

STATE OF COLORADO GRANT AGREEMENT

COVER PAGE

State Agency Colorado Department of Health Care Policy and Financing	Agreement Number 19-110409A1
Grantee The Resource Exchange, Inc.	Agreement Performance Beginning Date The later of the Effective Date or July 1, 2019
	Initial Agreement Expiration Date June 30, 2020
Agreement Maximum Amount Initial Term State Fiscal Year 2020 \$3,083,774.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Fund Expenditure End Date June 30, 2020
	Agreement Authority Authority to enter into this Agreement is located in Colorado Revised Statute (C.R.S.) Title 25.5-6-106 to 107.
Agreement Purpose The purpose of this Contract is for Contractor to serve as a Single Entry Point (SEP) Agency within a local area where a current or potential long-term care client can obtain long-term care information, screening, assessment of need, and referral to appropriate long-term care program and case management services for all Coloradoans within their designated district.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A, Statement of Work. 2. Exhibit B, Sample Option Letter. 3. Exhibit C, Federal Provisions. 4. Exhibit D, Supplemental Provisions for Federal Awards 5. Exhibit E, Information Technology Provisions <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Colorado Special Provisions in §16 of the main body of this Agreement. 2. Exhibit C, Federal Provisions. 3. The provisions of the other sections of the main body of this Agreement. 4. Exhibit A, Statement of Work. 5. Exhibit B, Sample Option Letter 6. Exhibit D, Supplemental Provisions for Federal Awards 7. Exhibit E, Information Technology Provisions 	
Principal Representatives <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> For the State: Sarah McDonnell Department of Health Care Policy and Financing 1570 Grant Street Denver, CO 80203 Sarah.McDonnell@state.co.us </div> <div style="width: 45%;"> For Grantee: David Ervin The Resource Exchange, Inc. 6385 Corporate Drive Suite 301 Colorado Springs, CO 80919 dervin@tre.org </div> </div>	

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.



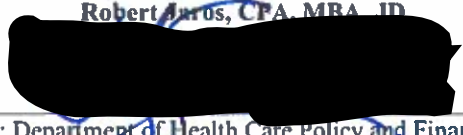
<p>GRANTEE The Resource Exchange, Inc.</p> <p></p> <p>By: David Ervin, Chief Executive Officer</p> <p>Date: <u>5/10/2019</u></p>	<p>STATE OF COLORADO Jared S. Polis, Governor Department of Health Care Policy & Financing Kim Bimestefer</p> <p></p> <p>By: Kim Bimestefer, Executive Director, Department of Health Care Policy & Financing</p> <p>Date: <u>6-26-19</u></p>
	<p>LEGAL REVIEW Phil Weiser, Attorney General</p> <p>By: Assistant Attorney General</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert A. Juras, CPA, MBA, JD</p> <p></p> <p>By: Department of Health Care Policy and Financing</p> <p>Effective Date: <u>6/30/19</u></p>	

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1. PARTIES

This Agreement is entered into by and between Grantee named on the Cover Page for this Agreement (the “Grantee” or “Contractor”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Grantee and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date, except as described in §5.C, or after the Fund Expenditure End Date. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

B. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Grantee as provided in §13, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate

upon execution of a replacement Agreement or modification extending the total term of this Agreement.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Grantee, which shall be governed by §11.A.i.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §13. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in §11.A.i.a.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Grantee for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

D. Grantee's Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. "Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. "Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E. **"CORA"** means the Colorado Open Records Act, §24-72-200.1, *et. seq.*, C.R.S.
- F. **"Effective Date"** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- G. **"End of Term Extension"** means the time period defined in §2.B
- H. **"Exhibits"** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- I. **"Federal Award"** means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- J. **"Federal Awarding Agency"** means a Federal agency providing a Federal Award to a Recipient. United States Department of Health and Human Services (HHS) is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- K. **"Goods"** means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- L. **"Grant Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- M. **"Incident"** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §24-37.5-401 *et. seq.* C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.
- N. **"Matching Funds"** means the funds provided Grantee as a match required to receive the Grant Funds.
- O. **"Party"** means the State or Grantee, and "Parties" means both the State and Grantee.

- P. **"PII"** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S.
- Q. **"PHI"** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- R. **"Recipient"** means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- S. **"Services"** means the services to be performed by Grantee as set forth in this Agreement and shall include any services to be rendered by Grantee in connection with the Goods.
- T. **"State Confidential Information"** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- U. **"State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- V. **"State Fiscal Year"** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- W. **"State Records"** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- X. **"Subcontractor"** means third-parties, if any, engaged by Grantee to aid in performance of the Work. "Subcontractor" also includes sub-grantees of grant funds.
- Y. **"Subrecipient"** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Grantee is a Subrecipient.

Z. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.

AA. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.

BB. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

4. STATEMENT OF WORK

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

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the Agreement Maximum for each State Fiscal Year shown on the Signature and Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Grantee in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within forty-five (45) days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Grantee and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Grantee shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within forty-five (45) days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full;

provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Grantee shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within thirty (30) days following the earlier to occur of Grantee's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Grantee and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Grantee shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.C.

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Reimbursement of Grantee Costs.

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in Exhibit A and §5 for all allowable costs described in this Grant and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the federal share of properly documented allowable costs related to the Work after review and approval

thereof, subject to the provisions of this Agreement and Exhibit A. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Grantee's costs for Work performed after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Contract and shown in the Budget if those costs are:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- ii. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out.

Grantee shall close out this Award within forty-five (45) days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee's final reimbursement request or invoice.

F. Litigation Reporting

If Grantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Grantee's ability to perform its obligations under this Agreement, Grantee shall, within ten (10) days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §13.

G. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than forty-five (45) calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

H. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

6. GRANTEE RECORDS

A. Maintenance

Grantee 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 (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records for a period (the "Record Retention Period") of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each

quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Grantee's performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by that governmental entity. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

D. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

7. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in Writing by the State. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI,

and (ii) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Grantee can establish that none of Grantee or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate

technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §24-73-101 *et seq.*, C.R.S.

8. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Grantee shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Agreement. Such a conflict of interest would arise when a Grantee or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Grantee acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

9. INSURANCE

Grantee shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

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

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

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

D. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

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

E. Professional Liability Insurance

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

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

F. Crime Insurance

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

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

G. Additional Insured

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

H. Primacy of Coverage

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

I. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least thirty (30) days prior notice to Grantee and Grantee shall forward such notice to the State in accordance with §13 within seven (7) days of Grantee's receipt of such notice.

J. Subrogation Waiver

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

K. Public Entities

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

the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Grantee shall ensure that the Subcontractor maintain at all times during the terms of this Grantee, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

For each commercial insurance plan provided by Grantee under this Agreement, Grantee shall provide to the State certificates evidencing Grantee's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Grantee shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Grantee's subcontract is not in effect as of the Effective Date, Grantee shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Grantee's execution of the subcontract. No later than fifteen (15) days before the expiration date of Grantee's or any Subcontractor's coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Grantee shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

10. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after the delivery of written notice, the Party may exercise any of the remedies as described in §11 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Grantee is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

11. REMEDIES

A. State's Remedies

If Grantee is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §10, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Grantee's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Grantee fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Grantee shall continue performance of this Agreement to the extent not terminated, if any.

a. **Obligations and Rights**

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work not cancelled by the termination notice and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Grantee shall assign to the State all of Grantee's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee but in which the State has an interest. At the State's request, Grantee shall return materials owned by the State in Grantee's possession at the time of any termination. Grantee shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. **Payments**

Notwithstanding anything to the contrary, the State shall only pay Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee'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 as if this Agreement had been terminated in the public interest under §2.C.

c. **Damages and Withholding**

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold payment to Grantee for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. **Remedies Not Involving Termination**

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

a. **Suspend Performance**

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

b. **Withhold Payment**

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Grantee's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Grantee's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Grantee shall, as approved by the State (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Grantee's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, following the notice and cure period in §10 and the dispute resolution process in §12 shall have all remedies available at law and equity.

12. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Grantee for resolution.

