating to such third-party materials, or it shall obtain and provide intellectual property indemnification for SIPA and EGE Customers (or obtain intellectual property indemnification for itself and enforce such indemnification on behalf of SIPA and EGE Customers) from the suppliers of such materials. Unless otherwise approved in advance by SIPA, such indemnification shall be:
	1. comparable to the intellectual property indemnification provided by PROVIDER to SIPA and EGE Customers under this Contract; or
	2. the best indemnification reasonably available in the industry for the same or substantially similar types of products for the intended use of such Materials
3. PROVIDER shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify SIPA and EGE CUSTOMER for all liability incurred by SIPA and EGE CUSTOMER as a result of such infringement. PROVIDER shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction or agreed to by PROVIDER regarding such claims or suits.
4. PROVIDER shall have no obligation to defend against or to pay any costs, damages, or attorney’s fees with respect to any claim based upon: (i) the use of any altered release if PROVIDER had not consented to the alteration, or (ii) the combination, operation, or use of PROVIDER Deliverables with programs or data which were not furnished by PROVIDER, if such infringement would have been avoided if the programs or data furnished by persons or entities other than PROVIDER had not been combined, operated, or used with PROVIDER Deliverables, or (iii) the use of PROVIDER Deliverables on or in connection with equipment or software not permitted under the Statement of Work if such infringement would have been avoided by not using PROVIDER Deliverables on or in connection with such other equipment or software, or (iv) SIPA or any EGE CUSTOMER protected data usage or storage without permission or license. SIPA shall not be responsible for any conduct described in this Section 4 of this Article VI engaged in by an EGE CUSTOMER without SIPA’s knowledge.

# **Article VII: SIPA or EGE FURNISHED DOCUMENTS, EXAMINATION, AND OWNERSHIP**

1. With respect to any documents that SIPA or EGE CUSTOMER is required to provide or does provide to PROVIDER pursuant to this Contract, PROVIDER shall exercise due care to ensure that such documents are sufficient for the performance of this Contract, and that they contain no manifest errors; however, nothing in this provision shall make PROVIDER liable for errors in the materials of SIPA or EGE CUSTOMER.
2. Any reports, studies, photographs, negatives, or other documents or drawings prepared by PROVIDER exclusively for SIPA or EGE CUSTOMER in the performance of its obligations under this Contract (but excluding PROVIDER Intellectual Property) shall be the exclusive property of SIPA or EGE CUSTOMER. PROVIDER, within thirty (30) days of termination or expiration of this Contract, shall deliver a copy of said documents to SIPA upon written request. PROVIDER shall be entitled to retain and use copies of the same. Similarly, within thirty (30) days of termination, SIPA shall return all Confidential or Proprietary Information to PROVIDER that has been disclosed, delivered, or otherwise furnished to it upon written request from PROVIDER at the time of termination.

# **Article VIII: CONFIDENTIALITY**

1. Except as provided in Article XXXIII, neither party shall use or disclose, either directly or indirectly, without prior written authorization, any Confidential Information concerning the other party obtained as a result of this Contract. Any Confidential Information in use by PROVIDER in the course of providing Electronic Information, Products, and Services under this Contract will be accorded at least the same precautions as are employed by PROVIDER for similar information in the course of its own business. The disclosure of any such information under transition assistance to a successor PROVIDER selected by SIPA shall affect neither the confidential nature of Confidential Information, nor SIPA’s obligations with respect thereto under this Contract.
2. PROVIDER shall provide for the security of all Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines including, without limitation:
	1. the most recently promulgated IRS Publication 1075 for all Tax Information,
	2. the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI,
	3. the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and
	4. the federal Health Insurance Portability and Accountability Act (HIPAA) for all PHI and the HIPAA Business Associate Addendum attached to a Statement of Work. PROVIDER shall immediately forward any request or demand for EGE CUSTOMER records to EGE CUSTOMER’s principal representative.
3. Section 1 of this Article VIII shall continue to apply, irrespective of any expiration or termination of this Contract, unless and until such time as such information comes into the receiving party’s lawful possession independent of disclosure in connection with this Contract, or otherwise lawfully to the general public.
4. The parties shall restrict disclosure of Confidential Information to the minimum number of persons required to enable PROVIDER to perform and provide Electronic Information, Products, and Services in an effective and timely manner.

# **Article IX: PUBLIC RELEASE OF INFORMATION**

PROVIDER shall obtain the written approval of SIPA concerning the content and timing of media releases, public announcements, promotional or marketing materials, customer lists, or business presentations (other than those submitted to SIPA, a Customer, an Administrative agency of the State or the Federal Government) and other information releases to be made by PROVIDER or any of its subcontractors concerning this Contract. PROVIDER shall provide SIPA a copy of any such publication no less than five (5) Business Days prior to its intended public release unless otherwise agreed by the parties. PROVIDER will provide additional copies at the request of SIPA. Nothing in this Contract shall preclude PROVIDER from releasing articles, case studies, advertisements, or other such public statements about the work performed in any EGE Statement of Work, provided that PROVIDER has obtained approval from EGE CUSTOMER. PROVIDER shall have the right to display SIPA’s logo on its website, with written authorization from SIPA. SIPA shall have the right to display PROVIDER’s logo on its website. Notwithstanding the foregoing, PROVIDER may make such public disclosures and filings under applicable securities regulations as recommended by PROVIDER’s securities law counsel, or as otherwise required by Law.

