

STATE OF COLORADO
Governor's Office of Information Technology
MASTER TASK ORDER CONTRACT
with
uWork.com., dba Covendis Technologies

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1. PARTIES

This Master Task Order Contract ("Contract") is entered into by and between **uWork.com, a Delaware corporation doing business as Covendis Technologies** ("Contractor"), and the STATE OF COLORADO acting by and through the Governor's Office of Information Technology ("State" or "OIT"). Contractor and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Contract shall not be effective or enforceable until it is approved and signed by the State Controller, as defined in §4 below ("Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Contract exists in CRS §24-37.5-105. Pursuant to CRS §24-110-201, this is a cooperative purchasing agreement. Eligible entities within Colorado are authorized to make purchases under this Contract in accordance with the terms specified in Request for Proposal #RFP-001-JG-13 ("RFP"). All State Agencies, as defined in §4 below, are included in this Contract. State legislative and judicial branch agencies, Institutions of Higher Education, and local public procurement units ("Local Public Procurement Units", as defined in C.R.S. §24-110-101) may participate in this Contract, as well. Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

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

C. Purpose

The purpose of this Contract is to establish prices and terms for Ordering Entities to procure Goods and Services from Contractor pursuant to Task Orders issued under this Contract, limited to temporary Information Technology (IT) resources. All State Agency purchases using this Contract shall be made by OIT through the execution of a Task Order, substantially in the form of **Exhibit C**. Purchases by Ordering Entities that are not State Agencies may be accomplished directly by means of a Task Order, purchase order, or other form of commitment voucher that the Ordering Entity and Contractor mutually agree. OIT shall not be liable to Contractor as a signatory to this Contract for any breach by an Ordering Entity of any payment or other obligation hereunder, and the State shall not be liable to Contractor for any such breach by any Local Procurement Units.

D. References

All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein, including in the attached **Exhibits A, B, C, and D**, shall be construed and interpreted as follows:

A. Acceptance Criteria

"Acceptance Criteria" means the standards listed in a Task Order or Order which specify the Ordering Entity's requirements and conditions that must be satisfied by the Contractor for the Ordering Entity to accept the completed Deliverables.

B. Acceptance Testing

"Acceptance Testing" means testing as described in a Task Order or Order to be performed by the Contractor to determine whether the Deliverable(s) meet the Acceptance Criteria.

C. Background Check

"Background Check" means the process the Ordering Entity will conduct through the Contractor to determine the appropriate level of background check for the positions requested, which may include criminal, national, IRS, revenue, and polygraph.

D. Budget

"Budget" means the budget for the Work described in **Exhibit A**, in this Contract, and in each Task Order, and shall include the pricing of each Task Order.

E. Business Day

"Business Day" means the time between 8:00 a.m. to 5:00 p.m., Mountain Standard Time, Monday through Friday, excluding State holidays and State mandated office closures.

F. Candidates

“Candidates” means the personnel submitted in response to a Requisition, and, once selected, accepted and onboarded, the personnel providing the services defined in the Requisition to the Ordering Entity.

G. Classification

“Classification” means the major subject matter of the services being ordered and performed. The classification is Information Technology Professional Services (ITPS).

H. Contract

“Contract” means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references, including Task Orders, incorporated herein pursuant to State law, fiscal rules, and State Controller policies.

I. Contract Funds

“Contract Funds” means funds available for payment by the State to Contractor pursuant to this Contract, State Agency Task Orders, and State Ordering Entity Task Orders or Orders issued under this Contract pursuant to §6.D below.

J. Contract Term

“Contract Term” means the Initial Term and any Renewal Term, as provided in §5.

K. Contractor Intellectual Property

“Contractor Intellectual Property” means any intellectual property that is owned by Contractor and contained in or necessary for the use of the Deliverables. Contractor Intellectual Property includes Documentation, and derivative works and compilations of any Contractor Intellectual Property.

L. Contractor’s Staff

“Contractor’s Staff” means any and all Contractor personnel (including without limitation all Key Persons listed in a Task Order or Order), staff, project team members, Contractor’s authorized representatives, and Contractor’s Subcontractors

M. CRS

“CRS” means the Colorado Revised Statutes.

N. Dashboard

“Dashboard” means a user interface that organizes and presents information in a way that is easy to read.

O. Deliverables

“Deliverables” means Services, any items and materials, knowledge transfer, and all related legal rights to own or use such Services, items and materials, delivered to an Ordering Entity pursuant to a Task Order or Order, as listed in the Task Order or Order Statement of Work, including but not limited to the Services, items or materials that Contractor delivered under a Task Order or Order in the course of performance of the Work, whether owned or developed by Contractor, Contractor’s Staff or any other third party.

P. Delivery Schedule

“Delivery Schedule” means the schedule(s) for the performance of Work, as set forth in a Task Order or Order that lists: (1) each Deliverable, including its measurable attributes; (2) the payment schedule within each Deliverable, including milestone completion dates; and (3) the final delivery date for each Deliverable.

Q. Documentation

“Documentation” means an operational description, in written format, of all Work to be performed under a Task Order or Order, including documents that are Deliverables.

R. Documentation Standard

“Documentation Standard” means the standard of quality and formatting of documents as stated in a Task Order or Order. At a minimum all documentation created must meet or exceed applicable industry standards.

S. Engagement

“Engagement” means selected, accepted and onboarded proposals for Services.

T. Errors

“Errors” means defect(s) in the Deliverables, Work or Work Product such that the Deliverables, Work or Work Product does not comply with the specifications set forth in a Task Order or Order.

U. Evaluation

“Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in §6, **Exhibit A**, and in each Task Order issued pursuant to §6.D.

V. Exhibits and Other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work), **Exhibit B** (Prices and Rates), and **Exhibit C** (Form of Task Order), and **Exhibit D** (Form of Option Letter).

W. Final Acceptance

“Final Acceptance” means the date upon which an Ordering Entity provides Contractor written notice that it has accepted all the Work to be performed, including all Deliverables or when applicable the System to be delivered, including any updates, corrections, or additions to content, and that the Ordering Entity will make payment for Work performed. The Warranty Period shall commence upon Final Acceptance.

X. Fiscal Year

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

Y. Goods

“Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services Contractor renders hereunder or under any Task Order or Order.

Z. Information Security Policies

“Information Security Policies” means the security standards, definitions and policies endorsed by the State Ordering Entity, or if not addressed by the State Ordering Entity, then at least known to be generally accepted practice in the industry, unless otherwise approved in writing by the Ordering Entity.

AA. Information Technology (“IT”)

“Information Technology (“IT”), “IT Professional Services”, or “ITPS” is defined in C.R.S. §§24-37.5-101, et seq.

BB. Initial Term

“Initial Term” means the Initial Term of this Contract as provided in §5.A.

CC. Institutions of Higher Education

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

DD. Interagency Agreement (IA)

“Interagency Agreement (IA)” means an agreement between OIT and another State Agency or State Ordering Entity and approved by the State Controller.

EE. Key Persons

“Key Persons” means Contractor’s staff who will be principally responsible for managing the Services or for performance of Work under a Task Order or Order and the satisfactory completion, delivery and acceptance of the related Deliverables.

FF. Managed Services

“Managed Services” means the broad spectrum of Services that Contractor provides to OIT and the Ordering Entities including but not limited to: the provision of the VMS; recruitment, screening and registration of Subcontractors; Subcontractor management and VMS systems management.

GG. MWBE

“MWBE” means a Minority, or Women owned Business.

HH. Non-Disclosure Agreement (“NDA”)

“Non-disclosure Agreement (“NDA”) means a separate contract that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, and to which the parties to the NDA wish to restrict access by third parties.

II. Open Source Software

“Open Source Software” means one or more of the following: (1) any software that contains or is derived in any manner (in whole or in part) from open source software or software subject to similar licensing or distribution requirements; and (2) any software that requires as a condition of its use, modification or distribution that such software (or other software incorporated into, derived from or distributed with such software) be either (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

JJ. Order

“Order” means an order issued under this Contract by an Ordering Entity, the terms and conditions, attachments, documents incorporated by reference under the terms thereof, and any future modifying agreements, exhibits, attachments or references incorporated therein.

KK. Ordering Entity or Customer

“Ordering Entity” or “Customer” means the State Agency, State Ordering Entity, or Local Public Procurement Unit that places a Task Order or Order hereunder for Goods or Services.

LL. Ordering Entity Intellectual Property

“Ordering Entity Intellectual Property” means any intellectual property that is owned by an Ordering Entity, including but not limited to any data stored on or collected by or through the VMS and all materials, concepts, data or other proprietary information. Ordering Entity Intellectual Property includes any derivative works and compilations of any Ordering Entity Intellectual Property.

MM. Party or Parties

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

NN. Pool of Subcontractors

“Pool of Subcontractors” means the Subcontractors awarded contracts for the provision of Services pursuant to this Contract. Covendis shall not be a Subcontractor.

OO. Program or MSP Program

“Program” or “MSP Program” means the combination of managed services administered, VMS and ITPS provided by the Contractor to OIT and Ordering Entities.

PP. Project

“Project” means the Services identified in **Exhibit A** as further defined in each individual Task Order or Order executed by an Ordering Entity pursuant to §6.

QQ. Proposals

“Proposals” are offers submitted by Subcontractors in response to Requisitions.

RR. Renewal Term

“Renewal Term” means the extension of the Initial Term pursuant to an Option Letter as provided in §5.C.

SS. Requisition

“Requisition” means a request by an Ordering Entity for Work to be performed pursuant to this Contract.

TT. Review

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

UU. Risk Management

“Risk Management” means all aspects of quality management and risk management methodologies that shall be applied to characterize risks at the level of Work Product, process, and the overall Program and Project. Risk Management includes the identification of risks, the thorough assessment

of the probability and the impact for the occurrence of risks, and the planning of viable responses that include, but are not limited to, mitigation, contingency, and avoidance strategies.

VV. Services

“Services” means the required services to be performed by Contractor pursuant to this Contract and any Task Order or Order issued under this Contract.

WW. State Agency

“State Agency” means a department, division, commission, board, bureau, or institution in the Executive Branch of the State government, but does not include State Ordering Entities, State-supported Institutions of Higher Education, or other Local Public Procurement Units (C.R.S. §24-37.5-102(4)).

XX. State Controller

“State Controller” means the Colorado State Controller or authorized designee of the Colorado State Controller.