B. Resolution of Controversies

If the initial resolution described in §12.A fails to resolve the dispute within ten (10) Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §24-106-109, C.R.S. and §24-109-101.1, C.R.S. through §24-109-505, C.R.S., (the "Resolution Statutes"), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

13. NOTICES AND REPRESENTATIVES

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

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Grantee hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Grantee cannot make any of the assignments required by this section, Grantee hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Assignments and Assistance

Whether or not Grantee is under contract with the State at the time, Grantee shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Grantee assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property

of the State (collectively, "State Materials"). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Grantee

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

15. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Grantee shall not enter into any subgrant or subcontract in connection with its obligations under this Agreement without providing notice to State. The State may reject any such Subcontractor, and Grantee shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any work after that Subcontractor's subcontract has been rejected by the State. If the entity with whom Grantee enters into a subcontract or subgrant would also be considered a Subrecipient, then the subcontract or subgrant entered into by Grantee shall also contain provisions permitting both Grantee and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in §15.A., all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other

attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

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

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

N. Taxes

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §15.A., this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement 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 Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Grantee's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Indemnification

i. General Indemnification

Grantee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims,

damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. **Confidential Information Indemnification**

Disclosure or use of State Confidential Information by Grantee in violation of §7 may be cause for legal action by third parties against Grantee, the State, or their respective agents. Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Grantee, or its employees, agents, assigns, or Subcontractors in violation of §7.

iii. **Intellectual Property Indemnification**

Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

U. **Federal Provisions**

Grantee shall comply with all applicable requirements of Exhibit Cat all times during the term of this Grant.

16. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

A. **STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. **FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

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

C. **GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. **INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to

be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109, C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

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

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §24-18-201 and §24-50-507, C.R.S.

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

has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §24-30-202(1) and §24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within three (3) days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may

terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

HIPAA BUSINESS ASSOCIATES ADDENDUM

This Business Associate Addendum ("Addendum") is part of the Contract between the State of Colorado, Department of Health Care Policy and Financing and the Contractor. For purposes of this Addendum, the State is referred to as "Department," "Covered Entity" or "CE" and the Contractor is referred to as "Associate." Unless the context clearly requires a distinction between the Contract document and this Addendum, all references herein to "the Contract" or "this Contract" include this Addendum.

RECITALS

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §1320d – 1320d-8 ("HIPAA") as amended by the American Recovery and Reinvestment Act of 2009 ("ARRA")/HITECH Act (P.L. 111-005), and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160, 162 and 164 (the "HIPAA Rules") and other applicable laws, as amended.
- C. As part of the HIPAA Rules, the CE is required to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

The parties agree as follows:

1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Rules at 45 C.F.R. Parts 160, 162 and 164, as amended. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the provisions of this Contract, the HIPAA Rules shall control. Where the provisions of this Contract differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Contract shall control.

b. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.501.

c. "Protected Information" shall mean PHI provided by CE to Associate or created, received, maintained or transmitted by Associate on CE's behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment and health care operations, Protected Information under this Contract does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access and amendment of Associate's PHI.

d. "Subcontractor" shall mean a third party to whom Associate delegates a function, activity, or service that involves CE's Protected Information, in order to carry out the responsibilities of this Agreement.

2. Obligations of Associate.

a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under this Contract and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Rules if so, used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A to this Addendum. Associate agrees to defend and indemnify the Department against third party claims arising from Associate's breach of this Addendum.

b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Rules if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Contract; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 C.F.R. Section 164.502(j)(1). To the extent that Associate discloses Protected Information to a third party Subcontractor, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances through execution of a written agreement with such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that such third party will notify Associate within five (5) business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.

c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Contract. Associate shall comply with the requirements of the HIPAA Security Rule, at 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Associate shall review, modify, and update documentation of its safeguards as needed to ensure continued provision of reasonable and appropriate protection of Protected Information.

d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Contract within five (5) business days of becoming aware of such use or disclosure.

e. Associate's Agents. If Associate uses one or more Subcontractors or agents to provide services under the Contract, and such Subcontractors or agents receive or have access to Protected Information, each Subcontractor or agent shall sign an agreement with Associate containing substantially the same provisions as this Addendum and further identifying CE as a third party beneficiary with rights of enforcement and indemnification from such Subcontractors or agents in the event of any violation of such Subcontractor or agent agreement. The agreement between the Associate and Subcontractor or agent shall ensure that the Subcontractor or agent agrees to at least the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate shall make Protected Information maintained by Associate or its agents or Subcontractors in such Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.524. If such Protected Information is maintained by Associate in an electronic form or format, Associate must make such Protected Information available to CE in a mutually agreed upon electronic form or format.

g. Amendment of PHI. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate or its agents or Subcontractors shall make such Protected Information available to CE for amendment within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, and shall incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or Subcontractors, Associate must notify CE in writing within five (5) business days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or Subcontractors shall be the responsibility of CE.

h. Accounting Rights. Associate and its agents or Subcontractors shall make available to CE, within ten (10) business days of notice by CE, the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.528. In the event that the request for an accounting is delivered directly to Associate or its agents or Subcontractors, Associate shall within five (5) business days of the receipt of the request, forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

i. Governmental Access to Records. Associate shall keep records and make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's or Associate's compliance with the HIPAA Rules. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary when the Secretary is investigating CE. Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of Associate's policies, procedures or practices to determine whether Associate is complying with the HIPAA Rules, and permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including Protected Information, that are pertinent to ascertaining compliance.

j. Minimum Necessary. Associate (and its agents or Subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. Sections 164.502(b) and 164.514(d).

k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

l. Retention of Protected Information. Except upon termination of the Contract as provided in Section 4(c) of this Addendum, Associate and its Subcontractors or agents shall retain all Protected Information throughout the term of this Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.

m. Associate's Insurance. Associate shall maintain insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Contract (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status and notice of cancellation).

n. Notification of Breach. During the term of this Contract, Associate shall notify CE within five (5) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of Protected Information and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall not initiate notification to affected individuals per the HIPAA Rules without prior notification and approval of CE. Information provided to CE shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed during the breach. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

o. Audits, Inspection and Enforcement. Within ten (10) business days of a written request by CE, Associate and its agents or Subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; and (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract.

p. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity and security of Protected Information transmitted to CE pursuant to the Contract, in accordance with the standards and requirements of the HIPAA Rules.

q. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 C.F.R. Section 164.522, Associate will restrict the use or disclosure of an individual's Protected Information. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of CE.

a. Safeguards During Transmission. CE shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity and security of Protected Information transmitted pursuant to this Contract, in accordance with the standards and requirements of the HIPAA Rules.

b. Notice of Changes. CE maintains a copy of its Notice of Privacy Practices on its website. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent that it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of PHI, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 C.F.R. Section 164.522.

4. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of this Contract and shall provide grounds for immediate termination of this Contract by CE pursuant to the provisions of the Contract covering termination for cause, if any. If the Contract contains no express provisions regarding termination for cause, the following terms and conditions shall apply:

(1) Default. If Associate refuses or fails to timely perform any of the provisions of this Contract, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Contract. Associate shall continue performance of this Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

(2) Associate's Duties. Notwithstanding termination of this Contract, and subject to any directions from CE, Associate shall take timely, reasonable and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.

b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement, then CE shall take reasonable steps to cure such breach or end such violation. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall terminate the Contract, if feasible. If Associate knows of a pattern of activity or practice of a Subcontractor or agent that constitutes a material breach or violation of the Subcontractor's or agent's obligations under the written agreement between Associate and the Subcontractor or agent, Associate shall take reasonable steps to cure such breach or end such violation, if feasible.

c. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Contract, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the Protected Information, Associate shall certify in writing to CE that such Protected Information has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d) and 2(e) of this Addendum to such Protected Information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. **Injunctive Relief.** CE shall have the right to injunctive and other equitable and legal relief against Associate or any of its Subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this Contract or applicable law.

6. **No Waiver of 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, protection, or other provisions of the Colorado Governmental Immunity Act, CRS 24-10-101 *et seq.* or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* as applicable, as now in effect or hereafter amended.

7. **Limitation of Liability.** Any limitation of Associate's liability in the Contract shall be inapplicable to the terms and conditions of this Addendum.

8. **Disclaimer.** CE makes no warranty or representation that compliance by Associate with this Contract or the HIPAA Rules will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

9. **Certification.** To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to the HIPAA Rules relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with the HIPAA Rules or this Addendum.

