



**Statewide Colorado Registration and Election
(SCORE)
Contract**

by and between

Colorado Department of State

and

Accenture LLP

Contract Routing Number: 05-VAA-00006

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RECITALS

THIS CONTRACT, made this 14th day of August, 2004 by and between the State of Colorado, acting by and through the Colorado Secretary of State, 1560 Broadway, Suite 200, Denver, Colorado 80202, (“State”) for the use and benefit of the Colorado Department of State (hereinafter referred to as “State” or “CDOS”) and Accenture LLP, 1400 16th Street, Suite 500, Denver, Colorado 80202, (hereinafter referred to as “Contractor”).

WHEREAS, on January 16, 2004, the State published, on the CDOS website and on the Bid Information and Distribution System (“BIDS”), a Request for Proposal (“RFP”) seeking a vendor to design, develop, implement, maintain, and support a statewide voter registration and election management system on a fixed-price basis to meet the requirements of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301 *et seq.* (2002) (“HAVA”), as described further in this Contract.

WHEREAS, Contractor responded to the above described RFP on February 17, 2004.

WHEREAS, the State engaged in a protracted and detailed review of each RFP submitted, rated each proposal, and concluded with a selection of a system that would best benefit the State of Colorado. Subsequent meetings were held between representatives of the State and the Contractor to clarify certain aspects of Contractor’s response to the RFP.

WHEREAS, on May 18, 2004, State selected Contractor to be the Statewide Colorado Registration and Election (SCORE) project vendor pursuant to RFP number DOS-HAVA-0001.

WHEREAS, authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Contract under Encumbrance Number PO-VAA-05-000000006 in Fund Number 20P, Appropriation Account H01, Organization HAVA, and Program Code 2040.

WHEREAS, required approval, clearance and coordination has been accomplished from and with the appropriate agencies.

NOW, THEREFORE, in consideration of these premises, and other good and valuable consideration, State and Contractor agree as follows:

AGREEMENT

1. DEFINITIONS AND MEANINGS

The State and Contractor agree to the definitions and the meanings of the terms (words and phrases) used in this Contract as follows:

“**Accenture**” shall mean Accenture LLP, an Illinois General Partnership, with a Colorado primary office located at 1400 16th Street, Suite 500, Denver, CO 80202.

“**AESM Software**” shall mean the Accenture Election Systems Manager proprietary software owned by Accenture that will be used in the design, implementation, and operation of the SCORE system. AESM Software shall include the changes made to the Contractor’s COTS software to address Colorado specific requirements. AESM Software does not include the Custom SCORE Software. The AESM Software Object Code will be licensed to the State for use in the SCORE system. The AESM Software Source Code shall be maintained in Escrow per provisions within this Contract.

“**Agency Authorized Users**” shall mean employees, agents, and third-party contractors of the State, County Clerks and Recorders and their staff, and others, as deemed by the State, authorized to use the SCORE system.

“**API**” shall mean Application Program Interface, a set of commonly used functions that provide a programmer with pre-programmed functionality.

“**Architectural Assessment and Validation Vendor**” and “**AA&V Vendor**” shall mean a vendor contracted by the State to assess Contractor’s proposed system architecture and the efficacy of the technical solution for the SCORE project. Nothing in this definition shall imply or suggest that the AA&V role will release Contractor from its primary responsibility to design and supply a turnkey automation system.

“**BAFO**” shall mean Best and Final Offer.

“**BCOL**” shall mean Bilateral Change Order Letter.

“**Bid Information and Distribution System**” and “**BIDS**” shall mean the Colorado Bid Information Distribution System (BIDS), which is an electronic notification system that uses commodity codes to notify interested vendors of State of Colorado bids.

“**Business**” shall mean all procedures and processes directly related to the State’s Statewide Voter Registration and Elections programs and operations.

“**CDOS**” shall mean the State of Colorado acting by and through the Department of State.

“**CDOS contractor**” shall mean third-party contractors employed by the State not party to the terms of this Contract.

“**CMMI**” shall mean Capability Maturity Model Integration. It is a process improvement model to be used by the Contractor on the SCORE project.

“**Consequential Damages**” shall mean loss or injury which does not flow directly and immediately from the act of a party but only from some of the consequences or results of such act.

“**Contract**” shall mean this Agreement including Exhibits A through K.

“**Contract Effective Date**” shall mean the date when the Contract has been fully executed by the Contractor, applicable state agencies, and the State Controller, or designee.

“**Contractor**” and “**Prime Contractor**” shall mean Accenture LLP.

“**COTS**” shall mean commercial off-the-shelf.

“**Counties**” shall mean the sixty-four (64) counties within the State of Colorado, acting through their respective County Clerks.

“**C.R.S.**” shall mean Colorado Revised Statutes.

“**Custom SCORE Software**” shall mean the software code designed, developed, tested, and implemented specifically to meet Colorado-unique requirements and not to become part of the AESM Software, such as SCORE interfaces to other Colorado agencies. The Custom SCORE Software Source Code and Object Code will be owned by the State and, following the Warranty Period, will be maintained by the State.

“**Deliverable**” shall mean a written document, supply, service, software, hardware, or other item to be delivered by the Contractor to the State as part of Contract performance.

“**DOC**” shall mean the Colorado Department of Corrections.

“**DOR**” shall mean the Colorado Department of Revenue.

“**DPA**” shall mean the Colorado Department of Personnel and Administration.

“**DPHE**” shall mean the Colorado Department of Public Health and Environment.

“**Failover Testing**” shall mean simulating failures of redundant hosting site system components, including application and database servers, and verifying that the backup or spare unit takes over for the primary unit as designed.

- “Final SCORE System Acceptance”** shall mean confirmation by the State that Contractor has provided a system to the State that conforms to System Acceptance Criteria as addressed in *Exhibit A - Statement of Work*.
- “Fiscal Rules”** shall mean rules promulgated by the State Controller that regulate the financial affairs of the State, including the form, use, execution and approval of contracts, leases, interagency agreements, purchase orders, and other commitment vouchers.
- “Fiscal Year”** shall mean the period during the year for which funds are appropriated and money is made available for commitment and expenditure by a government. The State’s fiscal year is July 1st through June 30th.
- “HAVA”** shall mean The Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301 *et seq.* (2002).
- “Hardware”** shall mean all SCORE system third-party hardware, licenses and related documentation provided by Contractor for use by the Agency Authorized Users.
- “Help Desk”** shall mean support services (*e.g.*, telephone, email, etc.) to address questions and problems Agency Authorized Users may have regarding the operation of the SCORE system.
- “Holdback”** shall mean monies held back from an Interim Payment and later paid to Contractor after Final SCORE System Acceptance.
- “Indemnity”** shall mean an agreement where one party contractually agrees to accept liability for a loss shifted to or incurred by the other party legally held responsible.
- “Infra”** shall mean information (*e.g.*, paragraphs and sections) that follow later in the text of this Contract.
- “Interfacing Agency”** shall mean any government entity with whose system the SCORE system must interact. This interaction may take a number of forms: a real-time interface, a batch interface, or a manual exchange of data through diskette, CD-ROM, or other means.
- “Interim Acceptance”** shall mean the process of receiving and evaluating deliverables prior to Final SCORE System Acceptance, which enables the State to make interim milestone payments to Contractor for such deliverables.
- “Interim Milestone Payment”** and **“Interim Payment”** shall mean any and all payments made by the State to the Contractor prior to Final SCORE System Acceptance. All such payments are subject to Final SCORE System Acceptance and the provisions of *Exhibit A - Statement of Work* and *Exhibit B - Payment Schedule*.
- “Independent Verification and Validation Vendor”** and **“IV&V Vendor”** shall mean the vendor responsible for independent verification and validation of Contractor

processes and deliverables. Nothing in this definition shall imply or suggest that the IV&V Vendor role will release Contractor from primary responsibility for the design or for the delivery of a turnkey SCORE system.

“Key Personnel” shall mean Contractor personnel deemed essential for the successful implementation of the SCORE system.

“Liquidated Damages” shall mean a specific sum of money expressly stipulated to by the Parties to the Contract as the amount of damages to be recovered if the specified performance is late.

“May” shall mean an auxiliary verb qualifying the meaning of another verb by expressing ability, permission, or possibility.

“Milestone” shall mean a work grouping below a phase that is comprised of one (1) or more deliverables. A Milestone represents the delivery of a complete unit of value to the success of the project.

“MNT” shall mean the Multi-Use Network employed by the DPA Division of Information Technologies (DoIT) to establish communications with the sixty-four counties of Colorado.

“Modification” shall mean any written alteration of specifications, place of delivery, period of performance, price, quantity, or other provisions of a contract.

“Object Code” shall mean machine-readable code that is executable by a computer system.

“O&M” shall mean Operations and Maintenance.

“Onsite Support Period” – the sixteen (16) month period during which Contractor shall provide onsite support according to guidelines set forth in *Exhibit D - Service Level Agreement*.

“Oral Presentation” shall mean the presentation made by members of Contractor’s SCORE project team to the State on April 27, 2004. The Oral Presentation is attached as *Exhibit H – Accenture Oral Presentation Materials, dated April 27, 2004*, and delineates issues and topics discussed during the Oral Presentation.

“Parties” shall mean the parties to this Contract (each a “Party” and collectively, the “Parties”), being the State and the Contractor.

“Performance Testing” shall mean testing of the SCORE system under a simulated full user load to verify performance and response times against the System Acceptance Criteria.

“Personally Identifiable Information” shall mean Information about an individual collected by a government entity that reasonably could be used to identify such

individual, including, but not limited to, first and last name, residence or other physical address, electronic mail address, telephone number, birth date, credit card information, and/or social security number.

“**PMO**” shall mean the Project Management Office of the Department of State.

“**Prime Contractor**” and “**Contractor**” shall mean Accenture LLP.

“**Project Manager**” shall mean a person, one designated by the Contractor and one designated by the State, who has the authority to make relevant day-to-day decisions in regard to the SCORE project for the Party naming him or her.

“**Proprietary Information**” shall mean information relating to a Party’s research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients, or affiliates, but does not include information lawfully obtained from third parties that is in the public domain, or that is developed independently.

“**Recommendations**” shall mean any written recommendations made, options offered, or alternatives proposed by Contractor. For the avoidance of doubt, Parties agree that all recommendations from Contractor shall be considered and decided upon by State.

“**Request for Proposal**” and “**RFP**” shall mean the State’s Request for Proposal, and is included in this Contract as *Exhibit F - Request for Proposals (DOS-HAVA-0001)*, Dated January 16, 2004.

“**RFP Response**” shall mean Contractor’s response to the RFP and is included in this Contract as *Exhibit G - Accenture RFP Response, Dated February 17, 2004*.

“**Scalable**” shall mean the ability to add additional components to the SCORE system to increase its workload and/or storage capacity.

“**SCORE**” shall mean the Statewide Colorado Registration and Election system that will replace existing voter registration systems located in each of Colorado’s counties. The SCORE system will consist of a new centralized architectural platform, including all application, operating and support software necessary to meet the SCORE requirements.

“**Secretary of State**” shall mean the elected executive who heads the Colorado Department of State (“CDOS”) and who, for State, will render the final decision on any matter involving the SCORE Contract and the SCORE Project.

“**Security Testing**” shall mean testing to confirm that security was implemented such to minimize security risks identified. Security Testing ascertains that the SCORE system components perform as expected regarding security requirements.

“**Shall**” shall mean to require a mandatory act, or response, and excludes the idea of discretion. The use of “shall” in this Contract creates a legal obligation.

- “**Should**” shall mean to imply a duty or obligation, though of propriety or expediency. The use of should in this Contract creates a moral obligation, as opposed to a legal obligation.
- “**Signatory**” shall mean the individual who signs this Contract personally or through an agent and who thereby legally obligates Contractor or State to the terms thereof.
- “**Source Code**” shall mean human-readable code that can be translated or compiled into Object Code.
- “**Specification**” shall mean any description of the physical nature or functional characteristic of a service or good.
- “**State**” shall mean the State of Colorado, Department of State.
- “**Statement of Work**” and “**SOW**” shall mean a detailed, written statement of the Parties’ responsibilities and the Project’s phases, milestones, goals and deliverables.
- “**Subcontractor**” shall mean a vendor who performs a portion of the Contract for the “Prime Contractor.” The subcontractor has a contractual relationship with the Prime Contractor, not the State.
- “**Subject Matter Expert**” and “**SME**” shall mean a person with a high degree of knowledge and expertise in a particular subject area (*e.g.* voter registration, election petitions, etc.).
- “**Supplies**” shall mean all property including, but not limited to, equipment and materials. The term does not include land, the purchase of an interest in land, water or mineral rights, workers’ compensation insurance, benefit insurance for State employees, or property insurance furnished in connection with public printing as defined in Section 24-70-201, 7B C.R.S. (2003) as amended.
- “**Supra**” shall mean information (*e.g.*, paragraphs and sections) found earlier in the text in this Contract.
- “**System Acceptance Criteria**” and “**SAC**” shall mean the criteria to be used by State to determine acceptance of the SCORE system from Contractor.
- “**System Availability**” shall mean the time during which the SCORE system is available to Agency Authorized Users to access and perform voter registration and election management operations.
- “**System Investigation Request**” and “**SIR**” shall mean a written request, created by State or Contractor, to review a potential nonconformity found in the SCORE system.
- “**System Response Time**” shall mean the time from the arrival of any interactive request at the hardware/software/application system to its departure from that system *i.e.*, system response time is exclusive of any network time.