YY. Statement of Work

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

ZZ. State Ordering Entity

“State Ordering Entity” means other departments of the State not defined as State Agencies, including the Department of Law, the State Treasurer, the Judicial Department, the Secretary of State, the State Legislature, or Institution of Higher Education, that place Task Orders or Orders hereunder for Goods and Services under the terms and pricing of this Contract. Local Public Procurement Units are not “State Ordering Entities”.

AAA. Subcontractor

“Subcontractor” means any third-party engaged by Contractor to aid in performance of Contractor’s obligations under this Contract and any Task Order or Order issued under this Contract.

BBB. Subcontractor Intellectual Property

“Subcontractor Intellectual Property” means any intellectual property that is owned by a Subcontractor and contained in or necessary for the use of a Deliverable. Subcontractor Intellectual Property includes Documentation, and derivative works and compilations of any Subcontractor Intellectual Property.

CCC. System or Systems

“System” or “Systems” means one or more of the Ordering Entity’s integrated computer software application and database systems that may be modified, converted, created or enhanced by Contractor for the Ordering Entity under a Task Order or Order. System includes but shall not be limited to all related technical design documents, software, databases, database schemas, formats, documentation, reports, memoranda, studies, plans, designs, specifications, statements, drawings, materials, exhibits, schedules and other documents or materials, in whatever media, developed by Contractor in the performance of Work under a Task Order or Order, as more fully described and specified in a Statement of Work.

DDD. Task Order

“Task Order” means a Task Order substantially in the form of **Exhibit C**, issued under this Contract in accordance with **§6.D**, its terms and conditions, attachments, documents incorporated by reference under the terms thereof, and any future modifying agreements, exhibits, attachments or references incorporated therein pursuant to Colorado State law, fiscal rules, and State Controller policies. A Task Order or Order shall have a defined Statement of Work and set of Deliverables. A Task Order or Order shall be structured around the Deliverables to be achieved as opposed to the manner by which the work is to be performed. The Statements of Work in a Task Order or Order describe the

required results in clear, specific and objective terms with measurable outcomes. See §IV of Exhibit A.

EEE. Third Party Intellectual Property

“Third Party Intellectual Property” means any intellectual property that is owned by a third-party and contained in or necessary for the use of a Deliverable. Third Party Intellectual Property includes Documentation, and derivative works and compilations of any third-party Intellectual Property.

FFF. Timeline

“Timeline” means a document that details dates and targets for achieving program goals or requirements.

GGG. Training

“Training” means the methods, tools and techniques designed and delivered by the Contractor to enable successful use of the VMS by OIT, Ordering Entities, and Subcontractors.

HHH. User

“User” means OIT or any Ordering Entity that purchases Goods or Services from Contractor pursuant to this Contract.

III. Vendor Management System or VMS or Equivalent Tool

“Vendor Management System” or “VMS” or “Equivalent Tool” means the secure, highly available, web-based software application provided by Contractor that automates and deploys the Requisition, engagement and screening of Subcontractors, management, invoicing and payment for Goods and Services.

JJJ. Vendor Neutral

“Vendor Neutral” means a quality of Contractor’s business model that promotes competition among its Subcontractors through an absence of Contractor’s controlling financial or management interest in any Subcontractor while being entirely reliant on their services in order to perform the Work.

KKK. Work

“Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract, Exhibit A, and any Task Order or Order issued under this Contract.

LLL. Work Product

“Work Product” means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Subcontractor(s) or their agents (either alone or with others) pursuant to a Task Order or Order. Work Product also includes temporary personnel services, training and instruction, and necessary workshops that Contractor provides to Users. Notwithstanding anything in this paragraph, Work Product does not include any Ordering Entity Intellectual Property, Contractor Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property.

5. TERM and EARLY TERMINATION

A. Initial Term-Work Commencement

The Parties’ respective performances under this Contract shall commence on its Effective Date. This Contract shall terminate one (1) year after the Effective Date, unless sooner terminated or further extended as specified elsewhere herein. Task Orders and Orders must be executed pursuant to this Contract prior to the expiration date (as such might be amended through Option Letters or by Contract amendments), but a Task Order or Order may have a delivery date or performance period that is to end not later than one hundred twenty (120) days after the then-current expiration date of this Contract. Notwithstanding the expiration or termination of this Contract, Contractor agrees to perform in accordance with the terms of any Task Orders or Orders then outstanding at such

expiration or termination and the Contract terms and conditions required to implement and govern such Task Orders and Orders shall survive any termination of this Contract until completion of any and all such Task Orders and Orders have been completed or terminated in accordance with this Contract.

B. Two Month Extension

The State, at its sole discretion and upon written notice to Contractor as provided in §16, may unilaterally extend the Contract Term for a period not to exceed two (2) months if a replacement contract has not been fully executed by the term date of this Contract. The provisions of this Contract and each Task Order or Order in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two (2) month extension. The two (2) month extension shall immediately terminate when and if a replacement contract is approved and signed by the State Controller.

C. State's Option to Extend

The State may require continued performance of this Contract for up to four (4) Renewal Terms of one (1) year each, at the same rates and terms specified in the Contract. If the State exercises this option, it will provide written notice to Contractor at least thirty (30) days prior to the end of the initial Contract Term or Renewal Term in form substantially equivalent to **Exhibit D**, specifying the length of the Renewal Term. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five (5) years. The Option Letter shall not be valid until signed by the State Controller.

D. Task Order and Order Terms

Task Orders and Orders for Work under this Contract having an aggregate cost less than One Million Dollars and 00/100 (\$1,000,000.00) may be placed consistent with the terms of this Contract during the Term specified above by OIT or Ordering Entities. Notwithstanding the expiration or termination of this Contract, Contractor agrees to perform in accordance with the terms of any Task Orders and Orders then outstanding at such expiration or termination. Contract provisions required to implement and govern Task Order or Order performance shall survive Contract termination until all outstanding Task Orders and Orders have been completed or terminated in accordance with this Contract.

6. STATEMENT OF WORK

A. Completion

The State shall not be liable to compensate Contractor for any Work performed on a Task Order or Order issued under this Contract prior to the Effective Date or after the termination of this Contract, except as provided in §5, and shall not be liable to compensate Contractor for any Work requested by any entity that is not a State Agency or State Ordering Entity that does not purchase Contractor's Goods and Services pursuant to §6.D below.

B. Goods and Services

Contractor shall procure Goods and Services necessary to complete the Work under each Task Order or Order issued under this Contract. For a Task Order for Work for a State Agency or State Ordering Entity purchasing pursuant to §6.D below, such procurement shall be accomplished using the Contract Funds available under the Task Order and shall not increase the maximum amount payable thereunder by the State. Contractor shall not enter into separate or individual contracts for the Goods and/or Services provided under this Contract or any Task Order for a State Agency during the term of this Contract without the express written consent of OIT. The State shall not be liable for any completed Work or Task Orders that are not originated in accordance with §6.D of this Contract. Contractor shall notify OIT immediately of any change of Contractor's name or address, price changes, and any other matters that impact Contractor's ability to perform Services as required

hereunder. OIT reserves the right to post Contractor's pricing (or a URL link to this information) on the Internet.

C. Employees

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

D. Task Orders

The process for OIT ordering and placement of Task Orders for OIT, a State Agency, and State Ordering Entities desiring to purchase Goods and/or Services via Task Order pursuant to this §6.D is described in this §6.D. Ordering Entities or State Ordering Entities not required to purchase Goods and/or Services via Task Order pursuant to this Contract but still desiring to utilize this Contract may place Orders with Contractor through the establishment of different ordering procedures by mutual agreement with Contractor. Each such Ordering Entity or State Ordering Entity shall be solely responsible for the payment of the Orders it places, and OIT shall have no responsibility, obligation, or liability for such Orders. Contractor shall not attempt to collect payments or other performance for such Orders from OIT.

i. State Ordering Entity Orders

If OIT, a State Agency, or a State Ordering Entity needs Contractor's Goods and/or Services, OIT will:

- a) coordinate with that State Agency or State Ordering Entity and Contractor to determine the Work to be completed and the Services to be performed by Contractor;
- b) enter into an Interagency Agreement with the that State Agency or State Ordering Entity to acquire Services and/or Goods for that State Agency or State Ordering Entity under this Contract prior to OIT issuing a Task Order for such Services and/or Goods; and
- c) define, negotiate, and execute a Task Order and its associated Statement of Work for Contractor's Services and the Work that the State Agency or State Ordering Entity is requesting.

ii. Issuance

- a) Tasks shall be defined, negotiated, and ordered by agreement of the Parties in a Task Order based on the rates established in **Exhibit B** hereto and subject to the provisions of this Contract. Changes to this Contract shall require a formal written amendment, in accordance with §20.H. The State is not committing to issue any minimum number of Task Orders by entering into this Contract.
- b) Task Orders shall be processed as follows:
 - (1) OIT shall provide written notice to Contractor in accordance with §16, specifying the desired Services, Goods, and requirements of each Task Order.
 - (2) Within thirty (30) days after receipt of such notice, Contractor shall submit a proposal to OIT, in a form acceptable to OIT and the State Agency or State Ordering Entity (if other than OIT), which proposal shall include all pertinent information including without limitation price, statement of work, proposed time of performance, estimated number of hours (as appropriate) material costs, any not to exceed travel expenses, and warranties.
 - (3) Once the Parties agree regarding the foregoing, they shall prepare and execute a Task Order in a form substantially similar to **Exhibit C**.
- c) Performance of the obligations set forth in each Task Order shall be subject to the provisions of this Contract. Contractor warrants it will successfully complete the Work and its obligations described in each Task Order within the stated time and price. The State shall not be liable to compensate or reimburse Contractor for any performance under a Task Order including, but not limited to, costs or expenses incurred, or be bound

by any provision thereof prior to that Task Order effective date or after termination of such Task Order.

iii. Modification

- a) A modification to a Task Order that increases the scope of work, maximum amount payable, or date for final completion of the Task Order shall be agreed to in writing by the Parties in a formal Task Order amendment, properly executed by the Parties and in accordance with applicable State law, State fiscal rules, and the provisions of this Contract. Modifications to Task Orders, other than Task Order amendments, shall conform to the policies of the State Controller.
- b) If the State Agency, State Ordering Entity, or OIT wishes to modify the scope or completion date of, or the maximum amount payable under a Task Order, OIT shall provide a written notice to Contractor, in accordance with §16, providing a detailed description of the requested modification. Within thirty (30) days of the receipt of such notice, Contractor shall submit to OIT a written Task Order amendment proposal setting forth the changes required to accomplish such modification to the Task Order, the revised scope of work, schedule, and costs associated with such modification, including an amended not-to-exceed amount for such Task Order.
- c) At the request of OIT, Contractor shall meet with the State Agency or State Ordering Entity and OIT to discuss the Task Order amendment proposal and related costs. If the Parties, including the State Agency or State Ordering Entity, agree to the terms of the modification, OIT and Contractor shall execute a Task Order amendment.
- d) A Task Order amendment will be approved only for modifications agreed upon by the Parties. An increase in Contractor's cost for the performance of Services or delivery of Goods under a signed Task Order shall not constitute grounds for a Task Order amendment.