# **Article X: FORCE MAJEURE**

1. **General**. Except as otherwise provided in this Article X, no party shall be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, epidemics, or any other similar cause beyond the reasonable control of such party except to the extent that the non-performing party is at fault in failing to prevent or causing such default or delay, and provided that such default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout, or labor dispute involving PROVIDER personnel shall not excuse PROVIDER from its obligations hereunder. In addition, the refusal of PROVIDER personnel to enter a facility that is the subject of a labor dispute shall excuse PROVIDER from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of physical harm.
2. **Duration and Notification**. In the event of a force majeure event the non-performing party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail, and such party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any party so prevented, hindered, or delayed in its performance shall, as quickly as practicable under the circumstances, notify the party to whom performance is due by telephone (to be confirmed in writing, including email, within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address such force majeure event, and the expected duration of such force majeure event.
3. **Substitute Electronic Information, Products, and Services; Termination**. If any event described in Section 1 of this Article X has substantially prevented, hindered, or delayed, or is reasonably expected to substantially prevent, hinder, or delay the performance by PROVIDER of Electronic Information, Products, and Services necessary for the performance of critical SIPA or EGE CUSTOMER functions for longer than the recovery period specified in the applicable disaster recovery plan or, if there is no such specified recovery period, for twenty-four (24) hours, PROVIDER shall, unless and until otherwise directed by SIPA, use commercially reasonable efforts to procure such Electronic Information, Products, and Services from an alternate source at PROVIDER’s expense for so long as the delay in performance shall continue, up to the charges actually paid to PROVIDER for the Electronic Information, Products, and Services with respect to the period of non-performance. If PROVIDER is unable to procure such substitute Electronic Information, Products, and Services on an expedited basis or SIPA elects to contract directly for such Electronic Information, Products, and Services, SIPA or EGE CUSTOMER may procure such Electronic Information, Products, and Services from an alternate source at SIPA’s expense. In addition, if any event described in Section 1 of this Article X substantially prevents, hinders, or delays the performance by PROVIDER of Electronic Information, Products, and Services necessary for the performance of critical SIPA or EGE CUSTOMER functions:
	1. for more than seven (7) days, then SIPA may, upon notice to PROVIDER, terminate all or any portion of the Electronic Information, Products, and Services so affected (including portions that are no longer required if the impacted portion is terminated) as of the termination date specified in the notice; or
	2. for more than fifteen (15) days, then SIPA may, upon notice to PROVIDER, terminate this Contract, in whole or in part, as of the termination date specified in the notice. PROVIDER shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting PROVIDER’s ability to perform.
4. **Payment Obligation**. If PROVIDER fails to provide Electronic Information, Products, and Services in accordance with this Contract due to the occurrence of a force majeure event, all amounts payable to PROVIDER hereunder shall be equitably adjusted downward so that SIPA is not required to pay any amounts for Electronic Information, Products, and Services that SIPA or EGE CUSTOMER are not receiving, whether from PROVIDER or from an alternate source at PROVIDER’s expense pursuant to Section 3 of this Article X.
5. **Allocation of Resources**. Without limiting PROVIDER’s obligations under this Contract, whenever a force majeure event or disaster causes PROVIDER to allocate limited resources between or among PROVIDER’s customers and affiliates, SIPA and EGE CUSTOMERS shall receive at least the same treatment as comparable Service Provider customers. In no event shall PROVIDER re-deploy or re-assign any Key Personnel to another customer or account in the event of the occurrence of a force majeure event.

# **Article XI: TERMINATION**

1. **Termination by SIPA for Cause**. SIPA may terminate the Contract for cause, by following the procedures set forth herein. If SIPA desires to terminate the Contract for cause, it will first give thirty (30) days prior written notice to PROVIDER, stating the problems constituting cause, procedures to correct such problems, and the date the Contract will be terminated in the event problems have not been corrected, which date shall be at least thirty (30) days from the date of the notice. If such problems have not been corrected within the designated time, then upon notice, SIPA may terminate this Contract for cause. In the event this Contract is terminated for cause, SIPA will only reimburse PROVIDER for accepted work or deliverables received up to the date of termination. In the event this Contract is terminated for cause, final payment of Electronic Information, Products, and Services to PROVIDER may be withheld at the discretion of SIPA until SIPA has completed a final audit. Notwithstanding the above, PROVIDER may be liable to SIPA or EGE CUSTOMER for SIPA’s or EGE CUSTOMER’s damages, but shall not be liable for incidental or consequential damages.
2. **Termination for Convenience**. SIPA may, upon at least ninety (90) days prior written notice to PROVIDER, terminate this Contract for convenience and without cause as of the termination date specified in the notice without cost or penalty and without payment of any termination charges. SIPA shall have the right to terminate any EGE Statement of Work under this Contract by giving PROVIDER at least twenty (20) days prior written notice. If notice is so given, the applicable Statement of Work under this Contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of the Statement of Work shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination.
3. **Immediate Termination**. Any Statement of Work is subject to immediate termination by SIPA if SIPA determines that the health, safety, or welfare of persons receiving Electronic Information, Products, and Services may be in jeopardy due to the acts of PROVIDER. Additionally, SIPA may immediately suspend this Contract upon verifying that PROVIDER has knowingly engaged in or is knowingly about to participate in fraudulent or other illegal acts.
4. **Termination Claim**. In the event that SIPA terminates this Contract or any Statements of Work under this Contract under the Termination for Convenience clause, PROVIDER is entitled to submit a termination claim within twenty (20) days of the effective date of termination. The termination claim shall address, and SIPA shall pay, the following costs:
	1. The agreed Statement of Work price for performance of work, which is accepted by SIPA, if applicable, up to the effective date of the termination.
	2. Reasonable and necessary costs incurred in preparing to perform the terminated portion of the Contract.
	3. The costs of settling claims arising out of the termination of subcontracts or orders.
	4. Reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the Contract amount for the terminated Contract or Statements of Work, reduced by amounts previously paid by SIPA to PROVIDER.

1. **Termination with Immediate Effect**. SIPA or PROVIDER shall have the right to terminate this Contract, in whole or in part, at any time and with immediate effect, in any of the following events:
	1. If either party becomes insolvent or is declared bankrupt; or any involuntary proceeding in bankruptcy is filed against it and not dismissed within ninety (90) days, or either party files for reorganization under the bankruptcy code.
	2. If either party resorts to fraudulent practices in connection with the Contract, including, but not limited to:
		1. Deceit concerning the nature, quality, or quantity of Electronic Information, Products, and Services required to be rendered under this Contract; or
		2. The giving or offering of gifts or remuneration for the purposes of bribery to any person on either party’s Board of Directors, in the employ of either party or any EGE, or acting on behalf of any of them, irrespective of whether such bribes or remuneration are made on the initiative of either party.
	3. In the event of such termination, either party’s remedies shall be the same as in the case of discharge for breach of Contract by either party.
2. **Termination by PROVIDER**. PROVIDER may terminate the Contract for cause, by following the procedures set forth herein. If PROVIDER desires to terminate the Contract for cause (meaning, for purposes of this Section 6 of Article XI, any material breach or evasion by SIPA of the terms or conditions of this Contract and its amendments, if any), it will first give thirty (30) days prior written notice to SIPA, stating the problems constituting cause, procedures to correct such problems, and the date the Contract will be terminated in the event problems have not been corrected, which date shall be at least thirty (30) days from the date of the notice. If such problems have not been corrected in such time, then upon notice, PROVIDER may terminate this Contract for cause.

# **Article XII: APPLICABLE LAW**

The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this Contract. Any legal action related to this Contract shall be brought in state or federal court within the City and County of Denver, Colorado. PROVIDER recognizes that SIPA is a political subdivision of the State of Colorado, and many EGEs are sovereign.

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

# **Article XIII: AMENDMENT**

Except as provided above, no modification of the Contract shall be effective unless agreed to in writing by both parties in an amendment to the Contract that is properly executed and approved in accordance with Law.