10. Amendment. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules and other applicable laws relating to the confidentiality, integrity, availability and security of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information and that it is Associate's responsibility to receive satisfactory written assurances from Associate's Subcontractors and agents. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Rules or other applicable laws. CE may terminate this Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section, or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules.

a. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any Subcontractors, employees or agents assisting Associate in the performance of its obligations under the Contract, available to CE, at no cost to CE, up to a maximum of thirty (30) hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of the HIPAA Rules or other laws relating to security and privacy or PHI, in which the actions of Associate are at issue, except where Associate or its Subcontractor, employee or agent is a named adverse party.

12. No Third-Party Beneficiaries. Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. Together, the Contract and this Addendum shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules. The parties agree that any ambiguity in this Contract shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. This Contract supersedes and replaces any previous separately executed HIPAA addendum between the parties.

14. **Survival of Certain Contract Terms.** Notwithstanding anything herein to the contrary, Associate's obligations under Section 4(c) ("Effect of Termination") and Section 12 ("No Third-Party Beneficiaries") shall survive termination of this Contract and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate. This Addendum shall remain in effect during the term of the Contract including any extensions.

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ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the Contract between the State of Colorado, Department of Health Care Policy and Financing and the Contractor and is effective as of the date of the Contract (the "Attachment Effective Date"). This Attachment may be amended from time to time as provided in Section 10(b) of the Addendum.

1. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows:

No Additional Permitted Uses

2. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows:

No additional permitted disclosures

3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract:

No subcontractors

4. Receipt. Associate's receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows and Associate's obligations under the Addendum shall commence with respect to such Protected Information upon such receipt:

Upon receipt of PHI from the Department.

5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information:

No additional restrictions on Use of Data

6. Additional Terms. This may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security or privacy specifications, de-identification/re-identification of data, etc.

No additional terms

EXHIBIT A, STATEMENT OF WORK

1.0 TERMINOLOGY

1.1. In addition to the terms defined in §3 of this Agreement, acronyms and abbreviations are defined at their first occurrence in this Exhibit B, Statement of Work. The following list of terms shall be construed and interpreted as follows:

- 1.1.1. Business Day – Any day in which the State is open and conducting business, but shall not include Saturday, Sunday, or any day which the State observes one of the holidays listed in §24-11-101(1), C.R.S., or any day that the County observes a holiday.
- 1.1.2. Business Interruption - Any event that disrupts Contractor's ability to complete the Work for a period of time, and may include, but is not limited to a Disaster, power outage, strike, loss of necessary personnel or computer virus.
- 1.1.3. Case Management - means the assessment of an individual receiving long-term services and supports' needs, the development and implementation of a support plan for such individual, referral and related activities, the coordination and monitoring of long-term service delivery, the evaluation of service effectiveness, and the periodic reassessment of such individual's needs.
- 1.1.4. Case Manager – means a person who provides case management services and meets all regulatory requirements for case manager.
- 1.1.5. Client - Any individual eligible for the Colorado Medicaid program, Colorado's CHP+ program or the Colorado Indigent Care Program, as determined by the Department.
- 1.1.6. Closeout Period - The period beginning on the earlier of ninety (90) calendar days prior to the end of the last renewal year of the Agreement or notice by the Department of non-renewal and ending on the day that the Department has accepted the final deliverable for the Closeout Period and has determined that the final transition is complete.
- 1.1.7. CMS – The federal Centers for Medicare and Medicaid Services.
- 1.1.8. Colorado Revised Statutes (C.R.S.) – The legal code of Colorado; the legal codified general and permanent statutes of the Colorado General Assembly.
- 1.1.9. Complaints and Grievances: Any complaint received by the Contractor as it relates to the services provided through this Agreement to include, but not limited to: general business functions, administration, administrative case management functions. Complaints received outside of the scope of this Agreement shall not be included.
- 1.1.10. Contractor – The individual, entity or subrecipient selected to complete the Work contained in the Agreement. Contractor and subrecipient will be used interchangeably throughout this agreement.
- 1.1.11. Corrective Action Plan - a written plan, which includes the specific actions the agency shall take to correct non-compliance with regulations and contractual obligations, which stipulates the date by which each action shall be completed.
- 1.1.12. Critical Incident - means an actual or alleged event that creates the risk of serious harm to the health or welfare of an individual receiving services; and it may endanger or

negatively impact the mental and/or physical well-being of an individual. Critical Incidents include but are not limited to: Injury/illness; mistreatment; abuse/neglect/exploitation; damage/theft of property; medication mismanagement; lost or missing person; criminal activity; unsafe housing/displacement; or death.

- 1.1.13. Data – State Confidential Information and other State information resources transferred to the Contractor for the purpose of completing a task or project assigned in the Statement of Work.
- 1.1.14. Deliverable - any tangible or intangible object produced by Contractor as a result of the work that is intended to be delivered to the Department, regardless of whether the object is specifically described or called out as a “Deliverable” or not.
- 1.1.15. Department – The Colorado Department of Health Care Policy and Financing
- 1.1.16. Disaster - An event that makes it impossible for Contractor to perform the Work out of its regular facility or facilities, and may include, but is not limited to, natural disasters, fire or terrorist attacks.
- 1.1.17. District – A Department-defined distinct geographic county-based service area. Each District is served by a single SEP Agency.
- 1.1.18. Eligibility Determination - determination of eligibility for Long Term Services and Supports (LTSS) programs.
- 1.1.19. Functional Eligibility - an individual meets functional criteria for a Long Term Services and Supports program as determined by the Department.
- 1.1.20. Functional Needs Assessment- a comprehensive evaluation with the individual seeking services and appropriate collaterals (such as family members, friends, and/or caregivers) and a written evaluation by the case manager utilization the ULTC 100.2, with supporting diagnostic information from the individual’s medical provider, to determine the individual’s level of functioning, service needs, available resources, potential funding resources, and medical necessity for admission or continued stay in certain Long Term Services and Supports Programs.
- 1.1.21. Health First Colorado – Colorado’s Medicaid Program.
- 1.1.22. Health Insurance Portability and Accountability Act (HIPAA) – The Health Insurance Portability and Accountability Act of 1996, as amended.
- 1.1.23. Home and Community Based Services (HCBS) waivers - means services and supports authorized through a 1915(c) waiver of the Social Security Act and provided in community settings to a client who requires an institutional level of care that would otherwise be provided in a Hospital, Nursing Facility, or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID). This includes: Home and Community Based Services Waiver for Persons with Brain Injury (HCBS-BI), Home and Community Based Services Waiver for Persons who are Elderly, Blind and Disabled (HCBS-EBD), Community Mental Health Supports Waiver (HCBS-CMHS), Home and Community Based Services Waiver for Persons with Spinal Cord Injury (HCBS-SCI), Waiver for Children with a Life Limiting Illness (HCBS-CLLI).