iv. Termination

- a) Each Task Order shall terminate on the date specified therein unless it is sooner terminated or extended by a Task Order amendment. OIT shall notify Contractor of the termination by the delivery of written notice, in accordance with §16, which identifies the Task Order to be terminated and the effective date of the termination. The State shall reimburse Contractor for Work performed and for all reasonable charges arising from Contractor having made advance commitments for materials, services, and supplies which cannot be cancelled. If the State pays for such advance commitments, the State may take possession of all materials, supplies, and results and finish the Work by such means as it deems fit.
- b) Termination of a Task Order as provided hereunder or under such Task Order shall not constitute a termination of this Contract or of any other Task Order.
- c) Requests for an extension of the time for the completion of any Task Order performance not requiring a Task Order amendment shall be submitted to OIT in writing, in accordance with §16, and shall require the written consent of OIT, which consent shall not be unreasonably withheld.

v. Payment Terms

Each Task Order shall contain the terms of payment for the Work, consistent with §7.B below, to be completed for such Task Order and shall be based on the pricing contained in **Exhibit B** of this Contract. The pricing contained in **Exhibit B** shall remain fixed throughout the term of this Contract, including extensions. The State does not guarantee that a minimum number of hours or minimum quantity of Goods or Services will be ordered from Contractor pursuant to this Contract. The Budget attached to each Task Order shall include all of Contractor's and Subcontractor's Goods, Services, and expenses. Services shall be priced as a firm, fixed price using the prices listed on **Exhibit B** or at the hourly rates listed in **Exhibit B**

as a not-to-exceed amount, unless otherwise specified in the Task Order. Payments will be made based on the monthly submission of statements detailing the dates, quantity, and description of Services performed and/or Goods delivered.

vi. Liquidated Damages.

The Parties may provide for liquidated damages in any Task Order to the extent that damages from a breach of such Task Order are difficult to prove or estimate. The amount of liquidated damages specified in a Task Order shall represent a reasonable estimation of damages that the State would suffer, including costs of additional inspection and oversight and lost opportunity for additional efficiencies that would have resulted from on-time completion of performance.

vii. Period of Performance

Task Orders must be executed pursuant to this Contract prior to the termination hereof, but may have a delivery date or performance period up to one hundred twenty (120) days past the then-current termination of this Contract. Notwithstanding the expiration or termination of this Contract, provisions required to implement and govern Task Order performance shall survive Contract termination. Contractor agrees that financial obligations of State Agencies or State Ordering Entities payable after the current applicable fiscal year are contingent upon Contract Funds for that purpose being appropriated, budgeted, and otherwise made available in the next fiscal year. Contractor agrees to perform in accordance with the terms of any Task Orders then outstanding at the time of expiration or termination. Contractor shall not honor any Task Orders executed after the expiration or termination of this Contract, or otherwise inconsistent with its terms.

E. Orders From Non-State Agency Ordering Entities

Ordering Entities that are not State Agencies may establish different ordering procedures by mutual agreement with Contractor.

F. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ("ARRA") and FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006 ("FFATA")

If an Ordering Entity places a Task Order or Order using FFATA Contract Funds, the Ordering Entity shall immediately notify the State Purchasing Office and Contractor, and such Task Order or Order shall include the "State of Colorado Supplemental Provisions for Contracts, Grants, and Purchase Orders Using Funds Provided Under the American Recovery and Reinvestment Act of 2009" or the "State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to the Federal Funding Accountability and Transparency Act of 2006", as applicable, and as such provisions may be modified from time to time. Both the ARRA provisions and FFATA provisions are available on the website of the Colorado State Controller at <http://www.colorado.gov/dpa/dfp/sco/contracts.htm>. The State agrees to comply with all applicable federal and state reporting requirements for the use of ARRA and FFATA funds. Contractor shall provide the required report to the Ordering Entity with the invoice that Contractor presents for payment. The Parties acknowledge that Contractor, for purchases under this Contract, is not a subcontractor or subgrantee, but a provider of Goods and Services.

7. PAYMENTS TO CONTRACTOR

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

A. Maximum Amount

Ordering Entities shall purchase Contractors Goods and/or Services under this Contract by Task Order or Orders, as required by State law and regulations. The maximum amount payable under this Contract shall be determined by the amount of such Task Orders or Orders. No funds will be encumbered by the State against this Contract, but rather shall be encumbered upon the effective date of each Task Order or Order. The maximum amount available for purchase of Goods and Services under a Task Order or Order shall be defined in each such Task Order or Order.

B. Payment

i. By Ordering Entities

All Ordering Entities issuing valid Task Orders or Orders will be bound by the terms and conditions of this Contract including, without limitation, the obligation to pay Contractor for Goods and Services. OIT shall not be liable for payment of Orders placed by entities that are not State Agencies or State Ordering Entities not purchasing Contractor's Goods and/or Services pursuant to §6.D.

ii. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or any Task Order shall comply with State fiscal rules and be made in accordance with the provisions of this Contract and such Task Order. Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State. Invoices shall be sent to Governor's Office of Information Technology, 601 E. 18th Avenue, Suite 250, Denver, CO, 80203. Attn: Accounting.

iii. Interest

State law and regulations provide that the State will pay Contractor within forty-five (45) days of receipt of an invoice if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within forty-five (45) days shall bear interest on the unpaid balance beginning on the forty-sixth (46th) day at a rate not to exceed one (1) percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days' interest to be paid and the interest rate (C.R.S. §24-30-202(24), as amended).

iv. Discount or Delinquency Period

Any acceptable cash discount period or delinquency period will start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable services.

v. Retainage

The Parties may agree in any Task Order or Order that OIT or an Ordering Entity shall withhold a percentage of the amount shown to be due to Contractor on any invoice until the Work required by such Task Order or Order has been completed or as otherwise agreed by the Parties. The withheld percentage of each invoice shall be retained as provided in such Task Order or Order or as otherwise provided by law.

vi. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current Fiscal Year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in §21 (Colorado Special Provisions). If federal funds are used to fund this Contract, or any Task Order or Order, in whole or in part, OIT's or the Ordering Entity's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract and each Task Order or Order shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract or any Task Order or Order, OIT or the Ordering Entity may terminate this Contract or such Task Order or Order immediately, in whole or in part, without further liability in accordance with the provisions hereof.

vii. Non-Appropriation:

- a) OIT's source of funding for all payments and maintenance costs under any Task Order will be State General Fund, State cash funds, federal program funds and other funds appropriated by the Colorado General Assembly to OIT; agency cash funds, gifts, grants, and donations not appropriated by the General Assembly; and federal grants and other

grant funds appropriated by the State Controller and transferred to OIT. If the State agency funds to make payments under a Task Order are not appropriated, granted, gifted, or otherwise not made available to OIT during the term of the Task Order in sufficient amount for OIT to continue to perform its obligations related to the Task Order (herein, "Non-Appropriation"), the Task Order shall terminate effective on the last day of the Fiscal Year for which funds were fully available.

- b) The State's obligation to pay under a Task Order shall be a current expense of the State payable exclusively with the funds described in subsection (a) herein and shall not in any way be construed to be a general obligation indebtedness of the State of Colorado or any agency or department thereof within the meaning of any provision of §§ 1, 2, 3, 4, or 5 of Article XI of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. The State has not pledged the full faith and credit of the State, or any agency or department thereof to the payment of the charges hereunder, and neither this nor any Task Order issued under this Contract shall 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 payments due hereunder.

viii. Erroneous Payments

At the State's sole discretion, payments made to Contractor by the State in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract, any Task Order, Order, or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

ix. Remittance

An Ordering Entity will remit payments by mail, by State "Procurement Card", or as otherwise agreed by Contractor and such Ordering Entity. The Ordering Entity shall submit payments to Contractor at the address shown on the invoice or statement if it is the same address recorded in this Contract or subsequently provided to OIT in writing.

C. Use of Funds

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

8. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Subcontracts

Contractor, with the consent of the State, may enter into one or more written subcontracts for the performance of Contractor's obligations under this Contract or any Task Order or Order. Each subcontract shall comply with all applicable federal and state laws and provide that such subcontract shall be governed by the laws of the State of Colorado. Contractor shall submit a copy of each subcontract to the State prior to the effective date of such subcontract. The State shall accept or reject such subcontract within ten (10) business days of the State's receipt thereof. Failure of the State to accept a subcontract within such period shall be deemed to be a rejection thereof. In the event Contractor engages a Subcontractor to perform Work in connection with a Task Order or Order which contains a retainage provision in accordance with §7.B.v, Contractor shall notify the State immediately, in writing by certified mail, of any action or suit filed and prompt notice of any claim made against Contractor by any Subcontractor which in the reasonable opinion of Contractor may result in litigation related in any way to this Contract. Contractor shall notify the State in writing, in accordance with §16 below, within ten (10) days of discovering that a Subcontractor has been served with any pleading in a legal action filed with a court or administrative agency which may affect such Subcontractors ability to perform its obligation under a subcontract.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder or under any Task Order or Order. Contractor shall maintain such records until the last to occur of: (i) a period of three (3) years after the date this Contract expires or is sooner terminated, or (ii) final payment is made hereunder and under any Task Order or Order, or (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

Contractor shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract and any Task Order or Order during the Record Retention Period for a period of three (3) years following termination of this Contract or final payment hereunder and under all Task Order s and Orders, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder and thereunder. The State reserves the right to inspect the Work at all reasonable times and places during the Contract Term, including any extensions or renewals. If the Work fails to conform to the requirements of this Contract or any Task Order or Order, the State may require Contractor to promptly bring the Work into conformity with Contract and Task Order or Order requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract and Task Order or Order requirements and exercise the remedies available under this Contract and such Task Order or Order, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

Contractor shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract and each Task Order and Order using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site

checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder or under any Task Order or Order.

D. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the Contract Term, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein. Contractor shall ensure the provisions of this paragraph apply to any subcontract related to performance under the Contract. Contractor shall, at Contractor's sole expense, reconstruct any records not preserved or retained as required by this paragraph.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

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

D. Protection

If Contractor provides physical or logical storage, processing or transmission of confidential or sensitive State data, Contractor shall provide physical and logical protection for State hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in this Contract or a Task Order or Order. Contractor shall provide the State with access, subject to Contractor's reasonable access security requirements, seven (7) days a week, twenty-four (24) hours a day, for the purpose of inspecting and monitoring access and use of State data, maintaining State systems, and evaluating physical and logical security control effectiveness. A State Ordering Entity may include in a Task order additional terms associated with the protection of confidential information.

E. Security-Notice

Contractor is responsible for the security of all information provided to it by the State. Contractor shall comply with the State's Cyber Security Policies, which the Governor's Office of Cyber Security has promulgated pursuant to CRS §§24-37.5-401 through 406 and 8 CCR §1501-5. The Policies are posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>.

F. Security Breach Remediation

If Contractor becomes aware of a data security breach, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Contractor shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State. Contractor shall be responsible for performing an analysis to determine the cause of the breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present such analysis and remediation plan to the State within ten (10) days of notifying the State of the data security breach. The State reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce the required analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis, produce a remediation plan, and Contractor shall reimburse the State for the reasonable costs thereof.

G. Disclosure-Liability

Disclosure of State records or other confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, Subcontractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this §10. Notwithstanding any other provision of this Contract or any Task Order or Order, Contractor shall be liable to the State or Ordering Entity for all consequential and incidental damages arising from a data security breach. The Work under this Contract may require the State to supply data to the Contractor that contains Personal Identifying Information (PII). The State, in its sole discretion may securely deliver such data directly to the facility where the data is used to perform the Work. The data is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes. The Contractor shall ensure that the data is not retained beyond timeframes established by the State.

11. CONFLICTS OF INTEREST

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

12. REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties for the benefit of the State or Ordering Entity on the date hereof and as of each Task Order or Order Effective Date, each of which was relied upon and will be relied upon by the State or Ordering Entity in entering into this Contract and each Task Order or Order.

A. Standard and Manner of Performance

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

B. Legal Authority – Contractor Signatory

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

C. Licenses, Permits, Etc.

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

D. Contractor Key Personnel

- i. The roles of Contractor's Key Personnel are defined in **Section II of Exhibit A** of this Contract.
- ii. A change in Key Personnel identified in any Task Order or Order may only be made with prior written approval by the State. The Contractor must submit for the State's approval, a replacement with the educational and relevant experience qualifications that meet or exceed that of the candidate proposed by the Contractor. The State shall accept or reject the change within ten (10) business days.
- iii. The number, classification and qualification of Key Personnel proposed by the Contractor are considered material elements of the performance required of this Contract. Positions may not be eliminated, combined, or shared among other contractual obligations the Contractor may have without prior written approval of the State.

13. INSURANCE

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

A. Contractor

i. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

ii. Non-Public Entities

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

B. Contractors - Subcontractors

Contractor shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this Contract or any Task Order or Order, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

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

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

iii. Automobile Liability

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

iv. Professional Liability

The Contractor agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form that provides coverage for its work undertaken pursuant to this Contract. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this State Contract and for at least two (2) years beyond the completion and acceptance of the work under this Contract, or, alternatively, a two year extended reporting period must be purchased.

v. Additional Insured

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

vi. Cyber Liability.

Data security and data breach (Cyberliability) insurance with at a minimum, coverage for claims and losses with respect to network or data risks such as data breaches, release of confidential information, unauthorized access/use of information, identity theft, invasion of privacy, damage/loss/theft of data, etc. and have limits of liability of not less than \$1,000,000 per occurrence.

vii. Primacy of Coverage

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

viii. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least thirty (30) days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven (7) days of Contractor's receipt of such notice.

ix. Subrogation Waiver

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

C. Certificates

Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven (7) business days of the Effective Date of this Contract. A Subcontractor providing Goods or Services in connection with a Task Order or Order shall provide a certificate to Contractor showing insurance coverage required hereunder within seven (7) business days of the Effective Date of such Task Order or Order. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any subcontract, Contractor and each Subcontractor shall, within ten (10) days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

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

B. Notice and Cure Period

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

C. Delay or Nonperformance – Liquidated Damages

If the State or Ordering Entity provides Contractor with written notice of delay or nonperformance under a Task Order or Order, in accordance with §16 below, and Contractor fails to cure such delay or nonperformance within the time specified in such notice, then to the extent such Task Order or Order contains a liquidated damages provision, Contractor shall be liable for the liquidated damages in addition to any other applicable damages as provided therein.

15. REMEDIES

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

A. Termination for Cause and/or Breach

The State may terminate this entire Contract, any Task Order or Order, or any part of this Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder or under any Task

Order or Order. Contractor shall continue performance of this Contract or such Task Order or Order to the extent not terminated, if any.

i. Obligations and Rights

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

ii. Payments

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

iii. Damages and Withholding

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

B. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

C. Termination of Task Orders by State Agencies

OIT or a State Ordering Entity, through its designated procurement officer or other authorized representative, may terminate a Task Order or Order for breach, which shall not terminate this Contract without notice of termination from the State, and such termination of a Task Order or Order shall be governed by this §15.C.

i. Default

If Contractor refuses or fails to perform any of its obligations under a Task Order, with such diligence as will ensure its completion within the time specified in the Task Order, OIT or the State Ordering Entity's procurement officer may notify Contractor in writing of the non-performance. If such breach is not corrected within thirty (30) days of issuance of notice, or if, due to Contractor's actions or inactions, performance would be of no value to the State, the procurement officer may terminate Contractor's right to proceed with the Task Order or such part of the Task Order as to which there has been such a delay or failure to properly perform. Contractor shall continue performance of the Task Order to the extent it is not terminated.

ii. Contractor's Duties

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

iii. Compensation

Payment for satisfactory Services performed and accepted by OIT or the State Ordering Entity shall be at the Contract price. OIT or the State Ordering Entity may withhold amounts due to Contractor as the procurement officer deems necessary to protect OIT or the State Ordering Entity against loss because of outstanding liens or claims of former lien holders and to reimburse OIT or the State Ordering Entity for extra costs incurred in procuring substitute Service.

iv. Erroneous termination for default

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

v. Termination of an Order for the Public Interest

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

for the public interest of all or any portion of a Task Order shall not constitute a breach of this Contract by OIT or the State Ordering Entity.

a) Contractor's Obligations

Contractor shall incur no further obligations in connection with the terminated Task Order and on the date set in the notice of termination Contractor will stop work to the extent specified in the notice. Contractor must still complete and deliver to OIT or the State Ordering Entity any Work not terminated by the notice of termination.

b) Compensation

Upon termination of a Task Order by OIT or a State Ordering Entity, Contractor shall be entitled to compensation as follows:

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

D. Remedies Not Involving Termination

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

i. Suspend Performance

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

ii. Withhold Payment

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

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract or any Task Order, Contractor shall, at the State's option **(a)** obtain for the State or Contractor the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-

infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

E. Delay or Nonperformance – Liquidated Damages

If the State provides Contractor with written notice of delay or nonperformance under a Task Order in accordance with §16 below, and if Contractor fails to cure such delay or nonperformance within the time specified in such notice, then to the extent such Task Order contains a liquidated damages provision, Contractor shall be liable for the liquidated damages in addition to any other applicable damages as provided therein.

16. NOTICES and REPRESENTATIVES

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

A. State:

Brenda Berlin, CFO
Governor's Office of Information Technology
601 East 18 th Avenue, Suite 250
Denver, CO 80203
OITContracts@state.co.us

B. Contractor:

Raymond Tsao, Founder & CEO
Covendis
200 Walker Street SW
Suite B
Atlanta, Georgia 30313
rtsao@covendis.com

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

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

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

A. Application

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

B. Agreement

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

C. Evaluation and Review

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, Task Order, State law, including CRS §24-103.5-101, and State fiscal rules, policies and guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract and any Task Orders shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein in the Task Orders and a final Evaluation, Review and Rating shall be rendered within thirty (30) days of the end of the Contract Term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress. Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by OIT, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

D. Notification

i. Evaluation and Review

Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

ii. Rebuttal/Protest and Appeal

Contractor may contest the final Evaluation, Review and rating by filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)).

20. GENERAL PROVISIONS

A. Assignment and Subcontracts

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

B. Binding Effect

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

C. Captions

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

D. Counterparts

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one (1) agreement.

E. Entire Understanding

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

F. Indemnification

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

G. Jurisdiction and Venue

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

H. Modification

i. By the Parties

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

ii. By Operation of Law

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

I. Order of Precedence

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

- i. Colorado Special Provisions,
- ii. An executed Option Letter (see **Exhibit D**),
- iii. The provisions of the main body of this Contract,
- iv. **Exhibit A** – Statement of Work,
- v. **Exhibit B** – Pricing and Rates,
- vi. An executed Task Order (see **Exhibit C**).

J. Severability

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

K. Survival of Certain Contract Terms

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

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

M. Third Party Beneficiaries

Enforcement of this Contract, Task Order or Order, and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract or any Task Order or Order are incidental to the Contract, and do not create any rights for such third parties.

N. Waiver

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

O. CORA Disclosure

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

21. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Contracts except where noted in italics. For purposes of this §21, the term "Contract" shall include all Task Orders issued hereunder.

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

Contractor and its Subcontractors shall perform their duties hereunder and under a Task Order or Order as independent contractors and not as employees of the State. Neither Contractor, any Subcontractor, nor any agent or employee of Contractor or of any Subcontractor shall be deemed to be an agent or employee of the State. Contractor and its employees, agents, and Subcontractors are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents, employees, or Subcontractors. Unemployment insurance benefits will be available to Contractor and its employees, agents, and Subcontractors only if such coverage is made available by Contractor or a third party. Contractor or its Subcontractor, as the case may be shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract and any Task Order or Order. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees, agents, and Subcontractors.

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW.