# **Article XIV: DISPUTE RESOLUTION**

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract that cannot be resolved by the Executive Director of the Statewide Internet Portal Authority and the executive leadership of PROVIDER, shall be referred in writing to the SIPA Board of Directors and the PROVIDER’s Board of Directors or governing body. Failing resolution at that level, disputes shall be mediated within a reasonable time using a reputable Alternative Dispute Resolution mediator selected by mutual agreement of SIPA and PROVIDER. The expense of the mediator shall be borne equally by both parties. This process is not intended to supersede any other process for the resolution of controversies provided by Law. Any provision of this Contract, whether or not incorporated herein by reference, that provides for arbitration by any extra-judicial body or person, or which is otherwise in conflict with said laws, shall be considered null and void.

# **Article XV: BINDING NATURE AND ASSIGNMENT OF CONTRACT**

1. **Binding Nature**. This Contract shall be binding on the parties and their respective successors and permitted assigns. Except in the instance of an assignment or transfer by SIPA of all or any portion of this Contract pursuant to Section 2 of this Article XV, the assigning party shall remain liable for the performance of any assigned or transferred obligations hereunder.
2. **Assignment**. PROVIDER may not assign all or any portion of its rights under or interests in this Contract (including by operation of law) or delegate any of its duties without the prior written consent of SIPA, which consent may be withheld in SIPA’s sole discretion. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment by the Assignee, in a form acceptable to SIPA in its sole discretion. Except where otherwise specifically agreed in writing by SIPA, SIPA’s acceptance of any assignment or delegation does not release PROVIDER from its obligations pursuant to this Contract. SIPA may, without the approval of PROVIDER, assign or transfer its rights or obligations under this Contract, in whole or in part, to any other State agency as directed by the State Legislature or as otherwise required under Law. The consent of a party to any assignment of this Contract shall not constitute such party’s consent to further assignment. Each party to whom an assignment or transfer is made must assume all or any part of PROVIDER’s or SIPA’s interests in this Contract, the Electronic Information, Products, and Services, and any documents executed with respect to this Contract, including, without limitation, its obligation for all or any portion of the payments due hereunder.
3. **Impermissible Assignment**. Any attempted assignment that does not comply with the terms of this Article XV shall be null and void ab initio; provided, however, that if PROVIDER assigns this Contract in contravention of this Article XV by operation of Law, such assignment shall be voidable at the option of SIPA.

# **Article XVI: ENTIRE AGREEMENT**

This Contract, including any Exhibits and Attachments referred to herein or attached hereto, each of which is incorporated herein for all purposes, constitutes the entire Contract between the parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments, or undertakings other than those expressly set forth herein. This Contract supersedes all prior contracts, agreements, representations, warranties, promises, covenants, commitments, or undertaking, whether written or oral, with respect to the subject matter contained in this Contract. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, modification, change, waiver, or discharge is sought to be enforced

In the event of conflicts or inconsistencies among the Contract and its Attachments and Exhibits, such conflicts shall be resolved by reference to the documents in the following order of priority, unless otherwise indicated in the Contract.

1. EGE Statement of Work
2. HIPAA Business Associate Agreement
3. MSA Statement of Work
4. Contract, including Exhibit A, Information Technology Provisions

# **Article XVII: RESPONSIBLE OFFICERS**

1. The Responsible Officers of the parties may be changed from time to time by notice to the other party. Until further notice, the Responsible Officer for SIPA shall be its Executive Director, and for PROVIDER the CEO/PRESIDENT of PROVIDER, or other such authorized signatory of PROVIDER as may be designated in advance by the Responsible Officer.
2. For the purpose of administration of this Contract, any communications between SIPA and PROVIDER shall be enforceable and binding upon the parties, only if agreed to in writing by the appropriate Responsible Officers.

# **Article XVIII: COMMUNICATIONS**

All notices, reports, and other correspondence to be provided to SIPA or PROVIDER pursuant to this Contract shall be sent to the attention of the responsible officers referred to below, entitled Responsible Officers, at the following addresses:

**STATEWIDE INTERNET PORTAL AUTHORITY (SIPA)**

Ajay Bagal

Executive Director

1300 Broadway, Suite 440

Denver, CO 80203

ajay@cosipa.gov

Copy To:

Richard Westfall, Legal Counsel

5842 West Marquette Drive

Denver, CO 80235

rwestfall@westfall.law

**PROVIDER**

Name:

Title:

Address:

Email Address:

1. All communications pertinent to this Contract shall be made or confirmed in writing, which may include email.
2. All documentation and communications required under this Contract shall be in the English language.

# **Article XIX: TIME LIMITS**

Any time limits to which this Contract binds PROVIDER or SIPA shall be counted in calendar days from the day following that of the event marking the start of the time limit, and shall end on the last day of the period laid down. When the last day of a time limit is a Saturday, Sunday, or a legal holiday in the state in which the particular Contractual performance is required, such time limit shall be extended to the first working day following.

# **Article XX: CONFLICT OF INTEREST**

During the term of this Contract, PROVIDER shall not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with PROVIDER fully performing its obligations under this Contract.

Additionally, PROVIDER acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of SIPA and EGE CUSTOMERS. Thus, PROVIDER agrees to refrain from any practices, activities, or relationships that could reasonably be considered to be in conflict with PROVIDER’s ability to fully perform its obligations to SIPA and EGE CUSTOMERS under the terms of this Contract, without the prior written approval of SIPA. Notwithstanding the foregoing, this Article XX shall not be construed to restrain PROVIDER from the practice of its trade with any other governmental entity or otherwise.

Neither PROVIDER nor its agent(s) shall participate in the selection of, or in the award or administration of, a contract or subcontract supported by State or Federal funds if a conflict of interest, real or apparent, exists. Such conflict arises when the employee, officer, or agent participating in the selection, award, or administration has a financial or other interest in the firm selected for award.

# **Article XXI: INSURANCE – PROVIDER**

PROVIDER shall obtain and maintain insurance as specified in this Article XXI at all times during the term of this Contract. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies rated at least A-VIII or better by Best’s Insurance Reports published by A.M. Best Co. During the term of this Contract PROVIDER agrees that it will keep in force an insurance policy or policies, issued by a company authorized to do business in Colorado, in the kinds and minimum amounts specified below.