“**Term**” shall mean the period of performance of this Contract.

“**Termination for Cause or Default**” shall mean the contractual right of either Party to end the Contract, pursuant to the rights granted and in the manner required in the Contract, because of an unexcused failure of the other Party to perform a contractual obligation (either omission or commission) in accordance with the Contract terms.

“**Termination for Convenience**” shall mean the contractual right of State in this Contract to terminate the remaining obligations under the Contract based on a change in circumstances or other “good faith” basis, after giving a contractually specified period of notice.

“**Turnkey**” shall mean a type of system that Contractor shall deliver to the State, which is consistent with the SCORE system requirements and shall be comprised of all components integrated, tested, and certified for immediate use in supporting an integrated Statewide Voter Registration and Election Management system according to the terms and provisions of this Contract and HAVA, as described in *Exhibit A – Statement of Work*.

“**Work Product**” shall mean reports, documents, templates, studies, strategies, operating models, technical architectures, designs, software objects, software programs, source code, object code, specifications, documentation, abstracts and summaries thereof, and other materials which are originated and prepared by Contractor for the State, either independently or in concert with the State or third parties during the course of Contractor’s performance under this Contract.

2. STATEMENT OF WORK

The Contractor shall perform the work and provide the deliverables as described in *Exhibit A - Statement of Work* of this Contract.

3. PERFORMANCE PERIOD

- A. The Contract shall be effective upon approval by the State Controller, or designee. The Contract performance contemplated herein shall commence as soon as practicable after the Contract Effective Date and shall be undertaken and performed in the manner set forth in this Contract and extend through the warranty period ending May 4, 2007.
- B. There is no right or expectation of renewal and any renewal will be determined at the discretion of the State and written agreement of the Contractor.
- C. Pursuant to Section 24-30-202(1), C.R.S., all provisions relating to time of performance shall be adjusted, and payment therefore shall be adjusted proportionately, to account for the change in work and services as reduced to writing by an amendment or BCOL. It is understood the State shall not be liable for

payment of work or services nor for costs or expenses incurred by the Contractor prior to the proper execution and approval of this Contract.

- D. The Parties agree that "time is of the essence." Failure of the Contractor to provide Milestones according to *Exhibit A - Statement of Work* by the dates specified due to the fault or negligence of the Contractor or its subcontractors shall be grounds for liquidated damages or termination of the Contract, in accordance with the applicable sections of the Contract.
- E. Any license agreements, warranty agreements or extended warranty agreements entered into and authorized by this Contract may extend beyond the end of the Term of this Contract.

4. PRICE/COST

The cost of the services and materials defined in this Contract will not exceed \$10,055,286.00. The State shall pay the Contractor as set forth in *Exhibit B - Payment Schedule* of this Contract. The Contractor will successfully complete the services and materials in accordance with Contract requirements within the ceiling price specified herein or as adjusted based on changes to the Contract in accordance with the procedures specified herein.

5. PRICE ADJUSTMENT

Any adjustment in the Contract price shall be made upon amendment or BCOL in one or more of the following ways:

- A. By agreement on a fixed-price adjustment.
- B. By unit prices specified in the Contract.
- C. By mutual agreement of State and Contractor.
- D. By Contractor providing data for any price adjustment subject to the provisions of the Cost or Pricing Data section of the Colorado State Procurement Rules.

6. PAYMENT SCHEDULE

Approved interim and final payments for Contract deliverables will be made per *Exhibit B - Payment Schedule* of this Contract.

7. PAYMENT TERMS

Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation shall be recovered from the Contractor by deduction from subsequent

payment under this Contract or other contracts between the State and the Contractor, or by the State as a debt due to the State. Each party shall provide the other with written notice of the nature of the error or inaccuracy as soon as such Party becomes aware of the error or inaccuracy.

1. For Milestones 1, 2, and 3, State shall make full payment on all delivered, accepted, and properly invoiced software and hardware products within thirty (30) days.
2. State shall pay Contractor, by Milestone, for all Deliverables completed and accepted by State in accordance with the terms of this Contract. Payment shall be made: 1) after the completion of each project Milestone for Milestones 4 through 19 (*Exhibit B, Payment Schedule*); 2) after the acceptance of the associated Deliverables for that Milestone by State; and 3) after the receipt of an acceptable invoice from the Contractor.

State shall acknowledge in writing acceptance of the Deliverable(s) as outlined in *Exhibit A – Statement of Work*, within each Milestone. Upon acceptance by the State of all Deliverables within a Milestone, Contractor may submit an invoice for the Deliverable(s).

3. State shall make payment in accordance with the established schedule of payments and upon acceptance, which includes the invoice amount and the payment amount.
4. Payment for Onsite Support (Milestone 20). State shall pay the Contractor monthly for onsite support within thirty (30) days of completed performance and receipt of an acceptable invoice from the Contractor.
5. Payment for Warranty (Milestone 21). State shall pay the Contractor monthly, in advance, for warranty performance within thirty (30) days of receipt of an acceptable invoice from the Contractor.
6. Payment for 2005 Election Support Services (Milestone 22). State shall pay the Contractor monthly within thirty (30) days of completed performance and receipt of an acceptable invoice from the Contractor.
7. Amounts relating to required holdbacks or those that are disputed by State or the amounts of liquidated damages that have been offset against earned billings of Contractor shall not be considered as late payments.

8. DISPUTED CHARGES

State may withhold payment of particular charges that State reasonably and in good faith disputes. Any amounts (or portions thereof) not so disputed otherwise will be paid by the applicable payment due date. State shall notify Contractor in writing on or before the

payment due date of any disputed charges for which State is withholding payment and describe, in reasonable detail, the reason for such withholding. State and Contractor shall diligently pursue an expedited resolution of such dispute. In the event of any good faith dispute with regard to a portion of any invoice, the undisputed portion shall be paid as provided herein. Upon resolution of the disputed portion, any amounts owed to Contractor shall be paid with interest at 8% per annum accruing from the date such amounts were originally due.

9. ORDER OF PRECEDENCE

In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- A. Colorado Special Provisions and Signature Page, Contract, pages 61 through 63.
- B. Executed Bilateral Change Order Letters or Amendments
- C. Contract, pages 1 through 60.
- D. Contract *Exhibit A - Statement of Work*
- E. Contract *Exhibit B - Payment Schedule*
- F. Contract *Exhibit I - Contractor's Best and Final Offer*
- G. Contract *Exhibit H - Contractor's Oral Presentation*
- H. Contract *Exhibit G - Contractor's RFP Response*
- I. Contract *Exhibit F - Request for Proposals (DOS-HAVA-0001)*
- J. Contract Exhibits C, D, J, and K

10. SERVICE LEVEL AGREEMENT

The Parties hereto agree to negotiate a service level agreement. The Parties will amend the Contract at a later date to add the service level agreement as *Exhibit D*.

11. KEY PERSONNEL PROVISION

- A. In an effort to develop an environment in which the services may be provided in an effective manner, the Parties have jointly designated certain key Contractor positions, including the Contractor Project Manager, as set forth in *Exhibit C - Contractor Key Personnel* of this Contract.
- B. Contractor Project Manager. During the term of the Contract, Contractor will designate an individual who will be primarily dedicated to the SCORE project (the

“Contractor Project Manager”). The Contractor Project Manager will be Jason Skurcenski. The Contractor Project Manager:

- (1) Will be the primary contact for State in dealing with Contractor under this Contract;
 - (2) Will have overall responsibility for managing and coordinating the delivery of the SCORE system;
 - (3) Will meet regularly with the State Project Manager; and
 - (4) Will have the authority to make decisions with respect to actions to be taken by Contractor in the ordinary course of day-to-day management of Contractor’s account in accordance with this Contract.
- C. Except in the event of resignation, death, disability or termination, Contractor shall notify State in writing at least twenty (20) business days prior to replacing any Contractor Key Personnel. The hiring, replacement, or release of Contractor key personnel is subject to prior written approval by State. In the event of any replacement of Contractor Key Personnel, Contractor shall provide for an appropriate transition (overlap) period for the new individual and use commercially reasonable efforts to minimize any disruption such replacement may cause in the performance of Contractor’s obligations under this Contract.
- D. If State determines, in good faith and consistent with applicable law, that the continued assignment of any Contractor Key Personnel is not in the best interests of State, State will notify Contractor in writing requesting the replacement of the individual and providing a summary of the reasons why the replacement is needed. Promptly after receiving such request, the Parties shall consult the matters stated in the request and either institute mutually agreeable corrective action or replace the individual within a mutually agreed upon timeframe. The replacement individual will have suitable ability and qualifications reasonably acceptable to State. This Paragraph (D) will not be construed to give State the ability to terminate the employment of any Contractor personnel or subcontractor personnel.

12. BEST INDUSTRY PRACTICES

The Contractor and the State shall conduct Project activities in a manner that follows industry recognized best practices. Examples of such practices include:

- A. Strong Contractor and State Executive Leadership so that business needs are met, stakeholders are aware of executive commitment to the Project, and oversight and direction are provided when needed.
- B. Strong Contractor and State Project Management so that plans and processes are in place to accomplish day-to-day project activities in a uniform, quality and efficient manner.

- C. A process exists and is followed to identify, assess, manage and mitigate Project risks.
- D. Project plans exist and are followed to help ensure quality and success in the areas of budgetary control, schedule control, change control, issue resolution, change management, quality assurance, conversion, testing, and training.
- E. Software development adheres to vendor (vendors of compilers, databases, etc.) guidelines and recommendations.
- F. Contractor follows industry acceptable standards to address security during all phases of the project as set forth in the Contract as amended.
- G. Project staff possess project-required experience and follow professional standards of conduct.
- H. Contractor employs CMMI Level 4 techniques to help accomplish Project objectives.

13. LEGAL AUTHORITY

The Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Contractor to its terms. The person(s) executing this Contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this Contract.

14. CHANGES TO CONTRACT

- A. By written instrument, State may make changes within the general scope of this Contract including the following:
 - (1) Drawings, designs, or specifications developed for State;
 - (2) Method of shipping or packing;
 - (3) Place of delivery or performance of services.
- B. Any change, increasing or decreasing the Contractor's cost to State or the time of performance of any part of the Contractor's work, requires a written modification to this Contract. Any adjustment in the Contract price made pursuant to this paragraph shall be determined in accordance with the Price Adjustment Clause of this Contract.
- C. Failure of the State and Contractor to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided State makes reasonable provisional adjustments in payment or time for performance. By

proceeding with the work, Contractor shall not be deemed to have prejudiced any claim for additional compensation or an extension of the time for completion. Additionally:

- (1) Within thirty (30) calendar days after receipt of a written modification under this Section’s paragraph “C”, unless extended by State in writing, Contractor shall file notice of intent to assert a claim for an adjustment.
- (2) No claim by Contractor for an adjustment shall be allowed if asserted after State makes final payment to Contractor under this Contract.

15. CHANGE REQUEST PROCESS

- A. Any anticipated change shall be documented through a Change Request Authorization Form, to be developed as part of the Change Control Plan deliverable identified in *Exhibit A - Statement of Work*.
- B. The HAVA Change Committee shall review all change requests generated through a Change Request Authorization Form. Any recommendation for approval of a change by the Change Committee shall be forwarded to the HAVA Steering Committee for review and recommendation to the Secretary of State for approval.
- C. Any changes submitted to the Change Committee shall be based upon a firm, fixed price proposal from Contractor [and shall be subject to the twenty (20) percent holdback.]
- D. All change efforts not in the form of personnel labor shall be provided at mutually agreed-to prices. Fixed price change proposals based upon personnel labor shall be computed using the appropriate hourly rates as described in the following table. These rates expire December 31, 2005. All change request effort not in the form of personnel labor shall be provided at mutually agreed to prices.

Hourly Rate Table	
Position Description	Rate / Hour
Project Manager	\$ 250.00
Team Leader	\$ 170.00
Technical Engineer	\$ 150.00
Senior Programmer/Analyst	\$ 120.00
Programmer/Analyst	\$ 90.00

- E. Bilateral Change Order Letters (“BCOL”). Bilateral changes within the general scope of this Contract may be executed using the Change Control Plan, to be delivered per the SOW, and *Exhibit E - Bilateral Change Order Letter (Template)* for the reasons as follows:
 - (1) Where the agreed-to changes do not result in an adjustment to the firm, fixed price, delivery schedule, or other terms and conditions of this Contract. In this

circumstance, the BCOL shall contain a mutual release of claims for adjustment of price, delivery schedule, or other terms and conditions.