- 1.1.24. **Intake, Screening and Referral** – means the initial contact with individuals by the Single Entry Point agency and shall include, but not limited to, a preliminary screening in the following areas: an individual's need for long term services and supports; an individual's need for referral to other programs or services; an individual's eligibility for financial and program assistance; and the need for a Functional Needs Assessment of the individual seeking services.
- 1.1.25. **Key Personnel** - The position or positions that are specifically designated as such in this Agreement.
- 1.1.26. **Long- Term Services and Supports (LTSS)** - means the services and supports used by individuals of all ages with functional limitations and chronic illnesses who need assistance to perform routine daily activities such as bathing, dressing, preparing meals, and administering medications.
- 1.1.27. **Member** - Any individual enrolled in the Colorado Medicaid program, Colorado's CHP+ program or the Colorado Indigent Care Program, as determined by the Department.
- 1.1.28. **National Core Indicators-Aging and Disabilities (NCI-AD)**- The National Core Indicators for Aging and Disabilities (NCI-AD) are standard measures used across participating states to assess the quality of life and outcomes of seniors and adults with physical disabilities—including traumatic or acquired brain injury—who are accessing publicly-funded services through the Older Americans Act (OAA), Program of All-Inclusive Care for the Elderly (PACE), Medicaid, and/or state-funded programs. The project is coordinated by the National Association of States United for Aging and Disabilities (NASUAD) and Human Services Research Institute (HSRI). NCI-AD data are gathered through yearly in-person Adult Consumer Surveys administered by state Aging, Disability, and Medicaid Agencies (or an Agency-contracted vendor) to a sample of at least 400 individuals in each participating state. NCI-AD data measure the performance of states' long-term services and supports (LTSS) systems and service recipient outcomes, helping states prioritize quality improvement initiatives, engage in thoughtful decision making, and conduct futures planning with valid and reliable LTSS data.
- 1.1.29. **Operational Start Date** - When the Department authorizes Contractor to begin fulfilling its obligations under the Agreement.
- 1.1.30. **Other Personnel** - Individuals and Subcontractors, in addition to Key Personnel, assigned to positions to complete tasks associated with the Work.
- 1.1.31. **Pre-Admission Screening and Resident Review (PASRR)** - the review that occurs for all client's seeking admission to a Medicaid nursing facility to screen the client for evidence of serious mental illness and/or intellectual and developmental disabilities or related conditions. The review determines whether the client needs the level of services that a nursing facility provider and whether clients who need nursing facility services also need specialized services.
- 1.1.32. **Program** – means a publicly funded program including, but not limited to: Home and Community Based Services Waivers,), Medicaid nursing facility, Program for All-Inclusive Care for the Elderly (PACE) and Long Term Home Health (LTHH).

- 1.1.33. Professional Medical Information Page (PMIP)- the medical information document signed by a licensed medical professional used as a component of the level of care evaluation to determine the client's need for LTSS program.
- 1.1.34. Provider - Any health care professional or entity that has been accepted as a provider in the Colorado Medicaid program, Colorado's CHP+ program or the Colorado Indigent Care Program, as determined by the Department.
- 1.1.35. Quality Improvement Strategy (QIS) - The Department's process to measure and improve its performance in meeting the HCBS waiver assurances annually as set forth in 42 CFR 441.301 and 441.302.
- 1.1.36. Quarter - Four (4) distinct time periods during the state fiscal year. Quarter one (1) begins on July 1 and ends September 30. Quarter two (2) begins on October 1 and ends December 31. Quarter three (3) begins on January 1 and ends March 31. Quarter four (4) begins on April 1 and ends on June 30.
- 1.1.37. Reassessment means a periodic comprehensive evaluation with the individual receiving services, appropriate collaterals, and case manager, with supporting diagnostic information from the individual's medical provider to re-determine the individual's level of functioning, service needs, available resources, and potential funding resources.
- 1.1.38. Region – A distinct geographic area, determined by the Department, which is comprised of one or more Districts.
- 1.1.39. Resource Development – The study, establishment and implementation of additional resources or services that extend the capabilities of community based long-term care systems to better serve long-term care clients and those likely to need community based long-term care in the future.
- 1.1.40. Support Plan- means the written document that specifies identified and needed services, to include Medicaid and non-Medicaid services regardless of funding source, to assist a client to remain safely in the community and developed in accordance with the Department rules. Support Plans are developed at minimum annually or when a reassessment notes a client's change in condition such that a new support need is identified.
- 1.1.41. Support Planning - means the process of working with the individual receiving services and people chosen by the individual to identify goals, needed services, individual choices and preferences, and appropriate service providers based on the individual seeking or receiving services' assessment and knowledge of the individual and of community resources. Support planning informs the individual seeking or receiving services of his or her rights and responsibilities.
- 1.1.42. Single Entry Point (SEP) – The availability of a single access or entry point within a local area where a current or potential long-term care client can obtain long-term care information, screening, assessment of need, and referral to appropriate long-term care programs and case management services.
- 1.1.43. Single Entry Point Agency (SEP Agency) – means the organization selected to provide intake, screening, referral, eligibility determination, and case management functions

for person in need of Long Term Services and Supports within a Single Entry Point District.

1.1.44. State – The State of Colorado acting by and through any State agency.

2.0 CONTRACTOR'S GENERAL REQUIREMENTS

- 2.1 The Department will contract with only one (1) organization, the Contractor, and will work solely with that organization with respect to all tasks and deliverables to be completed, services to be rendered and performance standards to be met under this Agreement.
- 2.2 The Contractor shall serve as the Single Entry Point Agency for the following counties:
 - 2.2.1 El Paso County
 - 2.2.2 Park County
 - 2.2.3 Teller County
- 2.3 Contractor may be privy to internal policy discussions, contractual issues, price negotiations, confidential medical information, Department financial information, advance knowledge of legislation and other Confidential Information. In addition to all other confidentiality requirements of the Agreement, the Contractor shall also consider and treat any such information as Confidential Information and shall only disclose it in accordance with the terms of the Agreement.
- 2.4 The Contractor shall work cooperatively with Department staff and, if applicable, the staff of other State contractors to ensure the completion of the Work. The Department may, in its sole discretion, use other contractors to perform activities related to the Work that are not contained in the Agreement or to perform any of the Department's responsibilities. In the event of a conflict between Contractor and any other State contractor, the State will resolve the conflict and Contractor shall abide by the resolution provided by the State.
- 2.5 The Contractor shall inform the Department on current trends and issues in the healthcare marketplace and provide information on new technologies in use that may impact the Contractor's responsibilities under this Agreement.
- 2.6 The Contractor shall maintain complete and detailed records of all meetings, system development life cycle documents, presentations, project artifacts, and any other interactions or Deliverables related to the Work described in the Agreement. The Contractor shall make such records available to the Department upon request throughout the term of the Agreement.
- 2.7 Deliverables
 - 2.7.1 All Deliverables shall meet Department-approved format and content requirements. The Department will specify the number of copies and media for each Deliverable.
 - 2.7.2 All Deliverables shall be submitted to the Department by close of business on the due date determined by the Department.
 - 2.7.3 Contractor shall submit each Deliverable to the Department for review and approval and shall adhere to the following Deliverable process such for any documentation creation, review, and acceptable cycle, the Contractor shall:
 - 2.7.3.1 Gather and document requirements for the Deliverable.

- 2.7.3.2 Perform internal quality control review(s) of the Deliverable, including, but not limited to:
 - 2.7.3.2.1 Readability.
 - 2.7.3.2.2 Spelling.
 - 2.7.3.2.3 Grammar.
 - 2.7.3.2.4 Completion.
- 2.7.3.3 Adhere to all required templates or development of templates.
- 2.7.3.4 The Department will review the Deliverable and may direct Contractor to make changes to the Deliverable. Contractor shall make all changes within ten (10) Business Days following the Department's direction to make the change unless the Department provides a longer period in writing.
 - 2.7.3.4.1 Changes the Department direct include, but are not limited to, modifying portions of the Deliverable, requiring new pages or portions of the Deliverable, requiring resubmission of the Deliverable or requiring inclusion of information or components that were left out of the Deliverable.
 - 2.7.3.4.2 The Department may also direct Contractor to provide clarification or provide a walkthrough of any Deliverable to assist the Department in its review. Contractor shall provide the clarification or walkthrough as directed by the Department.
- 2.7.3.5 Once the Department has received an acceptable version of the Deliverable, including all changes directed by the Department, the Department will notify Contractor of its acceptance of the Deliverable in writing. A Deliverable shall not be deemed accepted prior to the Department's notice to Contractor of its acceptance of that Deliverable.
- 2.7.4 Contractor shall employ an internal quality control process to ensure that all Deliverables are submitted on time, are complete, accurate, easy to understand and of high quality, as described herein. Contractor shall provide Deliverables that, at a minimum, are responsive to the specific requirements for that Deliverable, organized into a logical order, contain accurate spelling and grammar, are formatted uniformly, and contain accurate information and correct calculations.
- 2.7.5 In the event any due date for a Deliverable falls on a day that is not a Business Day, the due date shall be automatically extended to the next Business Day, unless otherwise directed by the Department.
- 2.7.6 All due dates or timelines that reference a period of days, months or quarters shall be measured in calendar days, months and quarters unless specifically stated as being measured in Business Days or otherwise. All times stated in the Agreement shall be considered to be in Mountain Time, adjusted for Daylight Saving Time as appropriate, unless specifically stated otherwise.
- 2.7.7 No Deliverable, report, data, procedure or system created by Contractor for the Department that is necessary to fulfilling Contractor's responsibilities under the Agreement, as determined by the Department, shall be considered proprietary.