1. **Worker’s Compensation**. Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of PROVIDER’s employees acting within the course and scope of their employment.
2. **General Liability**. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
	1. $1,000,000 each occurrence;
	2. $1,000,000 general aggregate;
	3. $1,000,000 products and completed operations aggregate; and
	4. $100,000 any one fire.
3. **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.
4. **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:
	1. $2,000,000 each occurrence; and
	2. $2,000,000 general aggregate.
5. **Professional Liability Insurance**. Insurance covering any damages caused by acts, errors, omissions, or any negligent act with minimum limits as follows:
	1. $2,000,000 each occurrence; and
	2. $2,000,000 general aggregate.
6. **Crime Insurance**. Insurance including employee dishonesty coverage with minimum limits as follows:
	1. $1,000,000 each occurrence; and
	2. $1,000,000 general aggregate.
7. **Additional Insured**. SIPA shall be included as an Additional Insured on the Commercial General Liability Policy.
8. **Cancellation**. The above insurance policies shall include provisions preventing cancellation or non-renewal without prompt notice and PROVIDER shall forward such notice to SIPA in accordance with Article XVIII (Communications). PROVIDER’s cancellation of one policy with immediate and commensurate coverage of a comparable alternative policy shall not require notification to SIPA.
9. **Certificates**. Upon written request, PROVIDER shall provide certificates showing insurance coverage required under this Article XXI to SIPA within seven (7) days of the Effective Date of this Contract. Upon written request and no later than fifteen (15) days following the expiration date of any such coverage, PROVIDER shall deliver to SIPA certificates of insurance evidencing renewals thereof. In addition, upon request by SIPA at any other time during the term of this Contract or any subcontract, PROVIDER shall, within ten (10) days of such request, supply to SIPA evidence satisfactory to SIPA of compliance with the provisions of this Article XXI.

# **Article XXII: MAINTENANCE, MONITORING, AUDIT, AND INSPECTION OF RECORDS**

1. **Maintenance**. PROVIDER shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the operation of Electronic Information, Products, and Services and Statements of Work under the Contract, and shall maintain such records for a period of three (3) years after the date of termination of the Contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters that may be pending (the “Records Retention Period”). Except as otherwise provided in this Contract or any Statement of Work, PROVIDER shall not have any obligation to maintain or store EGE CUSTOMER Data during or after this Contract terminates or if SIPA or any EGE CUSTOMER fails to cure any material breach hereof; provided that upon request PROVIDER will return or make available for download any EGE CUSTOMER Data that PROVIDER has in its possession or control.
2. **Inspection**. PROVIDER shall permit SIPA, EGE CUSTOMER, the State of Colorado, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe PROVIDER records during the Record Retention Period. PROVIDER shall make PROVIDER Records available during normal business hours at PROVIDER’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) business days’ notice, unless a shorter period of notice, or no notice, is necessary to protect the interests of EGE CUSTOMER.
3. **Monitoring**. SIPA, EGE CUSTOMER, the State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor PROVIDER’s performance of its obligations under this Contract using procedures as determined by SIPA, EGE CUSTOMER, the State, or that governmental entity. Any monitoring of PROVIDER’s performance shall be done in a manner that does not unduly interfere with PROVIDER’s performance of the Electronic Information, Products, and Services.
4. **Final Audit Report**. PROVIDER shall promptly submit to the requesting entity a copy of any final audit report of an audit performed on PROVIDER’s records that relates to or affects this Contract or a Statement of Work, whether the audit is conducted by PROVIDER or third party.

# **Article XXIII: SEVERABILITY**

To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.

# **Article XXIV: CONFORMANCE WITH LAW, GOVERNMENTAL AUTHORIZATIONS, PERMITS, LICENSES**

PROVIDER and its agent(s) shall at all times during the term of this Contract comply with all federal laws, state laws, and implementing regulations applicable to PROVIDER in its provision of Electronic Information, Products, and Services, as they currently exist and may hereafter be amended. PROVIDER shall be responsible for obtaining all governmental authorizations necessary for the performance of PROVIDER’s obligations hereunder, including all permits and business or professional licenses and pay all charges, fees, taxes, and incidental expenses that may be required for the lawful provision of the work. In the event that PROVIDER fails to obtain any such authorization, permits, and licenses as may be necessary to complete any work following notice and a reasonable cure period, SIPA may terminate the Contract or such element of work.

# **Article XXV: WAIVER**

Any waiver by any party hereto with regard to any of its rights hereunder shall be in writing and shall not constitute or act as a waiver to any future rights, which such party might have hereunder.

# **Article XXVI: THIRD PARTY BENEFICIARIES**

It is expressly understood and agreed that the enforcement of the terms and conditions of the Contract, and all rights of action relating to such enforcement, shall be strictly reserved to SIPA and PROVIDER or their permitted assignees. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person, including EGE CUSTOMERS. It is the express intention of SIPA and PROVIDER that any such person or entity, other than SIPA or PROVIDER or their permitted assignees, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only. An EGE CUSTOMER does have the right to enforce provisions within EGE Statements of Work and portions of the Contract as it relates to work performed on their behalf once executed by the parties.

# **Article XXVII: GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision of the Contract to the contrary, no term or condition of the Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, right, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., or the Federal Tort Claims Act, §§ 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of SIPA, its board, officials, and employees is controlled and limited by the provisions of the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., and the Federal Tort Claims Act, §§ 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

# **Article XXVIII: PLACE OF PERFORMANCE**

Unless otherwise agreed to in writing, all Services performed by PROVIDER, its subcontractors, and agents must be performed in the United States.

# **Article XXIX: INDEMNIFICATION**

PROVIDER shall defend, at its sole expense, any claim(s) or suit(s) brought against SIPA alleging any wrongful (including negligent) act or omission by PROVIDER, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract provided that SIPA gives PROVIDER written notice within ten (10) days of receipt by SIPA of such notice of such claim or suit, SIPA provides assistance and cooperation to PROVIDER in connection with such action, and PROVIDER has sole authority to defend or settle the claim. PROVIDER shall consult SIPA regarding such defense, and SIPA may, at its expense, participate in any defense. Should SIPA not choose to participate, PROVIDER shall keep SIPA advised of any settlement or defense.

PROVIDER shall have liability for all such claims or suits for which PROVIDER is found to be at fault (or agrees to be bound by settlement with or without admission of fault), and shall indemnify, save, and hold harmless SIPA, its employees, and its agents for all such damages, liability and court awards, including costs, expenses and attorney fees incurred by any of them as a result of such claim or suit. PROVIDER shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction or agreed to by PROVIDER regarding such claims or suits. If a loss is caused only in part by the fault of PROVIDER, then its liability hereunder shall be only such amount as is attributable to its fault.