- (2) Where the changes to the Contract do not modify the Payment Schedule defined in *Exhibit B - Payment Schedule*.
 - (3) Where the changes to the Contract reflect prices equal to, or less than, established catalog prices generally extended to the public, or on prices or rates set by law or regulation.
 - (4) Where the prices are not itemized in this Contract and are not listed in any established catalog, then the prices shall be negotiated and shall be equal to, or less than, prices generally extended to the public.
- F. The BCOL must bear the signature of the Secretary of State, or designee, the State Controller, and Contractor. The BCOL shall relate back to the basic Contract and include a detailed description of the changes, i.e., price adjustment, effective date, time within which changed work must be done, etc. Any change requested by State shall be based upon a fixed-price proposal from Contractor. Other bilateral changes to this Contract, deemed outside the scope of this paragraph, shall be executed by formal amendment to Contract and approved in accordance with Colorado law.
- G. Any BCOL and Amendments shall be numbered consistently and successively in order to avoid confusion.

16. MODIFICATION AND AMENDMENT

This Contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations, and mutually agreed to by the parties in accordance with the Contract. No modification of this Contract shall be effective unless agreed to in writing by both Parties in an amendment to this Contract that is properly executed and approved in accordance with applicable law.

17. CONTRACTOR'S TIMEFRAME FOR PERFORMANCE

The following chart sets forth the timeframe for the Contractor's performance of work commencing August 16, 2004 or upon Contract execution by the State Controller or his designee, whichever is later.

Phase	Milestone	Estimated Milestone Completion Date
1 – Hardware and Software Purchase	1 – Purchased Hardware, Purchase Hardware Warranty, Install Hardware in Data Center	n/a
	2 – License for software and annual software maintenance	n/a
	3 – Workstation Inventory	n/a

Phase	Milestone	Estimated Milestone Completion Date
2- Analysis	4 – Project Plan, Organizational Chart	10/05/2004
	5 – Application Requirements, Acceptance Criteria, Technical Architecture Design	11/12/2004
	6- Test Plan, Conversion Plan, IT Skill Gap Analysis	10/18/2004
3- Design	7 – Detailed Design Group 1, Training Plan, Security Plan, Development Standards, Conversion Detail Design	12/17/2004
	8 – Detailed Design Group 2, Implementation and Transition Plan, Help Desk plan	02/11/2005
4- Configuration / Development	9 – Pilot Test Plan, Disaster Recovery Plan, Updated Test Plan, Pilot Conversion Results	03/31/2005
	10 – Configured SCORE Software, Training Curriculum	04/08/2005
5 – System Test	11 – Maintenance and Support Plan, System Availability Plan	02/02/2005
	12 – System Test Results, Mock Conversions for Remaining Counties	08/04/2005
6 – Acceptance / Performance Test	13 – SCORE Readiness Report, Performance and Security Test Results	08/08/2005
7 – Pilot County Implementation	14 – Pilot Implementation	09/14/2005
	15 – Pilot County Training Survey Results	09/07/2005
8 – AESM Upgrade	16 – Detailed Design/SCORE Configuration, Updated Testing Approach, Regression and System Test Results	06/30/2005
9 – Statewide Implementation	17 – SCORE Implementation, Training Completion Rollout 1	10/24/2005
	18 – SCORE Implementation, Training Completion Rollout 2	02/01/2006
10 – Final Documentation	19 – Final Documentation	12/19/2005
11 – Onsite Support	20 – Onsite Support	02/06/2007
12 – Warranty	21 - Warranty	05/09/2007
13 – 2005 Election	22 – 2005 Election Support Services	11/18/2006

18. AWARD OF RELATED CONTRACTS

State may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the State in all such cases.

19. AUDIT, INSPECTION AND MONITORING

- A. The Contractor shall permit the State, the U.S. Election Assistance Commission, U.S. Department of Justice, U.S. General Accounting Office, U.S. General Service Commission or any other duly authorized governmental agent or agency, to monitor all activities conducted by the Contractor pursuant to the terms of this Contract. Such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, onsite checking, formal audit examinations, or any other reasonable procedures. All such monitoring shall be performed in a manner that does not interfere unreasonably with the work of the Contractor.
- B. The Contractor authorizes the State to perform audits or inspections of Contractor's records related to the Contract as described in Section 20 "Maintenance of Records", *infra*, at any reasonable time during the term of this Contract and for a period of five (5) years following the termination of this Contract.
- C. The Contractor will work closely with the State acquired IV&V Vendor. The Contractor shall reasonably integrate the IV&V Vendor into the project team and involve the IV&V Vendor in project activities including the generation of deliverable expectations documents, review and feedback related to deliverables, requirements tracking, risk management, status meetings, design sessions, issue resolution, project metrics reviews, work plan reviews, and change control. The Contractor shall permit the IV&V Vendor to participate as an active team member, providing input and communicating early and often with the Contractor project team.
- D. The Contractor shall permit the State, Federal Government, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to the Contract, as described in Section 20 "Maintenance of Records", *infra*. The Contractor shall also permit these same described entities to monitor all activities conducted by the Contractor pursuant to the terms of this Contract, including, but not limited to, the right to inspect the development of the AESM Software and Custom SCORE Software, upon reasonable notice and execution of standard nondisclosure and use agreements, attached as *Exhibit K – Nondisclosure and Use Agreement*. As the monitoring agency may in its sole discretion deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site check, or any other reasonable procedure.
- E. No Party shall be responsible for any taxes, fees or any other liabilities imposed upon any other Party as a result of such audits and inspections. Both Parties shall use reasonable efforts to minimize the number and duration of such audits or inspections conducted and to conduct such audits and inspections in a manner that will minimize the disruption to the other Party's business operations. The Party requesting an audit shall be responsible for the costs associated with the audit review. Information which is marked proprietary or confidential, disclosed during

any such audit, shall be shared in accordance with Sections 31 “Confidentiality” and 32 “Confidentiality of Records” of Contract.

20. MAINTENANCE OF RECORDS

Contractor shall maintain during the Term of this Contract, and for a period of five (5) years following date of termination of this Contract or final payment hereunder, whichever is later, copies of all financial records, documents, communications, or other materials generated or reviewed in connection with performance under this Contract. Records also shall include information regarding all direct or indirect costs of labor, materials, equipment, supplies or services provided or rendered. These financial records shall be maintained according to generally accepted accounting principles, and Contractor shall facilitate the separating of such financial records from other records of the Contractor. Contractor shall make these records available to the State for inspection and copying upon any request for an audit of such records. In the event of an audit, records shall be preserved until all audits are concluded.

21. STATE WARRANTIES

The State represents, warrants, and certifies that the following statements of fact are true, and shall remain true during the term of this Contract:

- A. Performance. The State shall perform its duties under this Contract diligently and competently.
- B. Consents. All necessary consents for the performance of the State’s duties under this Contract have been obtained. The State warrants that it shall provide Contractor with the necessary consents and permission to utilize State’s property and licenses.
- C. No Solicitation. For a period of one (1) year after Final SCORE System Acceptance, the State shall not solicit or hire any Contractor’s employee, including employees of subcontractors at any tier, who has worked on the SCORE Project unless State and Contractor mutually agree to an exception.

22. CONTRACTOR’S COVENANTS, WARRANTIES AND CERTIFICATIONS

- A. As of the Contract Effective Date, Contractor covenants, represents, warrants, and certifies the true statements of fact that follow. Contractor further certifies that the statements of fact shall remain true during the term of this Contract.
- B. Organization, Qualification, Compliance with Laws. Contractor is an Illinois general partnership registered as a limited liability partnership duly organized under the laws of Illinois. Contractor is qualified to do business in the State of Colorado as a foreign limited liability partnership. Contractor is in good standing in the State of Illinois and all other states in which it transacts business, including the State of

Colorado. Contractor has the requisite power and authority to carry on its limited liability partnership business, as presently conducted, and Contractor complies with all laws and regulations governing its activities.

- C. No Adverse Changes. Contractor has not suffered any adverse change in personnel and capabilities since the date of Contractor's RFP Response. By executing this Contract, Contractor represents that it is capable of performing all of the services and providing all of the deliverables required by the State in the Contract. At time of execution of this Contract, Contractor shall advise State on the loss of any partners, suppliers, or subcontractors since the date of Contractor's RFP Response.
- D. No Litigation. Contractor is not involved in any litigation or claim with respect to services, including voter registration and election management system services, provided to other clients of Contractor, which would affect Contractor's ability to perform under this Contract. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy or foreclosure.
- E. No Pending Litigation. To its knowledge, Contractor is not aware of any threatened litigation or claim, which would affect Contractor's ability to perform under this Contract. In the event that the Contractor learns of any actual litigation (i.e., Contractor named a party defendant) related to its Government or elections practice, Contractor shall notify State, in writing, within five (5) business days after being served with a summons, complaint, or other pleading filed in federal or state court or with an administrative agency. If requested in writing by the State and not subject to confidentiality restrictions, Contractor shall deliver copies of litigation documents to the representatives designated in this Contract.
- F. Performance. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services as required by this Contract. Contractor must provide all services in accordance with applicable federal, state and local laws and regulations, and in a manner consistent with generally accepted professional and technical standards of the computer and election industries except as otherwise stated in this Contract.
- G. Consents and Permits. All necessary consents for the performance of Contractor's duties under this Contract have been obtained. Throughout the term of this Contract, Contractor shall obtain and shall maintain all licenses, permits, authorizations, and approvals necessary for performing work under this Contract.
- H. Manufacturer's Warranties. Contractor shall transfer, assign and/or administer all manufacturers' warranties, which attend all hardware, software, or other goods delivered.
- I. System Defects. Contractor warrants that the system shall conform to the System Acceptance Criteria for a period ending ninety (90) days after the date of Final SCORE System Acceptance. The Contractor warrants that the hardware and software shall incorporate proven and reliable technology as defined in the System

Acceptance Criteria. The COTS or custom software to be developed as specified in the Contract or modified by a change order shall represent the most recent version(s) of software, or those versions of software as mutually agreed upon by State and Contractor. The AESM Software and Custom SCORE Software to be developed as specified in the Contract shall be designed to enable the SCORE System to maintain the same high level of performance for a period of ninety (90) days after the date of Final SCORE System Acceptance as specified in the System Performance Specifications and consistent with the SOW.

- J. Upgrades to Software. Upgrades or new versions of AESM Software employed in the System (not already provided in the maintenance provisions of the applicable software license agreement), which are developed and released after the Final SCORE System Acceptance, shall be covered in the Annual Maintenance Contract.
- K. License to Software. The State shall be granted a perpetual, non-exclusive enterprise license in all AESM Software Object Code, documentation, operating instructions, research, reports, studies, or other data created by Contractor for the State's internal use in accordance with the mutually agreed-upon license attached as *Exhibit J – AESM Software License Agreement*. The State shall take commercially reasonable measures to protect the licensed AESM Software from unauthorized disclosure.
- L. Ownership of Software. Subject to paragraph K above and Section 44 "Escrow", the State acknowledges that Contractor shall retain rights of ownership of all AESM Software, documentation, operating instructions, research, reports, studies, or other data agreed upon by the Parties, created by Contractor for the benefit of the State under this Contract. The State shall retain rights of ownership of all Custom SCORE Software.
- M. Turnkey Contract. The services provided and work performed by Contractor shall be performed on a firm fixed-price and turnkey basis in accordance with the terms of this Contract. The State shall not be obligated for any other payments to Contractor except as approved in writing by the Secretary of State, or designee and the State Controller. To the extent that the AA&V or IV&V Vendor suggests a change or upgrade to the system, which is endorsed by State and mutually agreed to by State and Contractor as a necessary change or upgrade during the course of the project, Contractor agrees to make such change or upgrade unless such change or upgrade would impair the operation of the system. In the event Contractor makes such change or upgrade, Contractor shall make such change or upgrade in accordance with the change control procedures.
- N. Warranties. Contractor warrants for the term of the Contract that the services and deliverables related to the SCORE System shall meet system performance specifications. Contractor further warrants a successful integration of systems, which shall be evidenced by Final SCORE System Acceptance. Contractor warrants that the software products under this project shall provide a Turnkey System that fully complies with State and HAVA requirements as set forth in

Exhibit A – Statement of Work. In addition to the general warranty contained hereinabove, Contractor specifically warrants the following:

- (1) AESM Software and Custom SCORE Software Product Warranty.
 - (a) The Contract specifically warrants the AESM Software and Custom SCORE Software, developed by Contractor or subcontractor(s), shall meet the specifications set forth in this Contract. The Product Warranty Period of the AESM Software and Custom SCORE Software shall commence upon completion of the Onsite Support Period and continue for a period of ninety (90) days.
 - (b) Contractor warrants that the software being implemented represents the proposed version or the most recent version available. Contractor and State must agree upon any version implemented.
 - (c) Notwithstanding anything herein to the contrary, any issues defined herein below, arising prior to or during the 90 day warranty period shall be covered by this warranty.
 - (d) The following items are covered by the product warranty:
 - i. Any instance where the Colorado installation of the AESM Software does not meet the functional requirements agreed to in the Contract or as described by the most up-to-date copy of the approved requirements document, including change requests;
 - ii. User and system documentation (i.e., training materials, user guides, operations documentation) not matching the requirements documents;
 - iii. Interfaces not working as described in the approved requirements documents; and
 - iv. The implemented system does not meet the agreed upon availability and performance standards pursuant to the system performance specifications.
 - (e) The following items are not covered by the product warranty:
 - i. Any new functional requirements not agreed to in the Contract or described in the most up-to-date version of the approved requirements documents;
 - ii. User and system documentation (i.e. training materials, user guides, operations and documentation) updated to include any new functional requirements not agreed to in the Contract or described

in the most up-to-date version of the approved requirements documents; or

- iii. Any portions of the system that have been developed or produced by anyone other than Contractor or Contractor's subcontractors, including those portions of the system that were produced or developed by the State or the State's subcontractors. Also, any product modifications made by anyone other than Contractor or its subcontractors.