- 2.7.8 If any Deliverable contains ongoing responsibilities or requirements for the Contractor, such as Deliverables that are plans, policies or procedures, then Contractor shall comply with all requirements of the most recently approved version of that Deliverable. Contractor shall not implement any version of any such Deliverable prior to receipt of the Department's written approval of that version of that Deliverable. Once a version of any Deliverable described in this subsection is approved by the Department, all requirements, milestones and other Deliverables contained within that Deliverable shall be considered to be requirements, milestones and Deliverables of this Agreement.
- 2.7.9 Any Deliverable described as an update of another Deliverable shall be considered a version of the original Deliverable for the purposes of this subsection.
- 2.8 Stated Deliverables and Performance Standards
- 2.8.1 Any section within this Statement of Work headed with or including the term "DELIVERABLE" or "PERFORMANCE STANDARD" is intended to highlight a Deliverable or performance standard contained in this Statement of Work and provide a clear due date for the Deliverables. The sections with these headings are for ease of reference not intended to expand or limit the requirements or responsibilities related to any Deliverable or performance standard, except to provide the due date for the Deliverables.
- 2.9 Communication with the Department
- 2.9.1 The Contractor shall enable all Contractor staff to exchange documents and electronic files with the Department staff in formats compatible with the Department's systems. The Department currently uses Microsoft Office 2016 and/or Microsoft Office 365 for PC. If the Contractor uses a compatible program, then the Contractor shall ensure that all documents or files delivered to the Department are completely transferrable and reviewable, without error, on the Department's systems.
- 2.9.2 The Department will use a transmittal process to provide the Contractor with official direction within the scope of the Agreement. The Contractor shall comply with all direction contained within a completed transmittal. For a transmittal to be considered complete, it must include, at a minimum, all of the following:
- 2.9.2.1 The date the transmittal will be effective.
- 2.9.3 Direction to the Contractor regarding performance under the Agreement.
- 2.9.4 A due date or timeline by which the Contractor shall comply with the direction contained in the transmittal.
- 2.9.5 The signature of the Department employee who has been designated to sign transmittals.
- 2.9.5.1 The Department will provide the Contractor with the name of the person it has designated to sign transmittals on behalf of the Department, who will be the Department's primary designee. The Department will also provide the Contractor with a list of backups who may sign a transmittal on behalf of the Department if the primary designee is unavailable. The Department may change any of its designees from time to time by providing notice to the Contractor through a transmittal.

- 2.9.6 The Department may deliver a completed transmittal to the Contractor in hard copy, as a scanned attachment to an email or through a dedicated communication system, if such a system is available.
- 2.9.7 If a transmittal is delivered through a dedicated communication system or other electronic system, then the Department may use an electronic signature to sign that transmittal.
- 2.9.8 If the Contractor receives conflicting transmittals, the Contractor shall contact the Department's primary designee, or backup designees if the primary designee is unavailable, to obtain direction. If the Department does not provide direction otherwise, then the transmittal with the latest effective date shall control.
- 2.9.9 In the event that the Contractor receives direction from the Department outside of the transmittal process, it shall contact the Department's primary designee, or backup designees if the primary designee is unavailable, and have the Department confirm that direction through a transmittal prior to complying with that direction.
- 2.9.10 Transmittals may not be used in place of an amendment, and may not, under any circumstances be used to modify the term of the Agreement or any compensation under the Agreement. Transmittals are not intended to be the sole means of communication between the Department and the Contractor, and the Department may provide day-to-day communication to the Contractor without using a transmittal.

2.10 Operations Guide

- 2.10.1 Contractor shall not engage in any Work under the Agreement, other than the Work described in this Section 2.9 and 2.11, prior to the Operational Start Date. The Department shall not be liable to the Contractor for, and Contractor shall not receive, any payment for any period prior to the Operational Start Date under this Agreement.
- 2.10.2 The Contractor shall create and implement an Operations Guide. The Operations Guide shall include the creation and management of the following:
 - 2.10.2.1 Communication Plan.
 - 2.10.2.2 Business Continuity Plan.
 - 2.10.2.3 Closeout Plan.
- 2.10.3 The Contractor shall submit the Operations Guide to the Department for review and approval.
 - 2.10.3.1 DELIVERABLE: Operations Guide
 - 2.10.3.2 DUE: Within forty-five (45) Business Days after the Effective Date
- 2.10.4 Communication Plan with Members, Providers, and Other Entities
 - 2.10.4.1 The Contractor shall create a Communication Plan that includes, but is not limited to, all of the following:
 - 2.10.4.1.1 A description of how the Contractor will communicate to Members any changes to the services those Members will receive or how those Members will receive the services.

- 2.10.4.1.2 A description of the communication methods, including things such as email lists, newsletters and other methods, that the Contractor will use to communicate with Providers and Subcontractors.
- 2.10.4.1.3 The specific means of immediate communication with Members and a method for accelerating the internal approval and communication process to address urgent communications or crisis situations.
- 2.10.4.1.4 A general plan for how the Contractor will address communication deficiencies or crisis situations, including how the Contractor will increase staff, contact hours or other steps the Contractor will take if existing communication methods for Members or Providers are insufficient.
- 2.10.4.1.5 A listing of the following individuals within the Contractor's organization, including cell phone numbers and email addresses:
- 2.10.4.1.6 An individual who is authorized to speak on the record regarding the Work, the Agreement or any issues that arise that are related to the Work.
- 2.10.4.1.7 An individual who is responsible for any website or marketing related to the Work.
- 2.10.4.1.8 Back-up communication staff that can respond in the event that the other individuals listed are unavailable.

2.11 Business Continuity Plan

- 2.11.1.1 The Contractor shall create a Business Continuity Plan that the Contractor will follow in order to continue operations after a Disaster or a Business Interruption. The Business Continuity Plan shall include, but is not limited to, all of the following:
 - 2.11.1.1.1 How the Contractor will replace staff that are lost or unavailable during or after a Business Interruption so that the Work is performed in accordance with the Agreement.
 - 2.11.1.1.2 How the Contractor will back-up all information necessary to continue performing the Work, so that no information is lost because of a Business Interruption.
 - 2.11.1.1.2.1 In the event of a Disaster, the plan shall also include how the Contractor will make all information available at its back-up facilities.
 - 2.11.1.1.3 How the Contractor will maintain complete back-up copies of all data, databases, operating programs, files, systems, and software pertaining to enrollment information at a Department-approved, off-site location.
 - 2.11.1.1.4 How the Contractor will comply with the disaster recovery standards described in Exhibit E, Information Technology Provisions.
 - 2.11.1.1.5 How the Contractor will minimize the effects on Members of any Business Interruption.
 - 2.11.1.1.6 How the Contractor will communicate with the Department during the Business Interruption and points of contact within the Contractor's organization the Department can contact in the event of a Business Interruption.
 - 2.11.1.1.7 Planned long-term back-up facilities out of which the Contractor can continue operations after a Disaster.