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

G. BINDING ARBITRATION PROHIBITED.

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

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

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to

State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

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

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

SPs Effective 1/1/09



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22. SIGNATURE PAGE

Contract Routing Number

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p>CONTRACTOR uWork.com, dba Covendis Technologies</p> <p>Raymond Tsao President & CEO</p> <p>By:  Raymond Tsao, President & CEO</p> <p>Date: <u>10.29.2013</u></p>	<p>STATE OF COLORADO John W. Hickenlooper, GOVERNOR Governor's Office of Information Technology Kristin Russell, Secretary of Technology and State Chief Information Officer</p> <p>By:  Brenda Berlin, Chief Financial Officer</p> <p>Date: <u>10.30.13</u></p>
	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ Signature – Senior Assistant Attorney General</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

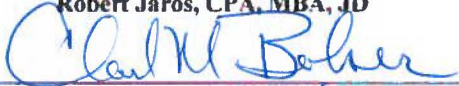
<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By:  Date: <u>10/30/13</u></p>

EXHIBIT A – STATEMENT OF WORK

I. Overview

During the term of this Statement of Work, uWork.com, dba Covendis Technologies (“Contractor” or “Covendis”) shall establish a Managed Services Program (“MSP”) and provide Managed Services as described in this Statement of Work using an online Vendor Management System (“VMS”).

Covendis shall provide Managed Services for the Information Technology Professional Services (“ITPS”) Classification to Ordering Entities. The ITPS services provided under the MSP shall include, but not be limited to recruitment, screening, and performance management of Covendis’ subcontractors, publication of ITPS opportunities, screening and onboarding of Candidates, invoicing and payment of Services, and quality controls and continuous improvement. Services provided under this Contract shall be performance-based services, as specified in Task Orders or Orders with specific statements of work calling for completion of defined deliverables and milestones at fixed prices (“Project Based”).

During the term of the Contract, Covendis, its divisions, and wholly owned subsidiaries or entities in which Covendis holds a majority stake shall be Subcontractor neutral and shall not provide Candidates for any position. Covendis shall provide ITPS ordered by users through its Subcontractors, in accordance with the terms and conditions of the Contract and any requirements contained in Task Order or an Order.

II. Key Persons

Covendis shall identify its Key Persons who will provide services under this Contract. Covendis shall submit to OIT resumes and references for each Key Person that include their background, education and credentials, and work experience related to a Managed Service program and ITPS. The role of each Key Person shall be as follows:

A. Implementation

1. **Program Executive** – shall participate in the steering committee for the program, and shall ensure Covendis executive sponsorship within the program and the subcontractor network. The Program Executive will attend periodic meetings with OIT and Ordering Entities along with the Covendis Colorado office staff, in person, as necessary.
2. **Project Manager** (Covendis) shall be responsible for all major deliverables, as well as communication and coordination with OIT and subcontractor representatives. The Project Manager will work with OIT to document the existing processes as well as any desired process changes. The Project Manager will work with the technical liaisons to configure the system and perform any integration tasks. The Project Manager will also work with the OIT lead to establish any internal and external communications, training, and change management activities. The Project Manager will work with subcontractor representatives to configure subcontractor modules, to set up personnel, and to arrange for training. The proposed Project Manager shall have completed at least 2 successful MSP implementations in the public sector or equivalent
3. **Category Manager/Subject Matter Expert** (Covendis) shall support the Project Manager in analysis, improvement, and documentation of existing business processes related to contingent worker management. This person will facilitate meetings and conduct quality assurance, training, and change management activities. He or she shall have at least five (5) years of both public and private sector MSP experience or equivalent
4. **Technology Manager** (Covendis) shall support the Project Manager in the documentation of system configuration and integration requirements and shall work with OIT and subcontractor representatives to complete any configuration and integration deliverables in accordance with the specifications drafted in conjunction with the Subject Matter Expert. This Technology Manager will act as the single point of contact for technical systems issues including the documentation of feature request and enhancements. The Technology Manager shall have at least five (5) years of both public and private sector VMS/MSP experience.

B. Post-Implementation/Ongoing Operations

1. **Program Executive** – shall participate in the steering committee for the program, and shall ensure Covendis executive sponsorship within the program and the subcontractor network. The Program Executive will attend periodic meetings with OIT and Ordering Entities along with the Covendis Colorado office staff, in person, as necessary.
2. **Program (On-Site) Manager** – shall have overall responsibility for the Contract within Covendis. The On-Site Manager shall manage a cross-functional team including the Quality Manager, Technical and Specifications Review Manager, Implementation Manager, dedicated client-care members, and technical/development liaison. Depending upon the skills and experience of the individual, the On-Site Manager and the Technical and Specification Review Manager may be combined in a single position. The On-Site Manager shall work on a day-to-day basis with OIT or Ordering Entity hiring managers to learn about the technology environments and programs that they work with and to gain insight into their resources. The On-Site Manager shall work with OIT or the Ordering Entity's hiring managers on each requisition to ensure that the requirements are accurately appraised and communicated to the subcontractor network.
3. **Quality Manager** – shall support the State in documenting and analyzing quality and satisfaction metrics and existing processes.. The Quality Manager shall facilitate meetings and shall conduct Quality Assurance ("QA"), training, and change management activities as part of the program's continuous improvement

C. OIT or the Ordering Entity shall provide a Project Coordinator and Subject Matter Experts, as necessary. Their roles shall be as follows:

1. **Project Coordinator** – shall be 10-20% dedicated to the project and shall have day-to-day responsibility for attending meetings and conference calls with internal customer stakeholders and subcontractor representatives. The Project Coordinator shall identify and facilitate activities with various subject matter experts (e.g. operations, finance/accounting, technology, etc.).
2. **Subject Matter Experts** – shall be available for discussions regarding their specific areas of expertise/responsibility, such as process, workflow, reporting, and technology integration.

III. Delivery and Implementation of Task Orders

The overall delivery plan has two phases: a) Preliminary Implementation (4 weeks), to begin accepting and processing ITPS orders; and b) Ongoing Program Management, Outreach, and Continuous Improvement (12 month cycles).

A. Phase I: Preliminary Implementation (4 Weeks)

Covendis and OIT shall form a joint implementation team. Covendis shall provide an overall project leader who is supported by a staffing subject matter expert and a technical/integration specialist.

1. **Objectives Setting** - Covendis shall work with the State to establish the vision and strategy for the program and define and prioritize objectives supporting the vision and strategy.
2. **Discovery: Gathering data and performing analysis** - Covendis and OIT shall identify program managers, super-users, high volume hiring managers, and others who will have key involvement in the program. Covendis and OIT shall work with those individuals to establish a baseline and map existing processes. Covendis will then seek areas for improvement in a new blueprint for the MSP program.
3. **Configuration and onboarding** - Covendis shall create a standard "minimum process" and then set up and configure each Ordering Entity individually, so that each Ordering Entity can establish and tailor its own approval workflow, users, reporting, integration, and other processes. Covendis shall meet with Ordering Entities throughout the implementation to ensure responsiveness and rapid resolution of issues that arise during the implementation and transition to ongoing operations.

4. Training - Covendis shall collaborate with OIT and other Ordering Entities to transition functions to the VMS, to train Ordering Entity employees to use the VMS, and to provide help desk and other functions to facilitate the transition.

B. High Level Project Plan

The table below lists implementation deliverables and times. Covendis and OIT will cooperate to add or change the deliverables and times as the parties proceed through the analysis phase.

Implementation Task/Deliverables	Schedule
<u>Program Meetings</u>	Weekly
<ul style="list-style-type: none"> i. Contractor Program Manager and Client Care Associate shall attend and participate in VMS Program and status meetings with the State and, at a minimum, prepare and provide Program updates, transition and status reports. ii. Contractor shall attend meetings as needed and scheduled by the State and Contractor. iii. Attend other meetings as may be required by the State to update stakeholders on Program activities. 	
<u>Needs Assessment and Program Kickoff</u>	Week 1
<ul style="list-style-type: none"> i. Contractor shall attend and participate in a Program commencement meeting with the State and Project Manager. ii. Contractor shall begin data and requirements gathering and needs assessment for Program organization and configuration. iii. Contractor shall provide and facilitate a webinar for the State to provide overview, strategy session and begin individual testing of System by the State. 	
<u>Program Planning, Scheduling and Kickoff</u>	Week 2
<ul style="list-style-type: none"> i. Attend a kickoff meeting with the State and Contractor Implementation Team ii. Continue business analysis and functional process design. iii. Schedule functional requirements meetings with the State. iv. Continue data collection v. Create System templates for review and approval by the State vi. Identify System baseline standards and gather recommendations from the State and the State workgroups. 	
<u>Change Management</u>	Weeks 1-4
<ul style="list-style-type: none"> i. Attend and participate in 2 forums scheduled by the State with Agencies to discuss the transition process. ii. Design and develop change management documentation in coordination with the State such as but not limited to marketing documents, FAQ, reference guides, and training syllabus and curriculum, glossary of terms from old to new VMS. 	
<u>Collect Business Requirements</u>	Weeks 1-2
<ul style="list-style-type: none"> i. Collect and document process workflow and special requirements and obtain confirmation from the State or the Agency ii. Document updated business requirements and functional specifications and requirements 	

Implementation Task/Deliverables	Schedule
<ul style="list-style-type: none"> iii. Document process flows iv. Identify Agency roles and responsibilities <ul style="list-style-type: none"> v. Document time card and deliverables method of entry into the System vi. Document Invoices format and method of submittal to AP. 	
<p><u>System Configuration</u></p> <ul style="list-style-type: none"> i. Create Contractor testing environment ii. Create test users iii. Configure System per outcomes from the State recommendations iv. Configure Agency buyer module v. Create testing plan 	Weeks 1-4
<p><u>System and User testing</u></p> <ul style="list-style-type: none"> i. Create and Finalize training plan ii. Create rollout plan and launch in coordination with the State 	
<p><u>Subcontractor Analysis</u></p> <ul style="list-style-type: none"> i. Provide outreach to onboard of current Contractor pool ii. Survey current active Suppliers iii. Develop framework for opportunities (risk/insurance requirements) 	Weeks 1-4
<p><u>Forums and Training</u></p> <ul style="list-style-type: none"> i. Conduct up to 4 Agency forums and training sessions and 4 System webinars. ii. Conduct forum with Subcontractors from current program on how to onboard to 2013 Program and the insurance assessment program. The State will participate in the forum to answer questions relative to State's program requirements. 	Weeks 3-4
<p><u>System Testing</u></p> <ul style="list-style-type: none"> i. Conduct end to end System and user testing ii. Complete modifications and corrections identified by the State 	Week 3
<p><u>Agency Transition</u></p> <ul style="list-style-type: none"> i. Complete transition of Agencies identified by the State ii. Identify Agencies with opportunities ready for posting on the VMS during launch. 	Weeks 3-4
<p><u>Final Approval and Modifications</u></p> <ul style="list-style-type: none"> i. Finalize System and Program adjustments as required by the State ii. Obtain production signoff by the State iii. Draft communication to Agencies about transition iv. Finalize Quick reference guide 	Week 4
<p><u>Launch Program</u></p> <p>Conduct soft launch and begin deployment (rollout) of MSP Program to Ordering Entities upon written notice to proceed from the State. The State may also elect to do a phased launch with OIT as the pilot agency.</p>	Week 4