# **Article XXX: INDEPENDENT CONTRACTOR**

PROVIDER shall perform its duties hereunder as an independent contractor and not as an employee. Neither PROVIDER nor any agent or employee of PROVIDER shall be or shall be deemed to be an agent or employee of SIPA. PROVIDER shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by SIPA pursuant to this Contract. PROVIDER acknowledges that PROVIDER and its employees are not entitled to unemployment insurance benefits unless PROVIDER or a third party provides such coverage and that SIPA does not pay for or otherwise provide such coverage. PROVIDER shall have no authorization, express or implied, to bind SIPA to any agreements, liability, or understanding except as expressly set forth in this Contract. PROVIDER shall be solely responsible for the acts of PROVIDER, its employees, and its agents.

# **Article XXXI: NON-DISCRIMINATION**

PROVIDER agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

# **Article XXXII: EMPLOYEE FINANCIAL INTEREST**

The signatories aver that to their knowledge, no employee of SIPA has any personal or beneficial interest whatsoever in the service or property described herein.

# **Article XXXIII: CUSTODIAN OF RECORDS**

This Contract is subject to the requirements of the Colorado Open Records Act, §§ 24-72-200.1 et seq., C.R.S. ("CORA"). Subject to the requirements of CORA, SIPA agrees not to disclose, publicly release, or produce for any purpose, including in response to a subpoena or other court or governmental order, PROVIDER’s Confidential Information without giving PROVIDER as much written notice as is reasonably practicable, and an opportunity to object to the disclosure or production of any Confidential Information. At the request of SIPA, PROVIDER shall provide such reasonable assistance as may be requested by SIPA to comply with this provision. PROVIDER shall designate in writing any records that may not be disclosed and the grounds for non-disclosure according to CORA.

For the purposes of the Colorado Open Records Act, each EGE CUSTOMER shall, at all times, be the custodian of EGE CUSTOMER records. If SIPA is the CUSTOMER, SIPA shall, at all times, be the custodian of SIPA records. Neither SIPA nor PROVIDER shall be deemed either the custodian of EGE CUSTOMER records, nor the custodian’s agent.

# **Article XXXIV: LITIGATION REPORTING**

Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency that is related to this Contract or that may affect PROVIDER’s ability to perform its obligations hereunder, PROVIDER shall notify SIPA of such action and deliver copies of such pleadings to SIPA’s Executive Director, with a copy to SIPA’s Legal Counsel, as identified herein.

# **Article XXXV: LIMITATION OF PROVIDER’S LIABILITY**

During any twelve (12)-month period, the liability of PROVIDER and its respective affiliates and agents to SIPA or to EGE CUSTOMER for damages relating to this Contract, including but not limited to direct losses and consequential, special, indirect, incidental, punitive, or exemplary losses, shall not exceed three (3) times the fees paid by SIPA or EGE CUSTOMER for the applicable Electronic Information, Products, and Services directly causing the damage for that twelve (12)-month period.

However, such limitation shall not limit or affect any claims, losses, or damages for which coverage is available under any insurance required under this Contract, and such limitation shall not limit or affect liability arising from:

* PROVIDER’s indemnification obligations under Article VI of this Contract;
* The unauthorized use or disclosure of Confidential Information;
* PROVIDER’s breach of its data protection and security obligations that results in an unauthorized use or disclosure of personal data; or
* Death or bodily injury arising from PROVIDER’s gross negligence or willful misconduct.

**IN WITNESS WHEREOF**, the parties hereto have signed this Contract.

**STATEWIDE INTERNET PORTAL PROVIDER**

**AUTHORITY**

Ajay Bagal [Name]

Executive Director [Title]

Dated: Dated:

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# **Attachment A**

**MASTER SERVICES AGREEMENT STATEMENT OF WORK**

PROVIDER will provide Electronic Information, Products, and Services pursuant to Orders and EGE Statements of Work prepared by PROVIDER and approved by SIPA.

PROVIDER shall perform all Electronic Information, Products, and Services, including but not limited to project planning, installation, configuration, customization, project management, organizational change management, and training related to set up, operation, and improvement of SIPA or EGE CUSTOMER’s technology solution as outlined in a specific EGE Statement of Work. Such Electronic Information, Products, and Services shall include the following:

Pricing Model. The pricing model outlined below may be amended by mutual written agreement of PROVIDER and SIPA, and pursuant to the change process outlined in this Statement of Work.

* SIPA receives at least a X% discount on PROVIDER’s list prices.
* SIPA will add a X% mark-up to its buy price to create the EGE Customer buy price. Costs for travel and related expenses will be sold to the EGE CUSTOMER at SIPA’s buy price.
* PROVIDER rates shall include travel related expenses. Travel and related expenses should be quoted as a **fixed price** or **not to exceed** line items.
* Example: If PROVIDER’s list price is $1000, then the maximum SIPA buy price would be $XXX. At PROVIDER’s sole discretion, PROVIDER may quote SIPA at less than the maximum SIPA buy price (e.g., $XXX). SIPA will add X% margin to the SIPA buy price and prepare a Quote for the EGE CUSTOMER. In this example ($XXX buy price), the EGE CUSTOMER buy price would be $XXX.

**Change Process**. PROVIDER and SIPA may offer other solutions and amend pricing as mutually agreed upon. Any changes to an EGE Statement of Work must be performed following the process outlined in that EGE Statement of Work.

Work on a Change Order shall not begin until SIPA and PROVIDER have executed a written agreement.

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# **Attachment B**

**EGE STATEMENT OF WORK**

PROVIDER will provide Electronic Information, Products, and Services to CUSTOMER as outlined below:

**Services**.

• [describe/list services being offered]

**Products**.

• [describe/list products being offered]

**Change Process**.

• [outline change process]

**Other Details.**

• [list other EGE SOW details]

**Terms and Conditions.**

* **Acceptance.**

Letter of Acceptance. When PROVIDER completes one or more Deliverables, PROVIDER shall provide a formal Letter of Acceptance (see Attachment C for template) to EGE CUSTOMER. EGE CUSTOMER will execute the Letter of Acceptance and return it to both SIPA and PROVIDER. Notwithstanding the foregoing, the Deliverables shall be deemed accepted upon expiration of the specified acceptance period unless EGE CUSTOMER has delivered a Notice of Defects within such time period.

Notice of Defects. CUSTOMER shall, within ten (10) business days from the date of receipt of Letter of Acceptance, notify PROVIDER in writing of those particulars, if any, in which the Deliverable does not meet the requirements of the relevant Statement of Work (a “Notice of Defects”). Failure of CUSTOMER to so notify PROVIDER shall be deemed acceptance of the Deliverable and associated Services. Without limiting the Service warranties set forth in the EGE Statement of Work, Services shall be deemed accepted upon delivery, except as set forth in this clause.