- 2.11.1.1.8 The time period it will take to transition all activities from the Contractor's regular facilities to the back-up facilities after a Disaster.
- 2.11.2 Closeout Plan
 - 2.11.2.1 The Contractor shall create a Closeout Plan that describes all requirements, steps, timelines, milestones, and Deliverables necessary to fully transition the services described in the Agreement from the Contractor to the Department or to another contractor selected by the Department to be the contractor after the termination of the Agreement. The Closeout Plan shall include, but is not limited to:
 - 2.11.2.1.1 Transfer of Members
 - 2.11.2.1.1.1 Transfer of documentation to include all electronic and physical documentation
 - 2.11.2.1.1.2 Transfer of all member records through the Department Case Management Systems
 - 2.11.2.1.2 Transfer of services
 - 2.11.2.1.3 Transfer of Case Management Services
 - 2.11.2.1.4 The Closeout Plan shall also designate an individual to act as a closeout coordinator who will ensure that all requirements, steps, timelines, milestones, and deliverables contained in the Closeout Plan are completed and work with the Department and any other contractor to minimize the impact of the transition on Members and the Department.
 - 2.11.2.2 The Contractor shall deliver the Closeout Plan to the Department for review and approval.
 - 2.11.2.3 The Contractor shall be ready to perform all Work by the Operational Start Date.
- 2.11.3 Closeout Period
 - 2.11.3.1 During the Closeout Period, the Contractor shall complete all of the following:
 - 2.11.3.2 Implement the most recent Closeout Plan or Closeout Plan Update as approved by the Department in the Operations Guide, as described herein and complete all steps, Deliverables and milestones contained in the most recent Closeout Plan or Closeout Plan Update that has been approved by the Department.
 - 2.11.3.3 Provide to the Department, or any other contractor at the Department's direction, all reports, data, systems, Deliverables and other information reasonably necessary for a transition as determined by the Department or included in the most recent Closeout Plan or Closeout Plan Update that has been approved by the Department.
 - 2.11.3.4 Ensure that all responsibilities under the Agreement have been transferred to the Department, or to another contractor at the Department's direction, without significant interruption.
 - 2.11.3.5 Notify any Subcontractors of the termination of the Agreement, as directed by the Department.

- 2.11.3.6 Notify all members that the Contractor will no longer be the SEP as directed by the Department. Contractor shall create these notifications and deliver them to the Department for approval. Once the Department has approved the notifications, Contractor shall deliver these notifications to all members, but in no event shall Contractor deliver any such notification prior to approval of that notification by the Department.
- 2.11.3.6.1 DELIVERABLE: Member Notifications
- 2.11.3.6.2 DUE: Thirty (30) days prior to termination of the Agreement
- 2.11.3.7 Continue meeting each requirement of the Agreement as described in the Department-approved and updated Closeout Plan, or until the Department determines that specific requirement is being performed by the Department or another contractor, whichever is sooner. The Department will determine when any specific requirement is being performed by the Department or another contractor, and will notify the Contractor of this determination for that requirement.
- 2.11.3.8 The Closeout Period may extend past the termination of the Agreement . The Department will perform a closeout review to ensure that Contractor has completed all requirements of the Closeout Period. If Contractor has not completed all of the requirements of the Closeout Period by the date of the termination of the Agreement , then any incomplete requirements shall survive termination of the Agreement.
- 2.12 Performance Reviews
- 2.12.1 The Department may conduct performance reviews or evaluations of the Contractor in relation to the Work performed under the Agreement.
- 2.12.2 The Department may work with the Contractor in the completion of any performance reviews or evaluations or the Department may complete any or all performance reviews or evaluations independently, at the Department's sole discretion.
- 2.12.3 The Contractor shall provide all information necessary for the Department to complete all performance reviews or evaluations, as determined by the Department, upon the Department's request. The Contractor shall provide this information regardless of whether the Department decides to work with the Contractor on any aspect of the performance review or evaluation.
- 2.12.4 The Department may conduct these performance reviews or evaluations at any point during the term of the Agreement, or after termination of the Agreement for any reason.
- 2.12.5 The Department may make the results of any performance reviews or evaluations available to the public, or may publicly post the results of any performance reviews or evaluations.
- 2.13 Renewal Options and Extensions
- 2.13.1 The Department may, within its sole discretion, choose to not exercise any renewal option in the Agreement for any reason. If the Department chooses to not exercise an option, it may re-procure the performance of the Work in its sole discretion.
- 2.13.2 The Parties may amend the Agreement to extend beyond five (5) years, in accordance with the Colorado Procurement Code and its implementing rules, in the event that the

Department determines the extension is necessary to align the Agreement with other Department agreements , to address state or federal programmatic or policy changes related to the Agreement , or to provide sufficient time to transition the Work.

2.14 Department System Access

2.14.1 In the event that the Contractor requires access to any Department computer system to complete the Work, the Contractor shall have and maintain all hardware, software, and interfaces necessary to access the system without requiring any modification to the Department's system. The Contractor shall follow all Department policies, processes, and procedures necessary to gain access to the Department's systems.

2.14.2 The Contractor shall be responsible for any costs associated with obtaining and maintaining access to systems needed to perform the Work under this solicitation, as determined by the Department. The Department will not reimburse the Contractor for any costs associated with obtaining and maintaining access to Department systems.

3.0 CONTRACTOR PERSONNEL

3.1 Personnel General Requirements

3.1.1 Contractor shall provide qualified Key Personnel and Other Personnel as necessary to perform the Work throughout the term of the Agreement.

3.1.2 Contractor shall designate the following Key Personnel positions:

3.1.2.1 Administrator

3.1.2.1.1 The Administrator shall be responsible for all of the following:

3.1.2.1.1.1 Serving as Contractor's primary point of contact for the Department.

3.1.2.1.1.2 Ensuring the completion of all Work in accordance with the Agreement's requirements. This includes, but is not limited to, ensuring the accuracy, timeliness and completeness of all work.

3.1.2.1.1.3 Ensuring the timely submission and accuracy of all Deliverables submitted to the Department.

3.1.2.1.1.4 Overseeing all other Key Personnel and Other Personnel and ensuring proper staffing levels throughout the term of the Agreement.

3.1.2.2 Case Management Supervisor(s)

3.1.2.2.1 The Contractor's Case Management Supervisor(s) shall meet all of the qualifications listed in 10 C.C.R. 2505-10, Section 8.393.1.L.1.d *et seq.*

3.1.2.3 Medical Consultant

3.1.3 Other Personnel

3.1.3.1 The Contractor shall have at least one (1) Case Manager and one (1) receptionist/clerical. Contractor shall have additional Case Manager(s) and Support Staff as necessary to complete the Work.

3.1.3.2 The Contractor's Case Manager(s) shall meet all of the qualifications listed in 10 C.C.R. 2505-10, Section 8.393.1.L. *et seq.*

- 3.1.3.3 Contractor shall provide the Department with a final list of Key Personnel assigned to the Agreement and appropriate contact information for those individuals.
- 3.1.3.3.1 DELIVERABLE: Key Personnel assigned to the Agreement
- 3.1.3.3.2 DUE: Within five (5) Business Days after the Effective Date
- 3.1.4 The Contractor shall conduct background checks on all new applicants for positions in which direct care, as defined in section §26.3.1.101(3.5), C.R.S. will be provided to an at-risk adult, as defined in section §26-3.1-101 (1.5), C.R.S to include at a minimum a Colorado Bureau of Investigation check. Pursuant to §25.5-6-106, C.R.S. on and after January 1, 2019, prior to employment, a single entry point agency shall submit the name of a person who will be providing direct care, to an at-risk adult, , as well as any other required identifying information, to the department of human services for a check of the Colorado adult protective services data system pursuant to section §26-3.1-111, C.R.S. to determine if the person is substantiated in a case of mistreatment of an at-risk adult.
- 3.1.5 Contractor shall not permit any individual proposed for assignment to Key Personnel positions to perform any Work prior to the Department's notice of that individual to be assigned as Key Personnel.
- 3.1.6 If any of Contractor's Key Personnel or Other Personnel are required to have and maintain any professional licensure or certification issued by any federal, state or local government agency, then Contractor shall submit copies of such current licenses and certifications to the Department.
- 3.1.6.1 DELIVERABLE: A copy of all current professional licensure and certification documentation as specified for Key Personnel or Other Personnel
- 3.1.6.2 DUE: Within five (5) Business Days of receipt of updated licensure or upon request by the Department
- 3.1.6.3 Contractor shall update this list to account for changes in the Key Personnel.
- 3.2 Personnel Availability
 - 3.2.1 Contractor shall ensure Key Personnel and Other Personnel assigned to the Agreement are available for meetings with the Department during the Department's normal business hours, as determined by the Department. Contractor shall also make these personnel available outside of the Department's normal business hours and on weekends with prior notice from the Department.
 - 3.2.2 Contractor's Key Personnel and Other Personnel shall be available for all regularly scheduled meetings between Contractor and the Department, unless the Department has granted prior written approval otherwise.
 - 3.2.3 Contractor shall ensure that the Key Personnel and Other Personnel attending all meetings between the Department and Contractor have the authority to represent and commit Contractor regarding work planning, problem resolution and program development.
 - 3.2.4 At the Department's direction, the Contractor shall make its Key Personnel and Other Personnel available to attend meetings as subject matter experts with stakeholders both within the State government and external private stakeholders.