(2) One Hundred and Twenty (120) Day Services Warranty. The One Hundred and Twenty Day Services Warranty shall commence upon the date of the completion of Milestone 17 and continue for one hundred and twenty (120) days thereafter. Contractor warrants that its services and deliverables will be performed in a good and workmanlike manner and, during the Services Warranty Period, Contractor will re-perform, at no additional cost to the State, any services within the scope of the project that are identified as having warranty issues. The services warranty covers the following potential service and deliverables issues:

- (a) Services Not Performed Appropriately. Any instance where services performed for this project are not performed in a good and workmanlike manner.
- (b) Deliverables Not Meeting Specifications. Any instance where deliverables developed by the Contractor do not conform to the agreed upon specifications.
- (c) Data Conversion Defects. Data from a replaced county system that is found to have been incorrectly converted to the new database. The State will provide Contractor with any known data conversion defects as each of the counties is converted to the new statewide system such that any re-conversion of county data can be performed within sixty (60) days of the original conversion.

O. Warranty Procedure. Contractor shall respond to warranty claims in accordance with the procedures set forth in *Exhibit D – Service Level Agreement*.

P. THIS SECTION 22 “CONTRACTOR’S COVENANTS, WARRANTIES, AND CERTIFICATIONS” AND THE REQUIREMENTS IN *EXHIBIT A - STATEMENT OF WORK*, ARE CONTRACTOR’S ONLY EXPRESS WARRANTY CONCERNING THE SERVICES, ANY DELIVERABLES AND ANY WORK PRODUCT, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

23. CHANGE IN CIRCUMSTANCES

Contractor shall give notice to State within five (5) business days of either of the conditions that follow:

- A. Occurrence or non-occurrence of any event which would render any representation, covenant, or warranty untrue or inaccurate prior to the end of the term of this Contract; or
- B. Any failure of Contractor to comply with or satisfy any covenant, condition, or agreement set forth in this Contract. Each request for payment by Contractor shall contain a certification that each of the representations and warranties contained in this Contract are, to the best of Contractor's knowledge, true and accurate as of the date of the application for payment.

24. INSURANCE

At all times during the term of this Contract, Contractor shall keep in force and pay premiums for the insurance policies as follows:

- A. Standard Workers' Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.
- B. General Liability (including bodily injury, personal injury, and property damage) minimum coverage:
 - (1) Combined Single Limit of \$1,000,000 if written on an occurrence basis.
 - (2) Any aggregate limit will not be less than \$1,000,000.
- C. Automobile Liability minimum coverage:
 - (1) Combined single limit of \$1,000,000 per occurrence,
 - (2) Any aggregate limit will not be less than \$1,000,000.
 - (3) If any aggregate limits are reduced below \$1,000,000 because of claims made or paid during the required policy period, the Contractor immediately shall obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.
- D. The insurance shall include a provision for thirty (30) days prior written notice of cancellation to the State.
- E. The Contractor shall provide certificates showing adequate insurance coverage to the State within ten (10) business days of Contract execution, unless otherwise agreed upon by State and Contractor.

- F. The State and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to affect recovery.
- G. The insurance requirements set forth above apply to all subcontractors. It is the Contractor's responsibility to ensure that its subcontractors meet these insurance requirements. The State has the right to review the certificates of any and all subcontractors used by the Contractor.

25. INTELLECTUAL PROPERTY LICENSES AND PERMITS

The services and products provided by Contractor under this Contract shall not violate the Intellectual Property rights of any third party. Any violation is subject to Section 26 "Intellectual Property Indemnification" *infra*. Contractor shall assist the State in obtaining and assign to the State all necessary third party licenses consistent with the SOW and the State shall be the licensee. Contractor shall provide a license to the State for any COTS software that it provides consistent with the SOW.

26. INTELLECTUAL PROPERTY INDEMNIFICATION

- A. Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s) originated and delivered by Contractor under the Contract, or any part thereof, supplied by Contractor under this agreement constitutes infringement of any existing U.S. patent, copyright, trademark, or other proprietary rights (collectively "Intellectual Property") for any claims or suits identified by December 31, 2006. State shall give Contractor written notice within twenty (20) days of receipt by the State of such notice of such claim or suit. State shall provide reasonable assistance and cooperation to Contractor in connection with such action. Contractor shall defend such claim at its expense and shall pay any costs or damages that, finally, may be awarded against the State. Contractor has sole authority to defend or settle the claim.
- B. Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense. Should the State not choose to participate, Contractor shall keep the State advised of any settlement or defense.
- C. Contractor shall be liable for all such claims or suits and shall indemnify the State for all liability incurred by the State as a result of such infringement. Contractor shall pay all out-of-pocket costs, expenses, and damages agreed to by Contractor, regarding such claims or suits, or finally awarded by a court of competent jurisdiction.
- D. Contractor will not indemnify the State, however, if the claim of infringement is caused by:

- (1) State's misuse or unauthorized modification of the Deliverable;
 - (2) State's failure to use corrections or enhancements made freely available by Contractor;
 - (3) State's use of the Deliverable in combination with any product or information not owned or developed by Contractor;
 - (4) State's distribution, marketing or use by third parties of the Deliverable; or
 - (5) Information, direction, specification or materials provided by State or its contractors not under Contractor's direction.
- E. If any Deliverable is, or in Contractor's opinion is likely to be, held to be infringing, Contractor shall at its expense and option either:
- (1) Procure the right for State to continue using it,
 - (2) Replace it with a non-infringing equivalent,
 - (3) Modify it to make it non-infringing, or
 - (4) Direct the return of the Deliverable and refund to State the fees paid for such Deliverable less a reasonable amount for State's use of the Deliverable up to the time of return.
- F. The State retains the right to sue for damages for breach of contract in addition to any other remedies set forth in this Contract for Intellectual Property infringement. The State also retains the right to claim damages for breach of contract in accordance with the breach and termination provisions herein if the non-infringing system, ultimately delivered by Contractor, does not meet Contract requirements.

27. INTELLECTUAL PROPERTY OWNERSHIP

- A. AESM Software and associated documentation. AESM Software, documentation, operating instructions, research, reports, studies, photographs, negatives, drawings, and other documents, or materials (not previously defined elsewhere in this Contract) prepared by Contractor in the performance of its obligations under this Contract and that becomes part of the commercially available AESM Software, shall be the exclusive property of the Contractor and may be reused by the Contractor. The Contractor upon completion, termination, or cancellation of this Contract and payment by the State in accordance with the Contract shall deliver one copy of all such materials to the State. Contractor may, at its own expense, keep copies of all its writings for its personal files. The Contractor shall also retain exclusive right to resell or license the AESM Software to other entities.
- B. Custom SCORE Software. Custom SCORE Software, documentation, operating instructions, research, reports, studies, photographs, negatives, drawings, and other

documents or materials (not previously defined elsewhere in this Contract) prepared by Contractor in the performance of its obligations under this Contract and that becomes part of the SCORE system and not part of the commercially available AESM Software, shall be the exclusive property of the State. The Contractor upon completion, termination, or cancellation of this Contract and payment by the State in accordance with the Contract shall deliver one copy of all such materials to the State.

28. RIGHTS IN DATA AND COPYRIGHT – FEDERAL RESERVED RIGHTS

As authorized by 41 C.F.R. 105-71.134, the federal government, through the State, reserves a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use subject to nondisclosure and internal use restrictions and State law, and to authorize the State and others to use, for Federal Government purposes:

- A. The copyright in any work developed under this Contract or a resulting third party contract; and,
- B. Any rights of copyright to which a contractor/grantee, sub-recipient, or third party contractor purchases ownership with federal assistance.

29. DATABASE SCHEMA

Contractor agrees that State is the owner of all data in SCORE databases and that the State is entitled to free and unobstructed access to and use of such data for purposes including, but not limited to, report generation and module creation via API usage. In order to permit the State to fully exploit the data and functionality, Contractor agrees to provide the State with the materials and documents necessary to extract the data independent of the Contractor subject to internal use restrictions as set forth in Sections 31 “Confidentiality” and 32 “Confidentiality of Records” of Contract.

30. SOFTWARE MAINTENANCE

A. AESM Software Maintenance

- (1) Notwithstanding any other provisions contained in this Contract, annual maintenance shall commence upon completion and acceptance of Milestone 17, SCORE Implementation – Rollout 1.
- (2) Contractor further agrees that on maintenance-related issues:
 - (a) Contractor shall be the Single Point of Contact.
 - (b) Maintenance services shall continue throughout the length of the maintenance period, regardless of the solvency of any subcontractors or third party vendors utilized by Contractor to provide such services.

- (c) Contractor shall notify State thirty (30) days in advance of a new release of AESM Software, which would resolve outstanding software problems. Contractor's notification shall contain documentation outlining Contractor's assessment of the necessity of performing the upgrade.
- (d) When State and Contractor determine the necessity for the Contractor to perform on-site configuration and software installation, the State and Contractor will follow the guidelines set forth in *Exhibit D – Service Level Agreement*.
- (e) Resolution of any maintenance issue shall be coordinated with State.

B. Custom SCORE Software Maintenance

- (1) Notwithstanding any other provisions contained in this Contract, maintenance of the Custom SCORE Software shall become the responsibility of State upon completion of the Onsite Support Period.
- (2) Contractor further agrees that on maintenance-related issues:
 - (a) At State's direction, Contractor will perform maintenance of the Custom SCORE software as part of Milestone 20, Onsite Support. The State and Contractor will follow the guidelines set forth in *Exhibit D – Service Level Agreement*.
 - (b) Prioritization and completion of Custom Score Software Maintenance activities shall be coordinated with State in accordance with *Exhibit D – Service Level Agreement*, within the fixed level of Onsite support effort agreed to as part of this Contract, or as adjusted as part of a Contract Amendment.
 - (c) Resolution of any maintenance issue shall be coordinated with State.

31. CONFIDENTIALITY

- A. During the performance of this Contract, except as required by law, each Party may be given access to information (in hardcopy or electronic form) that relates to the other Party's past, present, and future research and development, business activities, financial condition, products, services, and technical knowledge. Each Party's use of confidential information shall adhere to policies and procedures as follows:
 - (1) The confidential information may be used by the receiving Party only in connection with the performance of this Contract; and
 - (2) The receiving Party agrees to exercise reasonable care in protecting the confidentiality of the information received from the disclosing Party in the

same manner that it protects the confidentiality of its own proprietary and confidential information; and

- (3) Access to the confidential information shall be restricted to each Party's personnel, approved subcontractors and consultants, unless expressly authorized in writing by the other Party; and
 - (4) Confidential information shall not be copied, reproduced, or electronically captured by the receiving Party without the disclosing Party's express written authorization, which will not be unreasonably withheld, conditioned or delayed; and
 - (5) All confidential and proprietary information made available to the receiving Party, including copies, shall be returned or destroyed upon the disclosing Party's request; and
 - (6) Each Party agrees to notify and advise all of its employees, agents, consultants, licensees, and subcontractors in writing of the above requirements and of the possible penalties and fines that may be imposed for any violation of these requirements.
- B. Each Party's Confidential Information will remain the property of that Party except as otherwise expressly provided in this Contract.
- C. Any breach of confidentiality by the receiving Party, or third party agents of the receiving Party, shall constitute good cause for the disclosing Party to cancel this Contract, without liability to the disclosing Party.
- D. Neither Party shall:
- (1) Acquire any right in or assert any lien against the confidential information of the other; or
 - (2) Sell, assign, lease or otherwise commercially exploit the confidential information (or any derivative works thereof) of the other Party.
- E. This Section will not apply to any particular information that either Party can demonstrate:
- (1) Was, at the time of disclosure to it, in the public domain; or
 - (2) After disclosure, is published or otherwise becomes part of the public domain through no fault of the receiving Party; or
 - (3) Was in the possession of the receiving Party at the time of the disclosure to it and was not the subject of a pre-existing confidentiality obligation; or

- (4) Was received by the receiving Party, after disclosure to it, from a third party who had a lawful right to disclose such information; or
 - (5) Was independently developed by the receiving Party without use of the confidential information of the disclosing Party.
- F. The State's waiver of an alleged breach of confidentiality by Contractor, or third party agents of Contractor, does not constitute a waiver of any subsequent breach by Contractor, or third party agents of Contractor.
- G. If Contractor receives a subpoena or other valid request, issued under the auspices of an administrative or judicial authority, demanding the State's confidential information, Contractor shall notify the State within five (5) business days of such receipt.
- H. With respect to information designated by Contractor as confidential, State's confidentiality obligations to Contractor shall be in accordance with applicable Colorado statutory provisions, including the Colorado Open Records Act, that address State's receipt and protection of such confidential information. Contractor shall identify any of Contractor's confidential information to be provided to State.