C. Subcontractor Network Onboarding

1. Prior to implementation the State shall provide Covendis with a list of all current Subcontractors providing contracted personnel for the State. Covendis shall reach out to each firm to invite them to apply to contract with Covendis as a subcontractor.
2. Covendis shall screen and qualify each prospective subcontractor according to the following criteria:
 - a) Client references
 - b) Financial stability (as evidenced by business credit and verification)
 - c) Pricing (by RFI, RFQ, or survey)
 - d) Technological and recruiting capabilities and speed
 - e) Client preference (e.g. Geographical, Diversity considerations)
 - f) Past performance on Staffing and Consulting Projects
3. Covendis shall invite potential subcontractors to join the network and execute a contract with Covendis setting out the subcontractor's and Covendis' respective rights and responsibilities. That agreement shall require the subcontractor to abide by all terms, conditions, requirements, and pricing provisions of this Contract, including applicable service levels, for each Ordering Entity the subcontractor services through Covendis. Covendis shall collect and verify certificates of insurance and any other necessary documentation. Such documentation shall be available on the VMS.
4. After the initial rollout of the subcontractor network, Covendis shall conduct additional onboarding of qualified subcontractors at least once in each calendar quarter after the Effective Date of the Contract.
5. Once admitted to the network, each subcontractor shall have an equal chance to compete for resource requests, according to their capabilities and capacity
6. Covendis shall conduct a continuous improvement effort for the subcontractor base. Subcontractors can receive instant feedback on submissions through the VMS, as well as periodic feedback and reporting. Covendis shall conduct periodic account reviews with subcontractors to review all of the above criteria used to prequalify them, along with actual experience data and reporting, client issues/incidents, commendations/recommendation, reporting on service levels, and pricing.
7. Subcontractors shall renew in the network on an annual basis, and each must execute or provide updated agreements, policies and procedures, insurance requirements, and other information, such as data audits as specified by the agreements, and annual background verifications for their employees and company.
8. Over time, the performance and success of the subcontractors will be measured and monitored by Covendis and OIT. Any subcontractor that is not adequately performing may be removed from the program and replaced with other subcontractors. Similarly, if Covendis determines that the current mix of subcontractors is not sufficient to source all requested skill sets in a timely fashion, then Covendis will do research to find additional subcontractors to invite to the program. The State may ask Covendis to add subcontractors to meet specific program needs.
9. The subcontractor evaluation will be separate from OIT's evaluation of Covendis as a Subcontractor, pursuant to C.R.S. §§24-102-205, 24-103-601, 24-103.5-101, and 24-105-102 concerning vendor performance of State contracts.

D. Phase II: Ongoing Program Management, Outreach, and Continuous Improvement (12 month cycles)

Phase II activities shall transition from implementation to ongoing program management operations, outreach, and continuous improvement. Phase II activities shall include the following:

1. Periodic Status Meetings – with OIT and applicable Ordering Entities
2. Program Status Reports – monthly with Quarterly Executive Summaries

3. Measurement and Reporting of performance metrics and other quality measures
4. Evaluation of Ordering Entity adoption, usage and compliance
5. Ongoing Ordering Entity onboarding, configuration, and enhancements
6. Ongoing basic and advanced training
7. Subcontractor network outreach
8. Measurement of subcontractor performance
9. Normalization of subcontractor performance
10. Gather feedback from stakeholders (e.g. satisfaction surveys)
11. Evaluation and Prioritization of program improvements

IV. Purchasing Managed Services by Project Based Task Orders

A Task Order shall be limited to a total cost of less than One Million Dollars and 0/100 (\$1,000,000.00). The procedure for issuing and managing a Task Order issued by OIT for OIT, any State Agency, or a State Ordering Entity is outlined in §6.D of the Contract. Other Ordering Entities utilizing this Contract may establish different ordering procedures by mutual agreement with Contractor.

A. Ordering

A Task Order shall include the following:

1. Each Task Order shall specify all milestones, including a complete description of the deliverables due at each milestone; and
2. The Task Order shall include the timeline for deliverables or milestones and the State contact(s) to whom they are submitted; and
3. The Task Order shall include a budget for the costs with each project, including a breakdown for the costs per deliverable and costs per milestone.

B. Project Management

For each Task Order, Covendis shall fully staff the project and ensure there is a designated point of contact who shall be available for consultation at all times. Depending on the nature and complexity of the project, Covendis shall be responsible for assembling and coordinating a project team consisting of varying disciplines and professional levels. Covendis shall designate a Project Manager to serve as liaison with designated State staff. The Project Manager shall, upon request, submit written progress reports to the State. The reports shall include, but not be limited to:

1. A management report of current and completed milestones and/or deliverables;
2. Monthly expenditure and activity report, if requested;
3. Total expenses accrued as of the report date; and
4. Overall assessment of project status in a State approved form or format that will include a description of any outstanding problems and recommendation(s) for corrective action.

C. Payment

Project payments shall be set up as progress payments. The Ordering Entity shall make payments in accordance to the terms of the Contract and as mutually agreed upon in the Task Order or Order, upon successful milestone completion, including acceptance testing, as identified in the Task Order or Order. The State may withhold a scheduled progress payment if the required deliverables are of unacceptable quality or do not pass acceptance testing, until such time that the deliverables are re-submitted and accepted. A final payment shall be made upon project completion and final acceptance.

D. Configuration, Training, and Maintenance

Covendis shall perform the following:

1. Establish a baseline of current processes, rates, and users;
2. Blueprint and configure the VMS according to the requirements of each Ordering Entity needing ITPS;
3. Establish a competitive subcontractor and candidate pool;
4. Onboard and train end users, including but not limited to Ordering Entities, subcontractors, and Candidates;
5. Identify areas of opportunity for outreach and training of Ordering Entities and subcontractors;
6. Identify and prioritize areas for savings and implement on-going savings plans; and
7. Identify and prioritize areas for continuous improvement.

E. Knowledge Transfer

In addition to its Work under Task Orders, Covendis shall provide each Ordering Entity requested services for the purpose of transferring knowledge, ideas, concepts, and information regarding the Deliverables and the System. No less frequently than quarterly, Covendis shall provide each Ordering Entity any and all updated, changed, or revised policies, practices, procedures, processes and techniques with respect to any knowledge transferred under the Contract. Knowledge transfer shall include information and programs, tools and other materials including but not limited to the following:

1. Data files, file and data definitions and relationships, data definition specifications, data models, interfaces, program architecture, program structure, sequence and organization, screen displays, reference and user manuals, design and functional specifications relating to the System.
2. Maintenance documentation, support utilities, and tools relating to the System or enhancement under development;
3. Security requirements and methodologies relating to the System;
4. Operating system environment, including functions, triggers, stored procedures, and external systems interfaces;

F. Quality Management Plan

Covendis shall develop and implement a Quality Management Plan with the following features:

1. Review of proposed Task Order Statements of Work ("SOWs") to ensure they include fully developed and measurable Deliverables that correlate with tasks, acceptance criteria, and delivery and payment schedules. Covendis shall provide advice and assistance to the Ordering Entity, to help develop the Task Order and SOW, and shall recommend practices to ensure successful and timely completion of Deliverables.
2. Periodic review with OIT, no less than twice a year, of Covendis' performance in the use of the VMS and of Covendis' adherence to the terms and conditions of the Contract.
3. A blueprint of business processes, policies and procedures (including the terms and conditions of the Contract);
4. Metrics to measure performance and adherence to policies and procedures;
5. Automated reporting and measurement of the performance metrics. Meetings between Covendis' staff and Ordering Entity staff, as necessary, to review performance and to discuss ways to continuously improve performance and the program.
6. Training for Ordering Entity employees, including centralized, in-person training, webinars and other computer-aided training, and individualized training sessions

G. Screening proposed Candidates for employment

1. Covendis shall provide an integrated, online background check service to ensure quality while enabling Candidates to onboard quickly following selection. Covendis shall tailor the background verification requirements by agency, to accommodate their varying requirements.

2. Covendis shall work closely with the Ordering Entity to define a position description along with a detailed inventory of required and desirable skills. This will ensure that Covendis, its partners, and individual Candidates understand what the ideal candidate would be.
3. Covendis, through its VMS, shall publish these requirements to its network of subcontractors and shall search the combined candidate pool of the subcontractors' Candidates.
4. When a subcontractor submits a proposal, Covendis shall conduct, in addition to the subcontractor's screening, a quality check to insure that all required information has been provided.
5. After Covendis completes the quality check and resolves any issues that arise, Covendis shall screen and rank Candidates before forwarding the requested number of top Candidates on to the Ordering Entity. Candidates may be submitted all at once or as they are received and reviewed.
6. Covendis' candidate screening shall include the following:
 - a) Fit/Communications
 - b) Covendis shall screen the top Candidates, as defined in the Task Order or Order, from the quality check for fit and communications.
 - c) Technical Skills.
 - d) Covendis shall evaluate the best Candidates from the fit/communications screen for technical skills. Technical skills are determined through a process of technical interviews with experienced IT professionals and also skills testing. Covendis may use Kenexa's Prove It, TechCheck, and Brain Bench for such assessments. If requested, Covendis shall create ad hoc assessments for Candidates to complete from within its VMS.
 - e) References.
 - f) Covendis shall check references of the top Candidates from the technical skills assessment.
 - g) Background/Education Verification - Covendis shall conduct a Background Verification which shall include the following:
 - (1) SSN Trace
 - (2) Patriot Act
 - (3) Federal Criminal
 - (4) State Criminal (last 7 years)
 - (5) Motor Vehicles
 - (6) Drug Screening (if requested) - Covendis shall conduct drug screening if the Ordering Entity requests it.

H. Review of subcontractor performance and Work and involvement with OIT or Ordering Entities to resolve any Task Order or Order related disputes.