- 3.2.5 All of Contractor's Key Personnel and Other Personnel that attend any meeting with the Department or other Department stakeholders shall be physically present at the location of the meeting, unless the Department gives prior, written permission to attend by telephone or video conference. If Contractor has any personnel attend by telephone or video conference, Contractor shall provide all additional equipment necessary for attendance, including any virtual meeting space or telephone conference lines.
- 3.2.6 The Contractor shall respond to all telephone calls, voicemails, and emails from the Department within two (2) Business Days of receipt by the Contractor.
- 3.3 Other Personnel Responsibilities
- 3.3.1 Contractor shall use its discretion to determine the number of Other Personnel necessary to perform the Work in accordance with the requirements of this Agreement. If the Department determines that Contractor has not provided sufficient Other Personnel to perform the Work in accordance with the requirements of this Agreement, Contractor shall provide all Additional Other Personnel necessary to perform the Work in accordance with the requirements of this Agreement at no additional cost to the Department.
- 3.3.2 Contractor shall ensure that all Other Personnel have sufficient training and experience to complete all portions of the Work assigned to them. Contractor shall provide all necessary training to its Other Personnel, except for State-provided training specifically described in this Agreement.
- 3.3.3 Contractor may subcontract to complete a portion of the Work required by the Agreement. The conditions for using a Subcontractor or Subcontractors are as follows:
- 3.3.3.1 Contractor shall not subcontract more than forty percent (40%) of the Work. In this instance this requirement shall not apply to any Subcontractor that is substantially owned by the contractor.
- 3.3.3.2 Contractor shall provide the organizational name of each Subcontractor and all items to be worked on by each Subcontractor to the Department.
- 3.3.3.2.1 DELIVERABLE: Name of each Subcontractor and items on which each Subcontractor will work
- 3.3.3.2.2 DUE: Within five (5) Business Days after the Effective Date
- 3.3.3.3 The Contractor shall obtain prior consent and written approval for any use of Subcontractor(s).

4.0 CASE MANGEMENT OBLIGATIONS

4.1 Contractor's Obligations

- 4.1.1 The Contractor shall abide by and perform its duties and obligations in conformity with relevant federal law, all pertinent federal regulations, State law, rules and regulations of the Department of Health Care Policy and Financing which include, but are not limited to:
- 4.1.1.1 Colorado Revised Statutes, Title 25.5, Article 6, Sections 104 through and including 107.
- 4.1.1.2 Colorado Department of Health Care Policy and Financing written communications.

- 4.1.1.3 The Contractor shall comply with all State Medicaid regulations promulgated by the Department. These regulations include, but are not limited to:
- 4.1.1.4 Long Term Care Single Entry Point System - 10 CCR 2505-10, Sections 8.390 through 8.393 *et seq.*
- 4.1.1.5 Home and Community Based Services Waiver for Persons with Brain Injury (HCBS-BI) – 10 CCR 2505-10, Section 8.515.
- 4.1.1.6 Home and Community Based Services Waiver for Persons who are Elderly, Blind and Disabled (HCBS-EBD) 10 CCR 2505-10, Sections 8.485 through 8.486.
- 4.1.1.7 Community Mental Health Supports Waiver (HCBS-CMHS) 10 CCR 2505-10, Section 8.509.
- 4.1.1.8 Home and Community Based Service Waiver for Persons with Spinal Cord Injury (HCBS-SCI) 10 CCR 2505-10, Section 8.517.
- 4.1.1.9 Waiver for Children with a Life Limiting Illness (HCBS-CLLI) 10 CCR 2505-10, Section 8.504.
- 4.1.1.10 Medicaid nursing facility care 10 CCR 2505-10, Sections 8.400 through 8.409.
- 4.1.1.11 Program for All-Inclusive Care for the Elderly (PACE) §25.5-5-412, Section 6a-b., C.R.S.
- 4.1.1.12 Recipient Appeals, 10 CCR 2505-10, Section 8.057
- 4.1.2 The Contractor shall perform its obligations in conformity with the provisions of Title XIX of the Social Security Act and other applicable federal and state laws and regulations.
- 4.1.3 The general Business Functions of the Contractor shall include, but is not limited to, all of the following:
 - 4.1.3.1 Providing access to its facilities for clients, service providers and others. Regular business office hours of operation shall be posted and made available to the public and accommodations shall be made available for clients who need assistance or consultation outside regular business office hours. The Contractor shall provide emergency contact information to the Department for Key Personnel, when posted hours of operation do not follow a standard Monday through Friday schedule.
 - 4.1.3.2 Overcoming any geographic barriers within the district, including distance from the agency office to provide timely assessment and case management services to clients.
 - 4.1.3.3 Protecting clients' rights as they relate to the responsibilities of SEP agencies as described in this Agreement.
 - 4.1.3.4 Providing access to a telephone system and trained staff to ensure timely response to messages and telephone calls received after hours.
 - 4.1.3.5 Providing access to telecommunication devices and/or interpreters for the hearing and vocally impaired and access to foreign language interpreters as necessary.
 - 4.1.3.6 Providing a person-centered business approach seeking to accommodate client requests.

- 4.1.3.7 Following communication standards set by the Department. The application of these standards includes but is not limited to Memo Series, technical assistance documents, Provider Bulletins, training documents, and email correspondence.
- 4.1.3.8 The contractor shall support the Department's National Core Indicators (NCI) efforts.
- 4.1.3.9 The Contractor shall consult with the Medical Consultant(s) regarding medical and diagnostic concerns and long-term home health prior authorizations.
- 4.1.4 The Contractor shall perform Medicaid administrative functions including but not limited to the following:
 - 4.1.4.1 Authorizing services through the HCBS-BI, HCBS-EBD, HCBS-CMHS, HCBS-CLLI, and HCBS-SCI waivers in accordance with the eligibility criteria as defined by applicable state and federal statutes and regulations.
- 4.2 Qualification and Training Requirements
 - 4.2.1 Contractor's personnel, including but not limited to, Case Manager(s) and Case Management Supervisor(s) shall meet all qualification requirements listed in 10 C.C.R. 2505-10, Sections 8.393.1.L *et seq.*
 - 4.2.2 The Contractor shall ensure all newly hired case managers meet the qualification requirements established in 10 C.C.R. 2505-10, Section 8.393.4.42.
 - 4.2.3 The Contractor shall ensure that all case management staff receive training within one-hundred twenty (120) calendar days after the staff member's hire date and prior to being assigned independent case management duties. All other case management staff must receive a refresher training as required by the Department or the Contractor. Training must include the following areas:
 - 4.2.4 Long Term Services and Supports Eligibility
 - 4.2.5 Intake and Referral
 - 4.2.6 ULTC 100.2 (Functional Eligibility and Functional Needs Assessment)
 - 4.2.7 Comprehensive Assessment
 - 4.2.8 Support Plan Development
 - 4.2.9 Notices and Appeals
 - 4.2.10 Department Information Management Systems Documentation
 - 4.2.11 Long Term Home Health (LTHH)
 - 4.2.12 Monitoring
 - 4.2.13 Applicable Federal and State laws and regulations for LTSS programs
 - 4.2.14 Critical Incident Reporting
 - 4.2.15 Waiver requirements and services
 - 4.2.16 Mandatory reporting
 - 4.2.17 Pre-Admission Screening and Resident Review (PASRR)