32. CONFIDENTIALITY OF RECORDS

The Contractor is hereby designated an agent of the State for the purposes of the confidentiality requirements of Title 1, CRS. In the event the Contractor shall obtain access to any records or files of the State in connection with this agreement, or in connection with the performance of its obligations under this agreement, the Contractor shall keep such records and information confidential and shall comply with Title 1, C.R.S., and all other laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the State. The Contractor shall notify its employees, agents and subcontractors that they are subject to the confidentiality requirements as set forth above, and shall provide each employee, agent and subcontractor with a written explanation of the confidentiality requirements before they are permitted access to confidential data. Except as required by law, the State will not disclose to third persons, other than State contractors or consultants whose performance of services require disclosure, any information marked as "confidential" or "proprietary" or otherwise marked as agreed by the Parties. Except as otherwise agreed, "confidential" or "proprietary" information of the Contractor, which may be marked, is information relating to its research, development, trade secrets, business affairs, internal operations and management procedures and like information of its customers, clients, or affiliates, but does not include information lawfully obtained from third parties, information in the public domain, exhibits, attachments, or appendices to the Contract, or information required to be delivered to the State pursuant to the terms of this Contract. With respect to any such disclosure to other contractors or consultants of the State, the State agrees to inform them concerning the restrictions on disclosure and include suitable nondisclosure provisions in their agreements. Nothing herein is intended or shall operate as a waiver of

any applicable law governing disclosure of records, including the Colorado Open Records Act, Section 24-72-101 C.R.S.

33. UNAUTHORIZED ACTS

Each Party shall:

- A. Notify the other Party promptly of any material unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information by any person that may become known to such Party.
- B. Promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information.
- C. Use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights.
- D. Promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information.

34. NEWS RELEASES, JOINT PRESS ANNOUNCEMENTS, AND OTHER WRITTEN COMMUNICATIONS

- A. Contractor shall not make any news releases, joint press announcements, or engage in the production and release of any other written communications pertaining to this Contract, either prior to execution of Contract or during the term of this Contract, without prior written approval from State. Consent by State shall not be unreasonably withheld. All news releases, joint press announcements, and other written communications related to State or regarding the relationship of State and Contractor shall be channeled through the Press Office of the State, and shall require final approval by the State. Contractor may seek approval either by traditional written methods or electronically (*e.g.*, e-mail).
- B. News releases and joint press announcements may include accomplishments, general information, events, feature stories, crisis communication, or publicity related to State. Written communications shall include any published work intended for an audience external to State and any materials disseminated as a part of a speech to an audience external to State.
- C. If Contractor receives permission from State to respond directly to a media interview involving State (*i.e.*, joint news release on some accomplishment related to the SCORE Project), Contractor shall immediately following the interview send an e-mail to the Press Office detailing the information and answers provided, the name of the reporter, and the media outlet represented.

35. SECURITY CLEARANCE BACKGROUND CHECKS ON CONTRACTOR AND SUBCONTRACTOR EMPLOYEES

The Contractor performing services under this Contract will likely gain access to certain personally identifiable information deemed confidential, (e.g., social security numbers). Therefore, the Parties shall agree to the following:

- A. The Contractor agrees with regard to employees and subcontractors who will work on the project and who will gain access to certain personally identifiable information deemed confidential: 1) to provide copies of all evidence of security clearance background checks on Contractor's employees and subcontractors; 2) to provide copies of all evidence of security clearance background checks for additional or replacement employees; and 3) to provide copies of all evidence of security clearance background checks for additional or replacement subcontractors. In lieu of the foregoing requirements of this Section, State agrees to accept a written attestation or certification by Contractor that security clearance background checks have been performed and that all applicable employees and subcontractors have been cleared. Nothing contained herein requires Contractor to disclose federal security clearance information.
- B. The Contractor must submit required evidence of security clearance background checks within ten (10) business days. The ten (10) business day period commences the day following the triggering event (i.e., execution of this Contract by State or the Contractor's addition or replacement of employees and subcontractors on the project). State agrees to review the sufficiency of the security clearance background checks within three (3) business days, commencing from the date of State's receipt of the security clearance background check information or attestation or certification from the Contractor. In the event State does not accept the sufficiency of any security clearance background check, attestation or certification the State shall provide written notification to the Contractor, and the Contractor agrees that such employee or subcontractor shall not be eligible to perform the services contemplated for inclusion in this Contract. However, in no event, does the receipt of the attestation or certification constitute approval by the State of the individual pursuant to Section 11 "Key Personnel Provision" of this Contract.
- C. Any employee or subcontractor of the Contractor who will gain access to certain personally identifiable information deemed confidential or proprietary and who has been convicted within the last five (5) years of certain felonies, shall not be authorized to perform any work under this Contract. The enumerated felonies include:
 - (1) Theft
 - (2) Robbery
 - (3) Burglary

- (4) Fraud
 - (5) Forgery
 - (6) Embezzlement
 - (7) Computer Crime
 - (8) Other white-collar or government operations crimes
 - (9) Unlawful possession of controlled or dangerous weapons
 - (10) Assault offenses
 - (11) Any offense involving use of a firearm or dangerous weapon
- D. If, during the Contractor's performance of this Contract, an employee or subcontractor who gains access to certain personally identifiable information deemed confidential and is convicted of any of the above enumerated felony offenses or any other offense of moral turpitude, Contractor shall report the final conviction to State. Contractor shall provide this report within forty-eight (48) hours of the date of the final conviction. At the written request of State, the Contractor shall immediately remove the convicted employee or subcontractor.
- E. Contractor's evidence of security clearance background checks, attestation or certification must be marked "Confidential" and mailed to:

Drew T. Durham
HAVA Director
Secretary of State
1560 Broadway, Suite 200
Denver, Colorado 80202

36. PRIME CONTRACTOR AND SUBCONTRACTORS

- A. Contractor shall assume all responsibility for the delivery and quality of the products and services provided by this Contract, regardless of whether or not the Contractor hires subcontractors.
- B. Contractor shall not subcontract the performance of any part of Contractor's duties under this Contract without the prior written consent of the State prior to initiating the subcontract, and such consent shall not be unreasonably withheld or delayed. Contractor shall send written requests to State's SCORE Project Manager for prior approval of any subcontractor. For purposes of this provision, the Subcontractors and teaming partners identified in the Contractor's Response to the RFP or included in the Contractor's Oral Presentation shall be deemed approved by the State.

- C. Subcontracts permitted by State shall be subject to the requirements of this Contract, and Contractor shall be responsible for all subcontracting arrangements and the delivery of services as set forth in this Contract. Contractor shall be responsible for the performance of any subcontractor. Failure of the subcontractor to provide services in accordance with the requirements of this Contract shall be the responsibility of Contractor.
- D. Contractor agrees that any subcontract for services resulting from Contractor's performance under the terms and conditions of this Contract, if required by State, shall include a provision requiring the subcontractor to abide by the terms and conditions of this Contract, as well as all other applicable federal and state laws, and rules and regulations pertinent to this Contract that have been or may be established.
- E. Contractor further agrees that all subcontracts for services shall include a provision that the subcontractor shall indemnify and hold harmless the State, the Agency Authorized Users, and their officers, employees, and agents, from and against any claims, lawsuits, liability demands, damages, losses, or expenses that are attributable to subcontractor's performance in support of this Contract.
- F. Contractor shall remain responsible for obligations under this Contract performed by any subcontractors to the same extent as if Contractor's employees performed such obligations. Contractor shall be ultimately responsible for the timely performance and completion of any subcontracted work. Contractor also shall be ultimately responsible for the installation of any hardware and software delivered by a subcontractor. Contractor further warrants all parts and labor performed by any subcontractor or other third party who performs work on behalf of the Contractor under the warranty obligations contained in this Contract.
- G. Contractor will remain responsible for obligations under this Contract performed by any subcontractor to the same extent as if Contractor's employees performed such obligations. Contractor will remain State's sole point of contact regarding the services provided under this Contract.

37. SOLICITATION AND EMPLOYMENT OF STATE EMPLOYEES AND INDEPENDENT CONTRACTORS

- A. Contractor shall neither solicit nor hire any State employee that Contractor knows, or that Contractor should have known, has worked directly on or has been affiliated with the SCORE Project in any capacity.
- B. The restrictions delineated in this Section shall extend for a period of one (1) year after Final SCORE System Acceptance unless State and Contractor mutually agree to an exception.
- C. The Contractor (and subcontractors or subgrantees permitted under the terms of this Contract) shall maintain a written code of standards governing the performance of

its employees engaged in the award and administration of contracts. No employee, officer or agent of the Contractor, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved

38. CONFLICT OF INTEREST

- A. Conflict of Interest Definition: This term applies to the relationship of the Contractor with State when Contractor seeks to establish or maintains a relationship with a third party and the two relationships are in opposition to the Contractor/State relationship.
- B. During the term of the Contract, Contractor shall not enter into any third party relationship that creates a conflict of interest, real or apparent, or that creates the appearance of a conflict of interest. Contractor only need be aware of the existence of the two relationships in opposition (State's and a third party's) to require Contractor to inform State of the potential relationship, regardless of whether or not Contractor gains or benefits from such third-party relationship.
- C. Contractor shall submit to State within ten (10) business days of becoming aware of an actual or potential conflict of interest, a full disclosure statement of any actual or potential conflict of interest in writing setting forth the details that create the conflict of interest. Failure to submit an acceptable disclosure statement shall constitute a material breach of the Contract and constitute grounds for State's termination, for cause, of the Contract.
- D. Contractor also avers that to Contractor's knowledge, no employee of Contractor has any personal or beneficial interest (other than ordinary compensation) in the services or goods described in this Contract.
- E. Contractor periodically enters into alliance agreements or similar strategic partnering arrangements with information technology vendors. These arrangements enable Contractor to offer its customers enhanced service and technology options. The arrangements typically provide for technical and marketing assistance or referral fees in connection with business opportunities created or identified through the other partner. In some cases, Contractor may be offered and may take equity or other financial interest in the alliance partner.

39. SYSTEM DOCUMENTATION

Unless otherwise specified, system documentation for the SCORE system shall be delivered in accordance with the following standards:

A. AESM Software.

- (1) AESM Software Source Code, maintained in Escrow, shall contain internal documentation such that a person reasonably proficient in the use of the

programming language can efficiently use the documentation to understand the program structure, control techniques, and error processing logic in order to maintain the Source Code should it be removed from Escrow for the purposes of State control as specified in Section 44 “Escrow” supra. All escrowed system documentation shall be inventoried and configured in such a way as to allow the State to utilize the materials without Contractor support.

- (2) System documentation shall include instructions for converting the escrowed Source Code into Object Code, organized and configured to produce an executable AESM system, if warranted.
- (3) System documentation shall include technical architecture design, analysis, detail design, testing and an installation and configuration guide.
- (4) A User manual describing how a user can utilize all the functions within the AESM system shall be delivered upon system implementation and maintained per the annual maintenance agreement.
- (5) An Operations manual describing how a data center will maintain and operate the AESM system shall be delivered upon system implementation and maintained per the annual maintenance agreement.

B. Custom SCORE Software.

- (1) Custom SCORE Software Source Code shall contain internal documentation such that a person reasonably proficient in the use of the programming language can efficiently use the documentation to understand the program structure, control techniques, and error processing logic in order to maintain the Source Code.
- (2) System documentation shall include instructions for converting the Source Code into Object Code, organized and configured to produce executable programs.
- (3) System documentation shall include technical architecture design, requirements analysis, detail design, testing and an installation and configuration guide, all of which are included as Deliverables in *Exhibit A – Statement of Work*.
- (4) A User manual describing how a user can utilize all the functions within the SCORE system shall be delivered upon system implementation.
- (5) An Operations manual describing how the SCORE data center will maintain and operate the Custom SCORE Software shall be delivered upon system implementation.