Remedy of Defects. In connection with delivery of a Notice of Defects within the above-stated acceptance period, CUSTOMER may, as its exclusive remedies and PROVIDER’s sole liability in connection with a Notice of Defects, require PROVIDER to reperform the affected Services in conformity with the requirements of the Statement of Work. When such defects in the Services cannot be corrected by re-performance, CUSTOMER may (1) require PROVIDER to take necessary action to ensure that future performance conforms to Statement of Work requirements and (2) request a pro-rata refund or credit from PROVIDER which reflects the reduced value of the work.”

* **Termination of EGE Statement of Work**.

Termination by CUSTOMER for Cause. CUSTOMER may terminate this Statement of Work for cause, by following the procedures set forth herein. If CUSTOMER desires to terminate the Statement of Work for cause, it will first give thirty (30) days prior written notice to PROVIDER, stating the problems constituting cause, procedures to correct such problems, and the date the Statement of Work will be terminated in the event problems have not been corrected, which date shall be at least thirty (30) days from the date of the notice. If such problems have not been corrected within the designated time, then upon notice, EGE CUSTOMER may terminate this Statement of Work for cause. In the event this Statement of Work is terminated for cause, CUSTOMER and SIPA will be liable to PROVIDER only for accepted work or deliverables received up to the date of termination. In the event this Statement of Work is terminated for cause, final payment of Electronic Information, Products, and Services to PROVIDER may be withheld at the discretion of CUSTOMER until CUSTOMER has completed a final audit. Notwithstanding the above, PROVIDER may be liable to CUSTOMER for CUSTOMER’s damages, but shall not be liable for incidental or consequential damages.

Termination for Convenience. EGE CUSTOMER may, upon at least ninety (90) days prior written notice to PROVIDER, terminate this Statement of Work for convenience and without cause as of the termination date specified in the notice without cost or penalty and without payment of any termination charges. If notice is so given, the applicable Statement of Work under this Contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of the Statement of Work shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination.

Immediate Termination. This Statement of Work is subject to immediate termination by CUSTOMER if CUSTMOMER determines that the health, safety, or welfare of persons receiving Electronic Information, Products, and Services may be in jeopardy due to the acts of PROVIDER. Additionally, CUSTOMER may immediately suspend this Statement of Work upon verifying that PROVIDER has knowingly engaged in or is knowingly about to participate in fraudulent or other illegal acts.

Termination Claim. In the event that CUSTOMER terminates this Statement of the Termination for Convenience clause, PROVIDER is entitled to submit a termination claim within twenty (20) days of the effective date of termination. The termination claim shall address, and SIPA shall pay, the following costs:

* 1. The agreed Statement of Work price for performance of work, which is accepted by CUSTOMER, if applicable, up to the effective date of the termination.
	2. Reasonable and necessary costs incurred in preparing to perform the terminated portion of the Statement of Work.
	3. The costs of settling claims arising out of the termination of subcontracts.
	4. Reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the Statement of Work amount for the terminated Statement of Work, reduced by amounts previously paid by EGE CUSTOMER to PROVIDER.

Termination by PROVIDER. PROVIDER may terminate the Statement of Work for cause, by following the procedures set forth herein. If PROVIDER desires to terminate the Statement of Work for cause, it will first give thirty (30) days prior written notice to CUSTOMER, stating the problems constituting cause, procedures to correct such problems, and the date the Statement of Work will be terminated in the event problems have not been corrected, which date shall be at least thirty (30) days from the date of the notice. If such problems have not been corrected in such time, then upon notice, PROVIDER may terminate this Statement of Work for cause.

CUSTOMER shall be solely responsible for maintaining security of its data, information systems, and technology used to implement any Electronic Information, Products, and Services.

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# **Attachment C**

**GENERAL FORM OF LETTER OF ACCEPTANCE TEMPLATE**

**EGE CUSTOMER**

**Project Name**

**Project Type**

**Deliverables**

|  |  |  |  |
| --- | --- | --- | --- |
| **Service Deliverable** | **Description** | **Deliverable Date** | **Amount to Paid** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Outstanding Known Issues/Remaining Deliverables (if applicable)**

**EGE CUSTOMER Sign Off**

The Deliverable(s) specified above is/are accepted by EGE CUSTOMER and PROVIDER is authorized to move forward with deployment according to the terms outlined in this document.

**EGE CUSTOMER**

[Name]

[Title]

Date Signed:

# **Attachment D**

**HIPAA Business Associate Agreement**

This HIPAA Business Associate Agreement (“Agreement”) between the Statewide Internet Portal Authority (SIPA) and PROVIDER is agreed to in connection with, and as an exhibit to, the Contract, which authorizes SIPA to offer PROVIDER’s Electronic Information, Products, and Services to the State of Colorado.

For purposes of this Agreement, the CUSTOMER is referred to as “Covered Entity” and the PROVIDER is referred to as “Business Associate”. Unless the context clearly requires a distinction between the Contract and this Agreement, all references to “Contract” shall include this Agreement.

1. **Purpose**

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

1. **Definitions**

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

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

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

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

1. **Obligations and Activities of Business Associate**
	1. Permitted Uses and Disclosures.
		1. Business Associate shall use and disclose PHI only to accomplish Business Associate’s obligations under the Contract.
		2. To the extent Business Associate carries out one or more of Covered Entity’s obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
		3. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
			1. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
			2. the person notifies Business Associate of any Breach involving PHI of which it is aware.
		4. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
	2. Minimum Necessary. Business Associate, its subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).
	3. Impermissible Uses and Disclosures.
		1. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
		2. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.
	4. Business Associate’s Subcontractors.
		1. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.
		2. Business Associate shall provide to Covered Entity, on Covered Entity’s request, a list of subcontractors who have entered into any such agreement with Business Associate.
		3. Business Associate shall provide to Covered Entity, on Covered Entity’s request, copies of any such agreements Business Associate has entered into with subcontractors.
	5. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available at http://oit.state.co.us/about/policies.
	6. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 C.F.R. 164.524.
	7. Amendment of PHI.
		1. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 C.F.R. 164.526.
		2. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
	8. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
	9. Restrictions and Confidential Communications.
		1. Business Associate shall restrict the Use or Disclosure of an Individual’s PHI within ten days of notice from Covered Entity of:
			1. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
			2. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
		2. Business Associate shall not respond directly to an Individual’s requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
		3. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.
	10. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.
	11. Audit, Inspection and Enforcement.
		1. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores, and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.
		2. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity’s efforts to audit Business Associate’s compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate’s conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.
	12. Appropriate Safeguards.
		1. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
		2. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
		3. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
		4. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this Section 3.l shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.
	13. Safeguard During Transmission.
		1. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
		2. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.
	14. Reporting of Improper Use or Disclosure and Notification of Breach.
		1. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under § 24-73-103, C.R.S.
		2. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
		3. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.
		4. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.
	15. Business Associate’s Insurance and Notification Costs.
		1. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:
			1. loss of PHI data;
			2. Breach notification requirements specified in HIPAA Rules and in § 24-73-103, C.R.S.; and
			3. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
		2. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
		3. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
		4. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.
	16. Subcontractors and Breaches.
		1. Business Associate shall enter into a written agreement with each of its subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such subcontractors or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
		2. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.
	17. Data Ownership.
		1. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
		2. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.
	18. Retention of PHI. Except upon termination of this Agreement as provided in Section 5 below, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h above, for a period of six years.
2. **Obligations of Covered Entity**
	1. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.
	2. Notice of Changes.
		1. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate’s permitted or required uses or disclosures.
		2. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate’s permitted use or disclosure of PHI.
3. **Termination**
	1. Breach.
		1. In addition to any Contract provision regarding remedies for breach, SIPA shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both, and Covered Entity shall have the right to have Business Associate cease any work performed for Covered Entity.
		2. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.
	2. Effect of Termination.
		1. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its subcontractors maintain in any form, and shall not retain any copies of such PHI.
		2. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
		3. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this HIPAA Business Associate Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.
4. **Injunctive Relief**