1. Covendis' On-Site Manager shall review recent placements and shall track and monitor activity within the VMS to ensure that requirements and deliverables are completed and submitted on time.
2. Covendis' On-Site Manager shall meet with OIT or the Ordering Entity regularly to identify and discuss issues early.
3. Covendis' On-Site Manager shall act as a single point-of-contact for issues that might arise on a day-to-day basis.
4. Covendis shall establish and implement an incident reporting and tracking system with the following capabilities:
 - a) A help desk with a toll free number, available between the hours of 6 a.m. and 6 p.m., Monday through Friday. A Covendis representative shall answer each call, determine the issue to be resolved, and either resolve the issue or escalate the issue for resolution.
 - b) An online tracking system available 24/7 for follow-up and reporting of all but minor issues. Users shall be able to either enter a web form or send issues, including

descriptions and attachments, to a Customer designated email address COMSP@covendis.com. Covendis shall send the user reporting an issue an email confirmation along with a tracking number. Covendis shall route the issue to the appropriate Covendis personnel, who shall contact the user and/or resolve the issue and report back via the online issue reporting and tracking system, closing the issue, and sending users a confirmation e-mail with a description of the issue and resolution.

5. Covendis shall implement a dispute resolution process with the following components:

a) Tier-1

Users may communicate complaints or issues to Covendis via Covendis' online system or by telephone to our help desk representatives (who shall enter the issues into the Covendis online tracking system). Each issue shall receive a unique tracking number and a time and date stamp. Covendis shall review each open issue and route to the appropriate account or project team for resolution.

b) Tier-2

Covendis shall reach out to each party to gather key facts. Covendis shall work with each party individually in an attempt to rectify the situation. If the issue is resolved at this stage, Covendis shall record the resolution in the system and communicate it to both parties.

c) Tier-3

If the situation is not resolved at the Tier 2 stage, Covendis shall convene a mediation session with the disputing parties present in an effort to discuss the issue, review the facts and information, and facilitate a resolution or settlement of the issue. The parties involved shall include key decision makers that are able to obligate their respective parties to the agreed solution.

I. Subcontractor performance reviews.

1. The VMS shall enable continuous, real-time measurement of performance assessments, metrics, and key performance indicators ("KPI"s).
2. At least once annually, Covendis shall review subcontractor performance, utilizing analysis tools that determine subcontractor price and performance (e.g. quality) characteristics.
3. Covendis shall meet with OIT's designated representatives at least once each calendar quarter to discuss the current application, business processes, and metrics and to seek recommendations for service and system improvement.
4. Covendis shall send to users weekly surveys that contain both objective and subjective criteria and feedback.
5. Covendis shall deliver to OIT or the Ordering Entity not less often than quarterly an Executive Summary that will identify and explain patterns and trends and will discuss performance accomplishments and goals.

J. Risk Management & Business Continuity

1. Phased Approach to Task Orders

Covendis shall construct a phased approach within its VMS to ensure that each subcontractor has the ability to deliver the Task Order requirements and that the project remains on track.

- a) Unless otherwise agreed, before Covendis begins to provide services for a Task Order, Covendis shall construct on its VMS an initial deliverable where only a small amount of the total budget is paid after successful completion of that deliverable.
- b) Should a subcontractor prove unable to accomplish initial or subsequent deliverables, Covendis will quickly replace that subcontractor.

2. Retainage

The Parties may agree in any Task Order that the State shall withhold a percentage of the amount shown to be due to Contractor on any invoice until the Work required by such Task

Order has been completed or as otherwise agreed by the Parties. The withheld percentage of each invoice shall be retained as provided in such Task Order or as otherwise provided by law.

K. Subcontractor Recruitment and State Support

Covendis shall maintain a pool of subcontractors sufficient to attract procurement of ITPS through the Managed Services by Ordering Entities. Covendis' efforts will include, but not be limited to:

1. Regular meetings to exchange information with the OIT Program Manager regarding program questions, issues among actual and potential Subcontractors, actual and potential Ordering Entities, and general concerns about the Contract and Task Orders;
2. As needed, individual meetings with Ordering Entities to exchange information regarding program questions, subcontractor, Task Order, or project issues;
3. Best efforts to recruit subcontractors on a regular basis with skills that meet those identified and desired by OIT and other Ordering Entities; and/or
4. Providing data fields in the VMS that capture and update subcontractor profiles, including Colorado based companies, MWBE, business structure, and candidate work experience and credentials.

L. Outreach to OIT and Ordering Entities

During implementation, Covendis shall meet with OIT's Program Manager and with each Ordering Entity's main contact or delegate, review their business and workflow requirements, and demonstrate how the program and VMS may be configured to meet or exceed those requirements. Covendis shall configure the VMS, document the Ordering Entity's policies and procedures, and provide on-boarding services, including an individualized training program. Covendis shall meet periodically with Ordering Entities to review and resolve any issues related to the program, VMS, ITPS, or subcontractor network.

M. Recruiting Quality Subcontractors

Any prospective subcontractor can apply to Covendis to join the subcontractor network. Following a due diligence process that ensures the applicant will be a responsible subcontractor, Covendis shall onboard and train the subcontractor at no cost to the State.

1. Criteria for potential subcontractors include the following:
2. Client references
3. Financial stability (as evidenced by business credit and verification)
4. Pricing (by RFI, RFQ, RFP or survey)
5. Technological and recruiting capabilities and speed
6. Client requirements, such geographical and specialty, for example.
7. Covendis shall impose all terms, conditions, and requirements of this Contract on its subcontractors, including service levels they must adhere to for each Task Order.
8. Covendis shall collect and verify subcontractors' certificates of insurance and other required documentation.
9. Covendis shall use its VMS to track all subcontractor activity, users, billing, and invoicing and to prepare reports to track statistics, service levels, adherence to policies and procedures, and other business processes.
10. Covendis shall conduct periodic account reviews with subcontractors to review the criteria used to prequalify them, as well as actual experience data and reporting, client issues and incidents, commendations and recommendations, reporting on service levels, and pricing.
11. Covendis may remove from the program any subcontractor that is not adequately performing.
12. Covendis shall meet with the State not less often than quarterly, to discuss the subcontractor network, its successes and failures, opportunities to improve the program, and other factors.

Covendis shall prepare and share with the State during the quarterly meetings reports showing subcontractor business participation in the program. Each report will include the following information:

- a) Subcontractor name
- b) Revenues received by the subcontractor resulting from the Contract
- c) Type of business, such as small business, SBA 8(a), Woman Owned, Minority Owned, MWBE-certified, etc.
- d) Such additional information as the State might request.

N. Performance Measures

1. The following table states performance expectations under this Contract. Covendis shall be responsible for all subcontractors' performance and their compliance to these measurements.

Performance Metric	Description	Standard	Performance Target	Calculation	Frequency
Work Request Confirmation	Average response time from receipt of request to confirmation	1 business day	95% or higher	# of requests received within 4 hrs. / total # of requests	Monthly
Release of request to Subcontractor base	Time between verification of request and release to the "network"	4 hours	95% or higher	# of requests released within 4 hours / # of requests	
Resume submittal response time	Average response time from receipt of request to delivery of candidate resumes	3 business days	90% or higher	# of requests received 1 st batch of resumes within 3 days / total number of requests	Monthly
Receipt of subsequent batches of resumes	The time to receive subsequent resumes when 1 st batch resulted in no match	4 hours	95%	Time between notice that no resume matched the need and receipt of next resume batch	
Task Order Acceptance	Average response time from receipt of PO	1 business day	95% or higher	# of Task Orders acknowledged within 1 business day / total # of PO's	Monthly
Normal Request Fill Rate	Contractor's ability to satisfactorily fulfill requests; indicates how many requests are open	100%	92% or higher	Total # of filled positions at month end / total # of requests which have been in place for over 2 weeks	Monthly

Urgent Request Response Time	Average response time from receipt of URGENT request to delivery of resumes	24 hours	90% or higher	# of URGENT requests receiving 1 st round of resumes / total # of URGENT requests	Monthly
Resource Dismissal	Number of Candidates dismissed due to inadequate resource performance	N/A	5% or lower	# of turnovers (due to inadequate performance) / total # of requests	Monthly

2. Covendis shall provide the VMS according to the Service Level Standards (SLAs) stated in the following table. Failure to meet the SLAs in this Contract shall result in one of the following remedies:
- a) **Remedy Credit** - Each SLA will have a corresponding remedy credit which will apply should the SLA not be met. SLA details and applicable remedies shall be as set forth below.
 - b) **Root Cause Analysis** - In the event of a chronic intermittent problem that may not otherwise initiate a remedy credit, Covendis shall conduct a root cause analysis to determine the cause of the problem. "Chronic intermittent problem" includes but is not limited to, brief but repeated system outages and minor system glitches that do not impair the use of the majority of the functionality.
 - c) **Material Breach** - Failure to consistently meet the stated SLAs will be considered a material breach of this Agreement.

Level of Remedy	Minimum Number of Metrics not in Compliance	Maximum Number of Metrics not in Compliance	1st and 2nd month Remedy	3rd month Remedy	4th month Remedy
Level 1	3	6	Root Cause Analysis	Root Cause Analysis and Credit for Downtime	Escalation to Level 2 Remedies
Level 2	7	10	Credit for Downtime	Credit for Downtime	Escalation to Level 3 Remedies
Level 3	> 10	Unlimited	Credit for Downtime	Material Breach	N/A

O. Security

Covendis shall ensure that personnel it places to work with OIT and Ordering Entities will at all times maintain network, system, and application security. All such persons shall comply with the State of Colorado Information Security policies and State of Colorado Cyber Security Policies as found at <http://www.colorado.gov/cybersecurity> and current cyber security standards set forth and maintained by the Center for Internet Security, which can be found at: <http://www.cisecurity.org>.

1. Covendis shall implement the following security measures if, and as required by the State:

- a) Passwords are hashed using secure public algorithms and are not reversible

- b) System is dependent on role based engine, data can be accessed by user depending on that user's role and what access the user has in the system
- c) System authorizes using a role based approach within the Ordering Entity.
- d) Initial access is determined by the role assigned to the user
- e) Module access, database access, record access, program and field access is based on the logged-in user's role credential and system setup within the Ordering Entity
- f) Every login is tracked, whether successful or not, and unsuccessful attempts are flagged along with reason codes for analyses
- g) Logs of users logins are maintained, including unauthorized attempts to access the system; and reports are available to analyze them
- h) If a user attempts 3 unsuccessful logins, then the user is locked out and user needs to contact client care to unlock the account
- i) System logs users IP address, login attempts, time and date; system user can generate a report and analyze it
- j) Specific data created or modified are logged with user login id, and are date-time stamped
- k) Ordering Entity can delegate to other users with roles and access
- l) Users are added by Ordering Entities and a desired role is assigned for the new user. Ordering Entities are able to add, terminate and modify users.
- m) All security administration are taken effect immediately
- n) The VMS shall encrypt data through standard 256-bit SSL connections with the web server. The server shall initiate the SSL connection through standard, web-supported PKI technology.
- o) The VMS shall enable password encryption by Secure Hash Algorithm (SHA-1) when storing and communicating passwords over a network. No user shall have access to unencrypted passwords.
- p) Covendis' hosting provider shall limit physical access to its collocation center. Access control measures shall include biometric hand scanners and electronic key management systems at all data center entrances.