40. APPLICABLE LAW

The Contractor shall at all times during the execution of this Contract strictly adhere to, and comply with, all applicable Federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this Contract.

41. AVAILABILITY OF FUNDS/INSTALLMENT PURCHASES

- A. The Parties hereto understand and agree this Contract is contingent upon continuing availability of funds as provided in Section 59 “Special Provisions”, item 2, of this Contract and that the State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. The State may terminate this Contract as provided in the following paragraphs.
- B. The State has reason to believe that sufficient funds will be available for the full term of the Contract. Where, for reasons beyond State’s control, its funding entity does not allocate funds for any fiscal period where State has exhausted efforts to obtain funds legally available, and where such failure to obtain funds does not result from any act or failure to act on the part of State, State will not be obligated to make the payments remaining beyond State’s available funds, nor shall State be liable for any penalty therefor. In that event, State shall notify Contractor of such non-allocation of funds by sending written notice thereof to the Contractor thirty (30) days prior to the effective date of termination.
- C. To supplement the provisions of Section 59 “Special Provisions”, item 2, of this Contract regarding fund availability, and to make certain the understanding of the Parties because the Contract will extend beyond the current fiscal year, State and Contractor understand and intend that the obligation of the State to pay the annual charges hereunder constitutes a current expense of the State payable exclusively from State’s funds and shall not in any way be construed to be a general obligation indebtedness, or other multiple fiscal year financial obligation whatsoever, of the State of Colorado or any agency or department thereof, within the meaning of any provision of sections 1, 2, 3, 4 or 5 of article XI, Section 20 of article X, of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither the State, nor the Contractor on its behalf, has pledged the full faith and credit of the State, or any agency or department thereof, to the payment of the charges hereunder, and this Contract shall not directly or contingently obligate the State, or any agency or department thereof, to apply money from, or levy or pledge any form of taxation to, the payment of the annual charges.

42. STATE-FURNISHED PROPERTY

- A. The State shall provide to the Contractor, for use in connection with and under the terms of this Contract, the State-furnished property described in *Exhibit A - Statement of Work* together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as “State-furnished property”).
- B. If State-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the State, detailing the facts, and, as directed by the State and at State expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed

action and upon written request of the Contractor, the State shall make an equitable adjustment as provided in paragraph “F” of this Section.

- C. If damage occurs to State property before delivery to Contractor, the risk of which has been assumed by the State under this Contract, the State shall replace the items or the Contractor shall make such repairs as the State directs. However, if the Contractor cannot affect such repairs within the time required, the Contractor shall dispose of the property as directed by State. When any property for which the State is responsible is replaced or repaired, the State shall make an equitable adjustment in accordance with paragraph “F” of this Section.
- D. The State and all its designees shall have access at all reasonable times to the premises in which any State property is located for the purpose of inspecting the State property. The Contractor shall maintain an inventory and accountability system acceptable to the State, and mark or tag the property in accordance with State procedures.
- E. Risk of loss. Unless otherwise provided in this Contract, Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, State property upon its delivery to the Contractor. However, the Contractor is not responsible for reasonable wear and tear to State property or for State property properly consumed in performing this Contract.
- F. Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected Contract provision in accordance with the procedures set forth in this Contract. When appropriate, the State may initiate an equitable adjustment in favor of the State. The right to an equitable adjustment shall be the Contractor’s exclusive remedy. The State shall not be liable to suit for breach of contract for:
- (1) Any delay in delivery of State-furnished property;
 - (2) Delivery of State-furnished property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of State-furnished property; or
 - (4) Failure to repair or replace State property for which the State is responsible.
- G. Upon completing this Contract, or at such earlier dates as may be reasonably fixed by the State, no more often than annually, the Contractor shall submit, in a form acceptable to the State, inventory schedules covering all items of State property (including any resulting scrap) not consumed in performing this Contract or delivered to the State. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the State property as may be directed or authorized by the State. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to the State as the State directs.

43. GRANT ASSURANCES

If this Contract involves the expenditure of federal funds, the Contractor shall at all times during the execution of this Contract strictly adhere to and comply with all applicable federal laws and regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this Contract. The Contractor shall also require compliance with these statutes and regulations in subgrant agreements permitted under this Contract. The federal laws and regulations include:

- A. The "Help America Vote Act of 2002" 42 U.S.C. § 15301 *et seq.* (2002).
- B. The "Voting Rights Act of 1965" 42 U.S.C. § 1973c *et seq.* (1965).
- C. The "Voting Accessibility for the Elderly and Handicapped Act" 42 U.S.C. 1973ee-1 *et seq.*
- D. The "National Voter Registration Act of 1993" 42 U.S.C. 1973gg *et seq.*
- E. The "Americans with Disabilities Act of 1990" 42 U.S.C. 12101 *et seq.*
- F. The Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (Common Rule), at 49 C.F.R. 18.
- G. Standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 U.S.C. 1857(h).
- H. Section 508 of the "Clean Water Act" 33 U.S.C. 1368.
- I. Executive Order 11738, and Environmental Protection Agency regulations, 40 C.F.R.15.
- J. Mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- K. Office of Management and Budget Circulars A-87, A-133, A-21 or A-122, and A-102 or A-110, whichever is applicable.
- L. The "Hatch Act" 5 U.S.C.S. 1501-1508 and Public Law 95-454, Section 4728, (stating that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs).
- M. The "Rehabilitation Act of 1973", 29 U.S.C.S. 794 *et seq.*, and implementing regulation, 45 C.F.R. 80 *et seq.*, (requiring that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds).
- N. The "Drug-Free Workplace Act " 41 U.S.C. 701 *et seq.*
- O. The "Age Discrimination Act of 1975" 42 U.S.C. 6101 *et seq.* and its implementing

regulation, 45 C.F.R. 91.

- P. The “Civil Rights Act of 1968” 42 U.S.C. 3601 *et seq.*
- Q. The “Civil Rights Act of 1964” 42 U.S.C. 2000d *et seq.*
- R. The “Single Audit Act of 1996” 31 USCS § 7501 *et seq.*

44. ESCROW

All rights and licenses granted pursuant to this Agreement are and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to “intellectual property” as defined in Section 101(56) of the U.S. Bankruptcy Code. Contractor hereby passes through and assigns to State any rights Contractor has in connection with access to source code versions of any third party products or code incorporated into the software. Contractor agrees to designate State as a beneficiary in a Master Source Code Escrow Agreement. Contractor agrees not to amend or terminate the Master Source Code Escrow Agreement without the express written consent of State, which shall not be unreasonably withheld.

Within thirty (30) days after receiving notice its software has passed Final SCORE System Acceptance, Contractor shall deposit the source code for the SCORE system software, DLLs, compilers, firmware and any special utilities prepared by Contractor, including all software documentation, relevant commentary, and explanations (Escrowed Material) into an escrow repository. The Contractor warrants that the source code deposited, and all subsequent deposits under this Agreement, shall include comments and documentation and will be complete and capable of compilation, by a knowledgeable technician of the State, into an operable version. The Escrowed Material shall be maintained in good working order, sequence and business-like fashion as prescribed in Section 44 “Escrow” of this Contract.

Not later than every six (6) months thereafter, the Contractor shall deposit, with a mutually agreed upon Escrow Agent, all revisions, corrections, changes, modifications, and enhancements made to the Escrowed Material. Within seven (7) days after such deposit with the Escrow Agent, both the Contractor and the Escrow Agent shall give written notice of receipt to State. The Escrow Agent, for a period not to exceed fifteen (15) years, will retain all previous versions of Escrowed Materials.

The cost of using an alternative third party Escrow Agent shall be borne by State.

The Escrowed Material shall not contain any expiry key or other mechanism for establishing a date or time beyond which the software license will be invalid or beyond which the software will not function properly.

Upon written notice of cause to the Contractor and the Escrow Agent, the State may conduct tests of the Escrowed Material, under Contractor supervision, to confirm the conditions and usability of the Escrowed Material. Any direct costs associated with testing the Escrowed Materials shall be borne by the State.

A default by the Contractor shall be deemed to have occurred under this Escrow Agreement upon occurrence of any of the following:

- A. If Contractor has availed itself of, or been subjected to by any third party, a proceeding in bankruptcy in which Contractor is the named debtor; an assignment by Contractor for the benefit of its creditors; the appointment of a receiver for Contractor; or any other proceeding involving insolvency or the protection of, or from, creditors and same has not been discharged or terminated without any prejudice to State rights or interest under this License agreement within thirty (30) days.
- B. If Contractor has ceased its on-going business operations, or the sale, licensing, maintenance, or support of the Software to the documented requirement of this Agreement.
- C. If the Contractor breaches or defaults any term or condition of the Contract and the State terminates the Contract.

45. REMEDIES

- A. In addition to any other remedies provided for in this Contract, or by law, State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform Contractor's duties or obligations under this Contract. These additional remedial actions include:
 - (1) Suspending further performance by Contractor pending completion of necessary corrective action(s) by Contractor as specified by State without Contractor's entitlement to adjustment in price/cost or schedule, and/or;
 - (2) Reasonably withholding further payments to Contractor until Contractor satisfactorily completes necessary services or corrective actions in accordance with a mutually agreed upon plan, and/or;
 - (3) Requesting Contractor to remove those employees or subcontractors of Contractor working on the SCORE Project who are incompetent, unsatisfactory, insubordinate, or otherwise unsuitable, and whose continued performance under this Contract is deemed, in good faith by State, to be contrary to the public's interest or the State's interest, and/or;
 - (4) Denying payment for those services or deliverables not received by State by the Milestone due date as per Section 17 "Contractor's Timeframe for Performance" supra, due to circumstances caused by Contractor, and which no longer provide value for State, and/or;
 - (5) Terminating this Contract immediately as set forth in the Termination for Cause/Default Section of this Contract without further liability to State, including liability for termination costs.

- (6) Upon expiration or termination for any reason (except the State's uncured material breach of Contract), Contractor will provide such reasonable cooperation, assistance and services, and will assist State in the migration of State's production operations to State's control or to the control of an alternative vendor upon written notice to Contractor at least thirty (30) business days prior to termination and subject to the terms and conditions set forth in this Contract. Contractor may provide additional transition services as mutually agreed to between the Parties in writing.
 - (7) Following Contractor's failure to cure within thirty (30) business days after written notice of default, the State may repair or replace the defective deliverable, work, or service at State's own expense, and State may seek recovery of monies expended, plus twelve percent (12%) interest per annum from the date incurred. If State owes no monies to Contractor, State may choose to require Contractor, at Contractor's own expense, to provide to State, at a time and location chosen by State, all materials, parts, or instructions reasonably necessary to accomplish the repair or replacement of the defective deliverable, work, or service.
 - (8) Following Contractor's failure to cure within thirty (30) business days after written notice of default, the State, alternatively and at State's option, may apply an offset against any monies due Contractor equal to the diminished value caused to the SCORE project by the defective deliverable, work, or service.
 - (9) In the event of breach, State and Contractor shall not be liable for incidental or consequential damages, except that for purposes of this exclusion, incidental or consequential damages shall not include claims arising out of breach of confidentiality or any indemnification obligations set forth in this Contract.
 - (10) The enforcement of one remedy does not preclude the enforcement of any other remedy available at law or in equity.
 - (11) The above remedies are cumulative and State, in its sole discretion, may exercise any or all of them individually or simultaneously.
- B. In the event of breach by State, and a failure to cure within thirty (30) business days after receipt of written notice of breach, Contractor may terminate this Contract and seek recovery from State. Contractor may recover monies legally due to Contractor for work performed or services provided as of the date of breach. Nothing in this Contract shall be construed or interpreted as a waiver, express or implied, of the immunities, rights, benefits, or protections afforded the State under the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

46. TERMINATION FOR CAUSE/DEFAULT

- A. If Contractor refuses or fails to perform any of the provisions of this Contract in a diligent and a timely manner:
- (1) State shall notify Contractor in writing of the non-performance identifying the basis for such notice.
 - (2) State shall request prompt and acceptable performance.
 - (3) State may terminate Contractor's right to proceed with this Contract, or State may terminate any part of this Contract where the Contractor has failed to perform according to contractual requirements.
 - (4) State, upon giving thirty (30) days notice, may terminate this Contract for Contractor's breach of a term or condition in this Contract. Contractor upon receiving notice shall have thirty (30) days to cure such breach.
 - (5) State shall seek to have the Contractor pay State for all services rendered, expenses incurred, and any other direct costs resulting from the State's termination of the Contract for cause.
 - (6) The Contractor shall continue performance of the non-terminated work on the Contract, and Contractor also shall be liable for excess costs incurred in procuring similar goods or services elsewhere for State.
 - (7) Notwithstanding termination of the Contract, and subject to any directions from the State, the Contractor shall take timely, reasonable, and necessary action to protect and to preserve property in the possession of the Contractor in which the State holds an interest.
 - (8) If the State determines that the Contractor's failure to perform was excusable, and that the Contractor's performance otherwise would have met the terms of this Contract, the delivery schedule may be revised accordingly, subject to the rights of the State.
 - (9) If, after notice of termination of the Contractor's right to proceed under the provisions of this paragraph, the State determines that the Contractor was not in default or that the delay was excusable, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause.
- B. If the State refuses or fails to perform any of the provisions of this Contract in a diligent and a timely manner:
- (1) Contractor shall notify State in writing of the non-performance.
 - (2) Contractor shall request prompt and acceptable performance.