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

1. **Limitation of Liability**

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

1. **Disclaimer**

SIPA makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate’s own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

1. **Certification**

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

1. **Amendment**
	1. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
		1. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
		2. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI and obtain written assurance satisfactory to Covered Entity from Business Associate’s subcontractors and agents that they shall adequately safeguard all PHI.
		3. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
		4. SIPA may terminate this Agreement upon 30 days’ prior written notice in the event that:
			1. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by SIPA or Covered Entity pursuant to this Section 10.a.iv; or
			2. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity’s sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.
	2. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.
2. **Assistance in Litigation or Administrative Proceedings**

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, subcontractors, and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, subcontractors, or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

1. **Interpretation and Order of Precedence**

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

1. **Survival**

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this Contract or this agreement and shall be enforceable by Covered Entity.

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# **Attachment E**

**APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Appendix (“Appendix”) to the HIPAA Business Associate Agreement (“Agreement”) is an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

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

1. **Purpose**

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

1. **Additional Terms**
	1. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
		1. Reserved. [Replace this with any additional permitted uses of PHI. If there are no additional permitted uses, then leave this as “reserved”.]
	2. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
		1. Reserved. [Replace this with any additional permitted uses of PHI. If there are no additional permitted uses, then leave this as “reserved”.]
	3. Approved Subcontractors. Covered Entity agrees that the following subcontractors or agents of Business Associate may receive PHI under the Agreement:
		1. Reserved. [Replace this with any additional permitted uses of PHI. If there are no additional permitted uses, then leave this as “reserved”.]
	4. Definition of Receipt of PHI. Business Associate’s receipt of PHI under this Contract shall be deemed to occur, and Business Associate’s obligations under the Agreement shall commence, as follows:
		1. Reserved. [Replace this with any additional permitted uses of PHI. If there are no additional permitted uses, then leave this as “reserved”.]
	5. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate’s use and disclosure of PHI under the Contract:
		1. Reserved. [Replace this with any additional permitted uses of PHI. If there are no additional permitted uses, then leave this as “reserved”.]
	6. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:
		1. Reserved. [Replace this with any additional permitted uses of PHI. If there are no additional permitted uses, then leave this as “reserved”.]