P. Reporting

1. Quarterly Reporting

Covendis shall submit the following reports to OIT and Ordering Entities after the end of each quarter. Report quarters shall end on September 30, December 31, March 31, and June 30. Covendis shall provide OIT and Ordering Entities with data related to their projects and Task Orders or Orders, as requested. Reports shall include:

- a) The quarter being reported;
- b) The total dollars spent by State Agencies;
- c) The total dollars spent by Institutions of Higher Education;
- d) The total dollars spent by Local Public Procurement Units;
- e) The dollar value of purchases paid for with the State's Purchasing Card as opposed to other methods of payment; List of all Ordering Entities and their staff registered to use the VMS, their contact information, and levels of access registered to use to the VMS;
- f) List of Subcontractors available to provide ITPS through the VMS and identification of all Minority/Women/Small Business (MWBE) certified firms;
- g) List of each Task Order or Order opportunity, by number, and the subcontractors that submitted responses (hourly and Project).
- h) Project reports that include some or all of the fields listed below, as specified in the Task Order or Order for the Project:
 - (1) Breakout by Task Order or Order
 - (2) Break out by Colorado Subcontractors and Candidates.

- (3) Name of Ordering Entities and their Entity Name
- (4) Subcontractor providing ITPs
- (5) MWBE designation (as applicable)
- (6) Task Order or Order number and Project name or number
- (7) Task Order or Order expiration date
- (8) Type of ITPS Order (hourly and/or Project)
- (9) Type of skills required
- (10) Markup percent by Subcontractor
- (11) Markup percent by Contractor
- (12) Timeline metrics (submittals, interviews, hires)
- (13) Cost savings
- (14) Payments received in the quarter
- i) Track selected Candidate performance
- j) Track training provided to Users
- k) Contractor shall provide Ordering Entities with data related to their Task Orders or Orders, as requested.

V. Vendor Management System (VMS)

A. General Functionality

The VMS shall deploy ITPS opportunities, screen and compare candidate qualifications, track selected Candidates' hours, and have quality and security controls. The VMS shall provide the following functionalities:

- 1. For each Requisition, capture, assign, and use the OIT work order number as a single number that remains constant from submission of the requisition into the VMS through opportunity advertisement, Task Order or Order execution, and administration.
- 2. Provide OIT a level of authentication that permits OIT to run statistical and ad hoc reports in the same manner as Covendis.
- 3. Security at all times, with security features that manage all aspects of user access, security, and notification. The VMS shall use commercially such as server-side certificate encryption utilizing SSL, multiple barriers to entry, usernames and passwords, support for tiered security, and network architecture to prevent unauthorized access.
- 4. Accessibility through the Internet during normal business hours. A web browser, including tablet and smart phone browsers, shall be the only software necessary to access the VMS.
- 5. Enable the State to establish its own organization, users, requisition forms, workflow approval steps and thresholds, candidate submission processes and requirements, reporting, and data integration.
- 6. The VMS shall enable users to load Project based deliverables by uploading tables.
- 7. Enable users to track and maintain separate codes for projects and assignments, funding sources, billing codes, organization and department codes, cost centers, and other pertinent information.
- 8. Enable Candidates to apply and submit time to different codes as necessary.
- 9. Integrate into State systems as necessary.
- 10. Invoice for, accept and distribute, and report in real time on payments made by agencies based on billing codes.
- 11. Integrate to the State's treasury management and financial reporting systems when authorized by the State Controller to integrate.

B. Scalability and flexibility to satisfy unique agency needs

Covendis shall configure each Ordering Entities workflow so that it can operate independently. Each participating State Agency and State Ordering Entity shall be able to establish and manage its own users, agency workflow, templates, and reporting.

C. Login

Upon login, a User shall see a dashboard which lists such items as the following:

1. Spend information
2. Action items
3. Commonly used tasks
4. Services categories available for procurement
5. News and announcements
6. New items since last login shall be highlighted

D. Requisitioning Process

1. Covendis shall develop for the State standard position templates including job qualifications and necessary skills.
2. To add a requisition, the User shall select the appropriate folder, service classification, and requisition type.
3. A User shall be able to save all requisition details as templates for future use.
4. A User shall be able to simplify data entry by copying an old Requisition. A User shall have the ability to cut-and-paste from existing MS Office applications into the position description fields, maintaining formatting.
5. For Project based Requisitions, users may load deliverables simply by pasting a table within the Covendis VMS, thus eliminating manual entry.
6. A User may enter the OIT requisition number, which shall remain constant throughout the Requisition process.
7. A User shall have the ability to configure custom fields to ease data entry, to implement enhanced data requirements for downstream reporting or invoicing purposes, and/or to validate data. A User shall have the option to format such fields as free text fields, check boxes and radio buttons, pick lists, and drop downs.
8. A User shall have the ability to structure assignment and billing codes to address specific invoicing, reporting, or audit requirements. As Candidates enter time and expenses, the VMS shall assign those codes, so that invoices are properly coded, summarized, and analyzed.
9. Covendis shall review all Requisitions prior to posting to subcontractors, to ensure consistent quality. Covendis may make recommendations for improving position descriptions. In situations that are urgent, or where a niche or hard-to-find skill is required, Covendis shall communicate with its subcontractors and reach out to specialty or niche firms in order to ensure a successful outcome.
10. The VMS shall enable Users to establish fee or expense caps on Requisitions, communicate to subcontractors the number of submissions, and attach multiple documents such as position descriptions, for subcontractors to review and download.
11. Users may use the VMS to route Requisitions to subcontractors according to a user-defined ranking and release schedule, or Users may select specific subcontractors based on such criteria as geography, business area, and position/skills.
12. Users may add additional skills and qualifications if they choose, and they may save all such information to templates to reduce data entry.
13. The VMS shall rank Candidates according to their fit with selected requirements.
14. The VMS shall enable a User to track a Requisition's status and progress from a Requisition dashboard. The dashboard shall be capable of providing approval status and location, number of subcontractor responses, and key dates.
15. The VMS shall enable a User to review and modify Requisition details and to repost, as necessary. However, any modification that changes the scope of Task Order or the maximum amount payable under a Task Order must be the subject of a written agreement to modify the

Task Order, which agreement must be signed by both Parties and approved by the State Controller in accordance with State fiscal rules.

E. Internal Workflow Approval Process

1. The VMS shall enable the State to establish approval workflow steps
2. The VMS shall notify approvers when prior steps are completed. Ordering Entities may specify individual approvers within the VMS.
3. The VMS shall enable a user to establish the following:
 - a) Customized workflow by service category and requisition type
 - b) the number of workflow steps as required (this was discussed to be a single OIT approval to ensure that all other steps, e.g. Compass, were completed)
 - c) "Named" or specific approvers
 - d) Workflow for pre- and post-release
 - e) Multi-dimensional criteria
4. The VMS shall notify State approvers by e-mail that a Requisition requires approval.
5. The VMS shall enable approvers to enter the website to review and approve or to decline the Requisition by email, or to approve or decline a Requisition by phone.
6. The VMS shall enable approvers to review pending Requisitions and general information from an approval dashboard.
7. The VMS shall enable approvers to see all Requisition details, including attachments, subcontractors selected, other approvers specified, and other pertinent information before giving their approval.
8. The VMS shall enable approvers declining Requisitions to make comments which shall reach the users by e-mail and on an annotation section of the Requisition.
9. The VMS shall enable a user to modify and resubmit a declined Requisition.

F. Candidate Submission and Selection

1. The VMS shall notify subcontractors electronically of new opportunities.
2. Subcontractors shall be able to login and to submit Proposals (Candidate names, resumes and/or qualifications, and pricing) through the VMS for Covendis review and screening.
3. Covendis' On-Site Manager shall review submitted Proposals for completeness, accuracy, fit, and other stated requirements (e.g. background verifications, certifications, documents, accreditation, and employment history).
4. Covendis shall require all Candidates to reveal any previous State employment.
5. Covendis shall rank the best Candidate Proposals and forward them to the State based upon its requirements.
6. The VMS shall enable users to review Candidate resumes, qualifications, experience, and other qualifications, to download resumes, to score and rank Candidates, and to manage and conduct secondary screening and interviewing.
7. Covendis shall facilitate the scheduling of interviews and shall be capable of conducting additional online screening (e.g. skills testing, questionnaires, language proficiency).
8. The VMS shall have the capability of facilitating negotiations for things such as start dates, travel (as necessary), and other employment terms.
9. Covendis require all selected Candidates to reveal any previous State employment.

G. Onboarding/Offboarding

1. If a Candidate Proposal has been accepted, Covendis shall facilitate the completion of on-boarding and off-boarding requirements for Ordering Entities, including background verifications and notifications. The VMS shall track such procedures.
 - a) Contractor shall manage background verifications online and work with each Ordering Entity on specific forms and required security measures pertaining to the position

- b) The VMS shall enable subcontractors to order background checks online and to post results for review.

H. Reporting

1. Contractor shall make available to Users a designated set of standard reports that they can run in real-time, as well as an ad hoc reporting capability.
 - a) Drag-and-Drop Reporting – Previous Day. The VMS shall enable Users to create ad hoc reports by simply dragging and dropping specific data elements onto a reporting “canvas”. Users shall be able to export such reports to Excel, Word, CSV, and HTML formats. Standard Real Time Reporting. The VMS shall support Crystal Reports. Users shall be able to export reports created with Crystal Reports to Excel, Word, and PDF formats.
2. The VMS shall automatically deliver standard reports to user groups to be defined by Ordering Entities.
3. Reports may include the following:
 - a) Subcontractor business and specialties,
 - b) MWBE (Minority and Women Owned Business Entity) subcontractors,
 - c) Status of all ITPS opportunities,
 - d) Offers and qualifications submitted by subcontractors on ITPS opportunities,
 - e) Ad hoc reports as requested,
 - f) Timeline metrics such as submittals, interviews, and hires,
 - g) Financial information such as Task Orders received, dollars expended; and
 - h) Time tracking, billing, and selected candidate performance reporting.