- (3) Contractor may terminate State's right to proceed with this Contract, or Contractor may terminate any part of this Contract where the State has failed to perform according to contractual requirements.
- (4) Contractor, upon giving thirty (30) days notice, may terminate this Contract for State's breach of a term or condition in this Contract. State, upon receiving notice, shall have thirty (30) days to cure such breach.
- (5) After termination of this Contract, for any reason, the State shall have the right to continue to use the Contractor-owned AESM Software subject to the State's payment in full for the AESM Software License.

47. TERMINATION FOR CONVENIENCE

- A. Termination. The State may terminate the Contract in whole or in part, at any time, when the interests of the State so require. The State shall give a minimum of thirty (30) days written notice of termination under this clause to Contractor. Exercise of the Termination for Convenience Clause does not imply a breach of this Contract by State.
- B. Contractor's Obligations. Contractor shall not incur any further obligations in connection with the terminated work, and on the date set in the notice of termination, Contractor shall stop work as directed. Contractor also shall terminate outstanding orders and subcontracts related to the terminated work. Contractor shall settle the claims arising out of the termination of these outstanding orders and subcontracts. The State may direct Contractor in writing to assign the Contractor's right, title, and interest under terminated orders or subcontracts to State. Contractor shall complete and deliver the work not terminated under this clause to State.
- C. Compensation.
 - (1) The Contractor shall submit a termination claim specifying the amounts due along with sufficient data to support a claim. If Contractor fails to file a termination claim within ninety (90) days from the effective date of termination, the CDOS may pay Contractor an amount set in accordance with subparagraph (3) of this Section.
 - (2) State and Contractor may agree to a settlement provided Contractor has filed a termination claim accompanied by sufficient data to support a claim.
 - (3) Absent complete agreement under subparagraph (2) above, State shall pay Contractor the amounts as follows, provided the payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:
 - (a) Contract prices for services and deliverables accepted under this Contract;

- (b) “Demobilization Costs” defined as all non-refundable costs incurred by Contractor and its subcontractors, including early termination charges, for airline tickets, car leases, apartment leases, personnel moving and relocation expenses, equipment leases and facility leases, less any amounts paid prior to the effective date of termination. Such Demobilization Costs will be capped at \$10,000 (Ten Thousand Dollars).
- (c) Costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work. Profit shall not include anticipatory profit or consequential damages.
- (d) Costs of settling and paying claims arising out of the termination of outstanding orders or subcontracts pursuant to the Contractor’s obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph 2 of this Section.
- (e) The reasonable settlement costs of Contractor include accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims.
- (f) The settlement shall not exceed the total Contract price, less payments previously made by State, less proceeds of any sales of materials produced under this Contract, and less the Contract price of the work not terminated.
- (g) All invoices billed and paid shall be in the currency of the United States of America. The Parties agree that any pre-printed terms contained in State’s purchase orders, acknowledgments, shipping instructions, or other forms or in Contractor’s invoices, that are inconsistent with or different from the terms of this Contract will be void and of no effect even if signed by the Party against which their enforcement is sought. Costs claimed or agreed to under this Section shall be in accordance with applicable sections of the Colorado State Procurement Code.

48. LIQUIDATED DAMAGES

A. Liquidated Damages for Implementation Delay.

- (1) If Contractor does not perform according to the requirements of this Contract, State and County authorized users shall incur costs to maintain the existing systems that otherwise would have been replaced by Contractor.
- (2) State and Contractor agree that the damages from breach of this Contract are difficult to establish and that the amount specified represents a reasonable estimation of damages that the State will suffer based on the cost and severity of the problems.

- (3) Liquidated damages from Contractor shall be applied in the event State must resort to using legacy state and county systems, manual methods, or the services of a third-party contractor due to implementation delay caused by Contractor. Contractor shall be invoiced for payment of these liquidated damages as they occur.
 - (4) When State gives notice to Contractor of delay or nonperformance and Contractor fails to cure in the time specified, Contractor shall be liable for Six Thousand Thirteen Dollars (\$6,013) per calendar day for each day that all registered voters are not implemented following January 14, 2006. Damages shall accrue from the date set for cure until State reasonably obtains similar services or deliverables if Contractor is terminated for default or until Contractor provides the services or deliverables if Contractor is not terminated for default. Damages shall be proportionately reduced by the number of registered voters who are implemented by the deadline. As an example, if there are three million total registered voters in the State, and two million are implemented by the deadline, Contractor will owe Liquidated Damages equal to one-third of the Liquidated Damage specified for each calendar day. Liquidated damages shall accrue for a maximum of ninety (90) calendar days. If Contractor fails to cure the problem within the ninety (90) calendar days, State shall terminate Contractor for cause.
 - (5) When State gives notice to Contractor of delay or nonperformance and Contractor fails to cure in the time specified, Contractor shall be liable for Two Thousand Dollars (\$2,000) per calendar day for each day following September 16th, 2005 that the mutually agreed-upon counties included in Milestone 14 and Group 2 (as defined in the Assumptions section of the SOW) of Milestone 17 are not implemented. Damages shall accrue from the date set for cure until State reasonably obtains similar services or deliverables if Contractor is terminated for default or until Contractor provides the services or deliverables if Contractor is not terminated for default. Liquidated damages shall accrue for a maximum of ninety (90) calendar days. If Contractor fails to cure the problem within the ninety (90) calendar days, State shall terminate Contractor for cause. In addition, if Contractor completes the implementation of twenty-seven (27) counties on or prior to September 16th, 2005, State shall pay forty (40) percent of initial Contract holdback amount to Contractor.
- B. Late Milestone. In the event Contractor fails to complete Milestone 10, as defined in Section 17 "Contractor's Timeframe for Performance" supra, by the date set forth in the Project Schedule as revised, State may apply liquidated damages in the amount of One Thousand Dollars (\$1,000) per calendar day until Contractor completes the scheduled milestone. Damages shall accrue from the date set for cure until State reasonably obtains similar services or deliverables if Contractor is terminated for default or until Contractor provides the services or deliverables if Contractor is not terminated for default. Liquidated damages shall accrue for a maximum of ninety (90) calendar days.

- C. Contractor shall not be liable for liquidated damages if delays in meeting required schedules are due to State or County's failure to meet required schedule and project deadlines.
- D. State is responsible for gaining County commitment to adhere to approved implementation schedule, to attend training as scheduled, and to provide legacy data according to project deadlines.
- E. State shall allow Contractor a commercially reasonable time to cure any problem, delineated in this Section, prior to invoking the liquidated damages, based upon the severity of the problem.
- F. Contractor will provide the liquidated damages in the form of service level credits to the State against the immediately succeeding payments that become due to Contractor under this Agreement. If any service level credit remains outstanding upon the expiration or termination of this Agreement and no fees remain payable, Contractor will pay the State such remaining amount within 30 days after such expiration or termination.
- G. If Contractor fails to cure the problem, causing State to invoke liquidated damages, within the ninety (90) calendar days, State shall terminate Contractor for cause, and State shall pursue all remedies available under all other sections of this Contract and all remedies available at law or equity. Any Liquidated Damages credited to Client will reduce on a dollar for dollar basis the aggregate amount of the liability limitation set forth in Section 51 "Limitation of Liability".

49. TITLE AND RISK OF LOSS

Contractor or its affiliate shall ship all hardware purchased and third party software licensed pursuant to this Contract, freight prepaid, FOB the State's destination. The method of shipment shall be consistent with the nature of the hardware and third party software and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the hardware and third party software, in whole or in part, ordered hereunder which occurs prior to or after delivery to the State's destination, except loss or damage attributable to the State's (including those using the hardware or third party software on the State's behalf) acts or omissions or a force majeure event. Title to the delivered hardware shall pass to the State upon full payment for the hardware and subject to the terms of the applicable title agreements. The State agrees to be bound by and/or execute the third party software license agreements, if any, as required.

50. CONTRACTOR RELATIONSHIP WITH AGENCY AUTHORIZED USERS

- A. Contractor must perform the required work to enable transition of data from the Agency Authorized Users' existing legacy system to the new environment without any loss or degradation, unless mutually agreed to by State and Contractor. "Loss

or degradation”, relating to transition of data, refers to the quantity and quality of the data selected for transition from Agency Authorized Users’ existing legacy systems to the new environment developed by Contractor.

- B. Contractor shall cooperate with Agency Authorized Users in the integration of Contractor’s work with work, materials, and equipment supplied by Agency Authorized Users. Contractor shall promptly notify State if Contractor determines that an act or omission of an Agency Authorized User will delay or otherwise impair the provision of services.
- C. If an Agency Authorized User notifies State that it does not in good faith believe Contractor standards, methodologies or procedures are reasonable in the industry or appropriate in the particular situation, then State shall so notify Contractor and the Parties shall seek to establish mutually acceptable alternative arrangements.

51. LIMITATION OF LIABILITY

- A. Limitations. If State becomes entitled to claim damages from Contractor, including damages for breach of contract, breach of warranty, negligence, or tort claim, Contractor’s cumulative liability for all such claims shall be the amount of State’s actual direct damages. The amount of such damages shall not exceed One Hundred and Fifty Percent (150%) of the firm, fixed-price of this Contract.
- B. No Liability for Certain Damages. Contractor shall not be liable to State for any damages caused by the failure of State or its agents or other State contractors to perform as required under this Contract.
- C. Exclusions from Limitation; Survival. The foregoing limitations (Paragraphs A and B of this Section) do not apply and do not limit any liability with respect to indemnification obligations set forth in this Contract.
- D. The State may sue for breach of contract under all applicable legal theories.
- E. State’s damages for breach of contract shall not be limited to return of monies paid to Contractor for services or deliverables.

52. DISPUTE RESOLUTION

- A. Except as specifically provided otherwise in this Contract, disputes concerning the performance of this Contract, which cannot be resolved by the designated Contract representatives, shall be referred in writing to the Secretary of State, or her designee, and Contractor’s Client Partner or senior executive designated by Contractor. These senior management representatives shall discuss the problem and shall negotiate in good faith the resolution of the dispute by referencing applicable Contract provision(s) without the necessity of any formal legal proceeding. In the event such representatives of the Parties are able to agree to a mutual resolution of the dispute, such resolution shall be formalized by the appropriate action, i.e.,

formal Contract amendment, Bilateral Change Order Letter, or other written memoranda agreed to by State and Contractor's senior management representatives. This resolution process shall be exhausted prior to the incurrence of any liquidated damages as contained in this Contract.

- B. This process shall not supersede any other process for the resolution of controversies provided by law or at equity.

53. FORCE MAJEURE

Neither Contractor nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure" and does not arise from the fault or negligence of the non-performing Party. As used in this Contract "force majeure" means acts of God, acts of the public enemy, acts of terrorism, acts of war (declared or undeclared), labor disputes, lockouts, strikes or other industrial action, acts of the State and any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, or freight embargoes. This provision shall become effective only if the Party failing to perform notifies the other Party of the extent and nature of the problem as soon as reasonably possible after it becomes aware, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the non-performing Party.

54. STOP WORK ORDERS

- A. Because stop work orders may result in increased costs by reason of standby costs, such orders shall be issued only with prior approval of the State. Stop work orders shall include a clear description of the work to be suspended. If an extension of the stop work order becomes necessary, such stop-work order must be evidenced by a supplemental agreement as soon as feasible after issuance of the original stop-work order. Any cancellation of a stop-work order shall be subject to the same approvals as required for the issuance of the stop-work order.
- B. The State at any time by written order may require Contractor to stop all or any part of the work called for by this Contract. The stop-work order shall be for a specified period and shall be identified specifically as a stop-work order issued pursuant to this paragraph. Upon receipt of a stop-work order, Contractor shall take all reasonable steps to minimize incurring additional costs allocable to the work covered by the stop-work order. Before the stop-work order expires, or legally extended, the State either shall:
- (1) Cancel the stop work order; or
 - (2) Terminate the work covered by such stop work order, or

- (3) Terminate the Contract.
- C. Contractor shall have the right to resume work following cancellation of a stop-work order. An appropriate adjustment shall be made in the delivery schedule, the payment schedule, Contract price, or any combination of these adjustments, and the Contract shall be modified by BCOL or written amendment under the conditions as follows:
- (1) Stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) Contractor asserts a claim for such an adjustment within thirty (30) calendar days after the end of the period of work stoppage.
- D. If the work covered by a stop-work order is terminated for default or convenience, the reasonable costs resulting from the stop-work order shall be allowed by adjustment or otherwise. Such adjustment shall be in accordance with the Price Adjustment Clause of this Contract.