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# **Attachment F**

**EXHIBIT A, INFORMATION TECHNOLOGY PROVISIONS**

This **Exhibit A, Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between SIPA and PROVIDER as described in the Contract to which this Exhibit is attached, which authorizes SIPA to offer PROVIDER’s Electronic Information, Products, and Services to EGE CUSTOMERS. 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**
	1. In addition to the requirements of the main body of this Contract, if PROVIDER or any subcontractors is given access to EGE CUSTOMER Information Technology resources or records by the EGE CUSTOMER or its agents in connection with PROVIDER’s performance under the Contract, PROVIDER shall protect such Information Technology resources and EGE CUSTOMER Records in accordance with this Exhibit. All provisions of this Exhibit that refer to PROVIDER shall apply equally to any subcontractors performing work in connection with the Contract.
	2. The terms of this Exhibit shall apply to the extent that PROVIDER’s obligations under this Contract include the provision of Information Technology goods or services to the EGE CUSTOMER. “Information Technology” is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
		1. Any technology, equipment, or related services described in § 24-37.5-102(12), C.R.S.;
		2. The creation, use, processing, disclosure, transmission, or disposal of EGE CUSTOMER Records, including any data or code, in electronic form; and
		3. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
	3. PROVIDER shall, and shall cause its subcontractors to meet all of the following:
		1. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
		2. 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.
		3. Comply with state and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
		4. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
		5. 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”) or the EGE CUSTOMER’s security representative. “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 CUSTOMER, 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 CUSTOMER system or CUSTOMER Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a CUSTOMER system for the processing or storage of data; or (iv) changes to CUSTOMER system hardware, firmware, or software characteristics without CUSTOMER’s knowledge, instruction, or consent.
		6. 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.
	4. Subject to PROVIDER’s reasonable access security requirements and upon reasonable prior notice, PROVIDER shall provide the EGE CUSTOMER with scheduled access for the purpose of inspecting and monitoring access and use of EGE CUSTOMER Records, maintaining EGE CUSTOMER systems, and evaluating physical and logical security control effectiveness.
	5. PROVIDER shall perform current background checks in a form reasonably acceptable to the EGE CUSTOMER on all of its respective employees and agents performing services or having access to EGE CUSTOMER Records provided under this Contract, including any subcontractors or the employees of subcontractors. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access to EGE CUSTOMER Records shall be deemed to be current.
		1. Upon request, PROVIDER shall provide notice to a designated representative for the EGE CUSTOMER indicating that background checks have been performed. Such notice will inform the EGE CUSTOMER of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
		2. If PROVIDER will have access to Federal Tax Information under the Contract, PROVIDER shall agree to the EGE CUSTOMER’s requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and § 24-50-1002, C.R.S.
2. **Data Handling**
	1. PROVIDER may not maintain or forward these EGE CUSTOMER 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 EGE CUSTOMER. PROVIDER may not maintain EGE CUSTOMER Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS or the EGE CUSTOMER representative.
	2. PROVIDER shall not allow remote access to EGE CUSTOMER Records from outside the United States, including access by PROVIDER’s employees or agents, without the prior express written consent of OIS. PROVIDER shall communicate any request regarding non-U.S. access to EGE CUSTOMER Records to the Security and Compliance Representative for the EGE CUSTOMER. The EGE CUSTOMER shall have sole discretion to grant or deny any such request.
	3. Upon request by the EGE CUSTOMER made any time prior to sixty (60) days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, PROVIDER shall make available to the EGE CUSTOMER a complete download file of all EGE CUSTOMER data.
		1. This download file shall be made available to the EGE CUSTOMER within ten (10) Business Days of the EGE CUSTOMER’s request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all EGE CUSTOMER 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.
		2. Upon the termination of PROVIDER’s provision of data processing services, PROVIDER shall, as directed by the EGE CUSTOMER, return all EGE CUSTOMER Records provided by the EGE CUSTOMER to PROVIDER, and the copies thereof, to the EGE CUSTOMER or destroy all such EGE CUSTOMER Records and certify to the EGE CUSTOMER that it has done so. If any legal obligation imposed upon PROVIDER prevents it from returning or destroying all or part of the EGE CUSTOMER Records provided by the EGE CUSTOMER to PROVIDER, PROVIDER shall guarantee the confidentiality of all EGE CUSTOMER Records provided by the EGE CUSTOMER to PROVIDER and will not actively process such data anymore. PROVIDER shall not interrupt or obstruct the EGE CUSTOMER’s ability to access and retrieve EGE CUSTOMER Records stored by PROVIDER.
	4. The EGE CUSTOMER retains the right to use the established operational services to access and retrieve EGE CUSTOMER Records stored on PROVIDER’s infrastructure at its sole discretion and at any time. Upon request of the EGE CUSTOMER or of the supervisory authority, PROVIDER 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**
	1. PROVIDER shall provide and maintain a quality assurance system acceptable to the EGE CUSTOMER for any Work or Deliverables under this Contract and shall provide to the EGE CUSTOMER only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any Task Order or applicable solicitation, bid, offer, or proposal from which this Contract results.
	2. PROVIDER’s delivery of any Work or Deliverables to the EGE CUSTOMER shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications, and PROVIDER shall make records of such quality assurance available to the EGE CUSTOMER upon request during the term of the Contract or at any time within three (3) years following expiration or termination of the Contract.
	3. 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 EGE CUSTOMER to the PROVIDER that such Work or Deliverable has been accepted by the EGE CUSTOMER. 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 EGE CUSTOMER shall be final, except in cases of PROVIDER’s failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or PROVIDER’s gross negligence or willful misconduct.
4. **Warranty**
	1. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, PROVIDER warrants that any Work or Deliverable provided by PROVIDER under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. PROVIDER 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. PROVIDER’s warranties under this Section 4 shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
	2. Upon notice during the warranty term of any defect or material nonconformity, PROVIDER shall submit to the EGE CUSTOMER in writing within 10 Business Days of the notice one or more recommendations for corrective action with sufficient documentation for the EGE CUSTOMER to ascertain the feasibility, risks, and impacts of each recommendation. The EGE CUSTOMER’s remedy for such defect or material non-conformity shall be:
		1. PROVIDER shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the EGE CUSTOMER. PROVIDER shall deliver, at no additional cost to the EGE CUSTOMER, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or
		2. PROVIDER shall refund to the EGE CUSTOMER all amounts paid for such Work or Deliverable, as well as pay to the EGE CUSTOMER any additional amounts reasonably necessary for the EGE CUSTOMER to procure alternative Electronic Information, Products, and Services of substantially equivalent capability, function, and performance.
	3. Any Work or Deliverable delivered to the EGE CUSTOMER as a remedy under this Section 4 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**
	1. In addition to the compliance obligations imposed by the main body of the Contract, PROVIDER shall comply with:
		1. All 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.
		2. 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 PROVIDER’s performance under the Contract. Such obligations may arise from:
			1. Health Information Portability and Accountability Act (HIPAA)
			2. IRS Publication 1075
			3. Payment Card Industry Data Security Standard (PCI-DSS)
			4. FBI Criminal Justice Information Service Security Addendum
			5. CMS Minimum Acceptable Risk Standards for Exchanges
			6. Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information With The Social Security Administration
	2. PROVIDER 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 PROVIDER’s performance under the Contract.
	3. PROVIDER shall allow the EGE CUSTOMER reasonable access and shall provide the EGE CUSTOMER with information reasonably required to assess PROVIDER’s compliance. Such access and information shall include:
		1. 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
		2. The performance of security audit and penetration tests, as requested by OIS.
	4. To the extent PROVIDER controls or maintains information systems used in connection with EGE CUSTOMER Records, PROVIDER will provide OIS or EGE CUSTOMER’s security representative 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 or EGE CUSTOMER’s security representative. PROVIDER will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the EGE CUSTOMER. The EGE CUSTOMER will work with PROVIDER and OIS or EGE CUSTOMER’s security representative 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 or EGE CUSTOMER’s security representative will consider such requests in accordance with their policies and procedures referenced herein.
6. **Transition of Services**

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

1. **License or Use Audit Rights**
	1. To the extent that PROVIDER, through this Contract, a Task Order or otherwise as related to the subject matter of this Contract, has granted to the EGE CUSTOMER any license or otherwise limited permission to use any PROVIDER Property, the terms of this Section 7 shall apply.
	2. PROVIDER shall have the right, at any time during and throughout the Contract term, but not more than once per EGE CUSTOMER Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the EGE CUSTOMER 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 EGE CUSTOMER shall complete the audit and provide certification of its compliance to PROVIDER (“Audit Certification”) within 120 days following the EGE CUSTOMER’s receipt of the Audit Request.
	3. If upon receipt of the EGE CUSTOMER’s Audit Certification, the Parties reasonably determine that: (i) the EGE CUSTOMER’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 EGE CUSTOMER would have been or is then required to purchase additional maintenance and/or services (“Maintenance”), PROVIDER shall provide written notice to the EGE CUSTOMER in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the EGE CUSTOMER bring its use into compliance with such use restrictions and limitations.
2. **Accessibility**
	1. PROVIDER and its work product shall comply with all applicable provisions of §§ 24-85-101 et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Office of Information Technology pursuant to § 24-85-103 (2.5). PROVIDER shall also 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.
	2. PROVIDER shall indemnify, save, and hold harmless EGE CUSTOMER, its employees, agents and assignees (collectively, the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to the PROVIDER’s failure to comply with §§ 24-85-101 et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to § 24-85-103 (2.5).
	3. EGE CUSTOMER may require PROVIDER’s compliance to be determined by a third party vendor acceptable to the EGE Customer that shall attest that the PROVIDER’s work product and software is in compliance with §§ 24-85-101 et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to § 24-85-103 (2.5).

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