55. REPRESENTATIVES AND NOTICE

For purposes of this Contract, the individuals identified below are hereby designated representatives of the respective Parties. All notices required shall be in writing and delivered to the Parties by personal service, by recognized overnight courier or delivery service, or by registered or certified mail (postage prepaid and return receipt requested) at the addresses set forth below:

FOR STATE	FOR CONTRACTOR
<p>Send To:</p> <p>Colorado Department of State Attn: Brian Mouty HAVA Project Manager Suite 200 1560 Broadway Denver, CO 80202</p> <p>Phone: 303-894-2200, Ext 6626 Fax: 303-869-4861 Email: brian.mouty@sos.state.co.us</p>	<p>Send To:</p> <p>Accenture LLP Attn: Jason A. Skurcenski HAVA Project Manager Suite 500 1400 16th St. Denver, CO 80202-1320</p> <p>Phone: 720-359-5569 Fax: 720-359-4569 Email: jason.a.skurcenski@accenture.com</p>
<p>With A Copy To:</p> <p>Colorado Department of State Attn: Drew Durham HAVA Director Suite 200 1560 Broadway Denver, CO 80202</p> <p>Phone: 303-894-2200, Ext 6314 Fax: 303-869-4861 Email: drew.durham@sos.state.co.us</p>	<p>With A Copy To:</p> <p>Accenture LLP Attn: Todd Dunbar HAVA Engagement Director Suite 500 1400 16th St. Denver, CO 80202-1320</p> <p>Phone: 720-359-5477 Fax: 720-359-4477 Email: todd.a.dunbar@accenture.com</p>

Any such notice shall be deemed effectively given and received at the time of receipt or refusal, when delivered to one of the two persons listed above, or their designated recipient, if delivered personally, by courier or delivery service, or by United States Express Mail service with signature of recipient required. Any party may designate a different representative and/or address for the purpose of this paragraph by notice given in accordance with this Section.

56. FEDERAL CERTIFICATIONS

Within ten (10) days after execution of this Contract, Contractor shall provide, comply with, and if applicable, execute the federal certifications set forth below:

- A. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction
- B. Certification of Compliance with the Requirements of the Federal Drug-Free Workplace Act of 1988
- C. Certification Regarding Lobbying
- D. Tobacco Free Certification

For the term of this Contract, the Contractor further certifies that systems, controls, and procedures shall be implemented to prevent improper use of public funds. No State or other public funds payable under this Contract shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. If the State determines that the Contractor violates this paragraph, State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

Instructions and/or certification language regarding the above listed certifications follow within this Section.

56.1 Suspension and Debarment

- A. Instructions for Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction
 - (1) By signing and submitting its proposal and signing this Contract, the prospective lower tier participant is providing the certification set out below.
 - (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - (3) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
 - (4) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which

this proposal is submitted or with whom this Contract is made for assistance in obtaining a copy of those regulations.

- (5) The prospective lower tier participant agrees by submitting its proposal and signing this Contract that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (6) The prospective lower tier participant further agrees by submitting this proposal and signing this Contract that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transaction.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement programs.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

B. Contractor Certification – Suspension and Debarment

- (1) The prospective lower tier participant certifies, by execution of this Contract, that neither it nor its principals is presently declared ineligible or voluntarily excluded from participation in this transaction by a Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its certification.

56.2 Drug-Free Workplace Certification**A. Instructions for Drug-Free Workplace Certification**

- (1) By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
- (2) The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant and executes the contract. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
- (3) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
- (4) Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
- (5) If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph (3) above).

B. Contractor Certification – Drug-Free Workplace

The Contractor certifies that it will or will continue to provide a drug-free workplace by:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition:
- (2) Establishing an ongoing drug-free awareness program to inform employees about-
 - (a) The dangers of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Making it a requirement that each employee to be engaged in the performance of the grant/contract be given a copy of the statement required by paragraph B (1) above;
- (4) Notifying the employee in the statement required by paragraph B (1) that, as a condition of employment under the grant/contract, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (5) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph B 4 (b) above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant/contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant/contract;
- (6) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph B 4 (b) above, with respect to any employee who is so convicted:

- (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of this Section's paragraphs B (1) through B (6).

56.3 Lobbying Certification

The Contractor certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

56.4 Tobacco Free Certification

Public Law 103-227, the Pro-Children Act of 1994, requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by any entity and used routinely or regularly for the provision of health, day care, education, or

library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided by private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. By submitting and signing the application and this Contract, the Contractor certifies that it will comply with the requirements of the Act. The Contractor further agrees that it will require the language of this certification to be included in any subawards which contain provisions for children's services and that all subgrantees shall certify and perform accordingly.

57. GENERAL TERMS AND CONDITIONS

57.1 Governmental Immunity

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act (CGIA), Section 24-10-101, *et seq.*, C.R.S., as amended, and the risk management statutes, Section 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended. State and Contractor understand and agree that liability for claims for injuries to persons or property arising out of the alleged negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees shall be controlled and limited by the provisions of Section 24-10-101, *et seq.*, C.R.S., as now or hereafter amended.

57.2 Gratuities

By executing this Contract, Contractor avers that Contractor is familiar with C.R.S. 18-8-301, *et seq.*, (Bribery and Corrupt Influences) and C.R.S. 18-8-401, *et seq.*, (Abuse of Public Office). Contractor further avers that Contractor has not violated any of the provisions of the previously referenced statutes in Contract.

57.3 Third Party Beneficiaries

State and Contractor understand and expressly agree that the enforcement of the terms and conditions of this Contract, and all rights of action related to such enforcement, shall be strictly reserved to State and Contractor. Nothing in this Contract shall give or allow any claim or right of action to or by any third person. State and Contractor expressly agree that any person or entity, other than State or Contractor, receiving services or benefits under this Contract, shall be deemed only an incidental beneficiary.

57.4 Severability

State and Contractor agree that the terms and provisions of this Contract are severable. If any term or provision of this Contract is declared invalid by a court of competent jurisdiction, or if any term or provision becomes inoperative for any other reason, then such invalidity or inoperativeness shall not affect the validity of any other term or provision of this Contract. In addition, if any provision of this Contract, for any reason,

is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions of the Parties.

57.5 Waiver

The waiver of a breach of a term or provision of this Contract shall not be construed as a waiver of a breach of any other term or provision of this Contract or as a waiver of a breach of the same term or provision upon subsequent breach.

57.6 Assignment and Successors

The Contractor agrees not to assign rights or delegate duties under this Contract, or subcontract any part of the performance required under the Contract, without the express, written consent of the State, which shall not be unreasonably withheld, conditioned or delayed. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by Section 4-9-318, C.R.S., provided that the controller for the agency, department, or institution executing this Contract receives written notice of assignment adequate to identify the rights assigned. Such assignment shall not be deemed valid until receipt by such controller -- as distinguished from the State Controller -- and the Contractor assumes the risk that the controller for the agency, department, or institution involved receives such written notice of assignment. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation. Any attempt to assign rights under this Contract shall be void and of no effect, and further, shall be a breach for which there shall be no right to cure. Neither assignment nor attempted assignment shall relieve Contractor of Contractor's obligations under this Contract unless State otherwise agrees in writing.

57.7 Appendices, Attachments and Exhibits

The appendices, attachments and exhibits referred to in and attached to this Contract are made a part of it as fully included in the text.

57.8 Adequate Consideration

State and Contractor agree that the covenants and promises contained in this Contract are good and sufficient consideration for their respective obligations required under this Contract.

57.9 Further Assurances

State or Contractor, from time to time, may execute and deliver reasonably acceptable instruments as the other party or party's counsel may request to effectuate the intent of this Contract. State, at no time, may execute or deliver any instrument, which violates the statutes, fiscal rules, or regulations of the State of Colorado and federal agencies.

57.10 Interpretation

Captions and headings used in this Contract are for convenience of reference only and shall not affect the construction of any provision of this Contract. The singular includes the plural and vice versa. Any reference to gender shall be deemed to include the masculine, feminine or neuter. Font size, italics, underlining, bolding, etc., shall not be construed to increase the importance of that particular text beyond that of any other text.

57.11 Anti-Kickbacks

The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with the Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, the State may, at its discretion, terminate this Contract without liability to the State, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

57.12 Indemnification

The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all third party claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any intentional, negligent, or reckless act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract which results in personal injury or damage to real or tangible personal property.

57.13 Notice to Contractor

State shall consider the employment by Contractor of unauthorized aliens a violation of Section 274A of the Immigration and Naturalization Act. If Contractor has not cured such violation within three (3) business days of written notice from State, such violation shall be cause for unilateral cancellation of this Contract without payment of a demobilization cost.

57.14 Binding Effect

The provisions of this Contract shall be binding upon and inure to the benefit of the heirs, successors, personal representatives and assigns of the Parties.

57.15 Waiver

No exercise of any right or waiver of any remedy, in whole or in part, provided for in this Contract shall operate as an exercise of any other right or waiver of any other remedy, except as otherwise provided herein. No delay on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof.

57.16 Entire Agreement

This Contract embodies the entire agreement between State and Contractor with respect to the subject matter of the Contract and supersedes any and all prior agreements and understandings, written or oral, formal or informal.

57.17 Taxes

State will be exempt from all federal excise taxes and from all state and local government use taxes. When Contractor purchases materials for the benefit of the State, such exemptions apply except that in certain political subdivisions (for example, City and County of Denver) Contractor may be required to pay sales or use taxes even though the Contractor will ultimately provide product or service to State. State will not reimburse Contractor for any sales or use taxes. Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes. The State shall provide Contractor a tax exempt certificate for sales of tangible personal property to State by Contractor or purchases of tangible personal property made by Contractor on behalf of State in connection with this Contract, where the title vests in the State.

57.18 Survival of Certain Terms

Whenever the context permits, State and Contractor obligations under this Contract shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the Parties.

57.19 Extension of Contractor's Performance

In the event that State prevents or delays Contractor's performance of any of Contractor's obligations (including any obligations relating to liquidate damages), Contractor's performance shall be extended for a like period of time or as otherwise agreed to by the Parties, and this failure to perform by Contractor shall not be a breach of Contract. In the event such delay or failure by State results in State requesting that Contractor expend additional time or resources, the Parties will execute a change order and Contractor shall be paid for such additional time and resources at Contractor's then applicable rates.

58. CONTRACT EXHIBITS LIST

The following exhibits are part of this Contract:

- A. Exhibit A - Statement of Work**
- B. Exhibit B - Payment Schedule**
- C. Exhibit C - Contractor Key Personnel**
- D. Exhibit D - Service Level Agreement**
- E. Exhibit E - Bilateral Change Order Letter (Template)**
- F. Exhibit F - Request for Proposals (DOS-HAVA-0001), dated January 16, 2004**
- G. Exhibit G - Accenture RFP Response, dated February 17, 2004**
- H. Exhibit H - Accenture Oral Presentation Materials, dated April 27, 2004**
- I. Exhibit I - Accenture Best and Final Offer (BAFO), dated May 4, 2004**
- J. Exhibit J - AESM Software Product License Agreement**
- K. Exhibit K - Nondisclosure and Use Agreement**

59. SPECIAL PROVISIONS

(Not for Use with Inter-Governmental Contracts)

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. FUND AVAILABILITY. CRS 24-30-202 (5.5)

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

3. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

4. NON-DISCRIMINATION.

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

5. CHOICE OF LAW.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

6. VENDOR OFFSET. CRS 24-30-202 (1) & CRS 24-30-202.4

Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

7. SOFTWARE PIRACY PROHIBITION Governor's Executive Order D 002 00

No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

8. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

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

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SIGNATURE PAGE

CONTRACTOR:

Accenture, LLP

Legal Name of Contracting Entity (Contractor)

Signature of Contractor Authorized Officer

Todd A. Dunbar, Partner

Print Name & Title of Authorized Officer

Contractor FEIN

STATE OF COLORADO:

Colorado Department of State

Legal Name of State Agency (State)

Signature of State Authorized Officer

Donetta Davidson, Colorado Secretary of State

Print Name & Title of State Authorized Officer

COLORADO ATTORNEY GENERAL:

LEGAL REVIEW

Ken Salazar, Attorney General

By: Attorney General Representative

CORPORATIONS:

(A corporate attestation is required.)

Attest (Seal) By:

(Corporate Secretary or Equivalent, or Town/City/County Clerk)

(Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

Leslie M. Shenefelt

By: State Controller Representative

Date