- 4.2.18 Nursing Facility admissions
- 4.3 The Contractor shall utilize training materials provided by the Department where applicable related to section 4.2 of this Contract.
- 4.4 The Contractor shall provide the date all case management staff were hired and received training in the areas identified in Section 1.4.3, using the reporting template provided by the Department.
 - 4.4.1.1 DELIVERABLE: Case Management Training
 - 4.4.1.2 DUE: Semi-Annually, by July 15th and January 15th
- 4.5 The Contractor shall maintain supporting documentation demonstrating case managers attended the required trainings and make the information available to the Department upon request. Supporting documentation must include the name and description of the training, date the training was held, case managers in attendance, and trainer sign off showing the case manager completed the training.
- 4.6 Complaints and Grievances
 - 4.6.1 The Contractor shall receive, document and track any complaint received by the Contractor as it relates to the services provided through this Agreement to include, but not limited to, general business functions, administration, and case management functions. Complaints received outside of the scope of this Agreement shall not be included. Documentation shall consist of a complaint log that includes the date of complaint, name of the complainant, the nature of the complaint and the date and description of the resolution. The Contractor shall analyze complaints for trends quarterly and shall submit all complaint-oriented trends observed since the Effective Date of this Agreement and the remedial actions taken to address them to the Department.
 - 4.6.2 Trend analysis may include an examination of information including but not limited to:
 - 4.6.2.1 A comparison of complaint types and number of complaints over a period of time.
 - 4.6.2.2 Number of type of complaint against the Contractor, time, location, individual involved, staff involved, and/or any additional relevant information.
 - 4.6.2.3 An examination of potential reasons for the increase or decrease in complaints by total number, provider, individual, or staff.
 - 4.6.2.4 An examination of preventative measures that can be implemented to reduce the number or frequency of future complaints.
 - 4.6.2.5 Implementation of a plan of action or any future actions to take place.
 - 4.6.2.6 An analysis of whether or not the plan of action and changes made were effective or if additional changes need to occur.
 - 4.6.2.7 As part of the complaint process the Contractor shall include, but is not limited to, all of the following:
 - 4.6.2.7.1 Document complaints received
 - 4.6.2.7.2 Address substantiated complaints

- 4.6.2.7.3 Respond to complaints received and document actions taken to resolve and/or mitigate complaints
- 4.6.2.7.4 Conduct a quarterly trend analyses of all complaints received for the full period of the agreement.
- 4.6.2.7.5 The Contractor shall maintain all supporting documentation related to the collection and follow-up to complaints and make it available to the Department upon request.
- 4.6.2.8 DELIVERABLE: Complaint Trend Analysis
- 4.6.2.9 DUE: Quarterly, by October 31st, January 31st, April 30th and July 31st of each year

4.7 Appeals

- 4.7.1 The Contractor shall represent the Department and defend any adverse action in accordance with 10 CCR 2505-10, Sections 8.057 *et. seq.* in all appeals initiated during this Agreement t. The Contractor shall coordinate with the Department for any adverse actions necessitating Department attendance at a hearing.
- 4.7.2 The Contractor shall represent its actions at Administrative Law Judge hearings when the Client appeals a denial or adverse action affecting Client's program eligibility or receipt of services.
- 4.7.3 The Contractor shall process appeals in accordance with schedules published by the State of Colorado Office of Administrative Courts and rules promulgated by the Department.
- 4.7.4 The Contractor shall submit exceptions when applicable and include all relevant information.
- 4.7.5 The Contractor shall cooperate with the Office of the State Attorney General for any case in which it is involved.

4.8 Critical Incident Reports

- 4.8.1 The Contractor shall be responsible for Reporting critical incidents to the Department prescribed system as soon as possible, but no later than 24 hours (one business day) following notification.
- 4.8.2 Ensuring all suspected incidents of abuse, neglect, and exploitation are immediately reported consistent with current statute; Section 19-10-103 C.R.S. Colorado Children's Code, Section 18-8-115 C.R.S. (Colorado Criminal Code- Duty to Report a Crime), 18-6.5-108 C.R.S. (Colorado Criminal Code-Wrongs to At-Risk Adults), and Section 26-3.1-102, C.R.S. (Social Services Code-Protective Services).
- 4.8.3 Entering all CIR follow-up information timely in the Department prescribed system and maintain detailed documentation.
- 4.8.4 Critical Incident Trend Analysis
 - 4.8.4.1 The Contractor shall review and analyze all critical incidents to identify trends and problematic practices and documenting appropriate action.
 - 4.8.4.2 Trend analysis may include an examination of information including but not limited to:

- 4.8.4.2.1 Incident Date, Incident Time, Case Management (CM) Notification Date, CM Notification Time, Entry Date, Entry Time, Incident Type, Case Manager, Program Type, Incident Location Description, Percent of Timely Reporting.
- 4.8.4.2.2 An examination of potential reasons for the increase or decrease in incidents.
- 4.8.4.2.3 An examination of preventative measures that can be implemented to reduce the number or frequency of future incidents
- 4.8.4.2.4 Identify the root cause of the critical incident and analyze to determine if intervention is needed to prevent similar critical incidents in the future
- 4.8.4.2.5 Implementation of a plan of action or any future actions to take place
- 4.8.4.2.6 An analysis of whether or not the plan of action and changes made were effective or if additional changes need to occur
- 4.8.4.3 The Contractor shall submit the critical incident trend analyses on the Department's prescribed template.
 - 4.8.4.3.1 DELIVERABLE: Critical Incident Trend Analyses
 - 4.8.4.3.2 DUE: Quarterly by October 31st, January 31st, April 30th and July 31st
- 4.9 Corrective Action Plan
 - 4.9.1 When the Department determines that the Contractor is not in compliance with any term of this Agreement, the Contractor, upon written notification by the Department, shall develop a corrective action plan. Corrective action plans shall include, but not be limited to:
 - 4.9.1.1 A detailed time frame specifying the actions to be taken
 - 4.9.1.2 Contractor's employee(s) responsible for implementing the actions
 - 4.9.1.3 The implementation time frames and a date for completion
 - 4.9.2 The Contractor shall submit the Corrective Action Plan to the Department within ten (10) Business Days of the receipt of a written request from the Department
 - 4.9.2.1 DELIVERABLE: Corrective Action Plan
 - 4.9.2.2 DUE: Within ten (10) Business Days of receipt of a written request from the Department
 - 4.9.3 The Contractor shall notify the Department in writing, before the due date if it will not be able to present the Corrective Action Plan within the three (3) Business Days. The Contractor shall explain the rationale for the delay and the Department may grant an extension, in writing, of the deadline for the Contractor's compliance.
 - 4.9.4 Upon receipt of the Contractor's corrective action plan, the Department will accept, modify or reject the proposed Corrective Action Plan. Modifications and rejects shall be accompanied by a written explanation.
 - 4.9.4.1 In the event of a rejection of Contractor's Corrective Action Plan the Contractor shall re-write the corrective action plan and resubmit it to the Department for review.
 - 4.9.4.1.1 DELIVERABLE: Revised Corrective Action Plan

- 4.9.4.1.2 DUE: Within five (5) Business Day of the Department's rejection
- 4.9.5 Upon acceptance by the Department the Contractor shall implement the corrective action plan.
- 4.9.6 If corrections are not made by the timeline and quality specified by the Department then funds may be withheld from this agreement. Payments of funds from this agreement will resume beginning the month that the correction is made and accepted by the Department.
- 4.9.7 As part of the corrective action plan, supporting documentation demonstrating that deficiencies have been remediated may be required. The Contractor shall ensure all supporting documentation is submitted within the timeframes established in the Corrective Action Plan.
- 4.9.8 Upon receipt of the Contractor's supporting documentation, the Department will accept, request modifications, or reject the documentation. Modifications and rejections shall be accompanied by a written explanation.
- 4.9.9 In the event of a rejection of Contractor's supporting documentation to the corrective action plan, the Contractor shall correct and resubmit the supporting documentation to the Department for review.
- 4.9.9.1 DELIVERABLE: Revised Supporting Documentation
- 4.9.9.2 DUE: Within five (5) Business Day of the Department's rejection
- 4.9.10 If corrections are not made by the timeline and quality specified by the Department then funds may be withheld from this agreement. Payments of funds from this agreement will resume beginning the month that the correction is made and accepted by the Department.

5.0 INTAKE, SCREENING AND REFERRAL

- 5.1 The Contractor shall perform all screening and referral functions for the operation of a SEP agency in accordance with §25.5-6-104, C.R.S. and 10 CCR 2505-10, Sections 8.393.2.B. *et seq.*, shall include, but not limited to, all of the following:
 - 5.1.1 Facilitating the Medicaid application process and responding to all referrals of potentially eligible Clients within Department prescribed timeframes.
 - 5.1.2 Processing information regarding client Medicaid eligibility within two (2) Business Days of receipt from the eligibility site.
 - 5.1.3 Ask referring agencies to complete and submit an intake and screening form to initiate the process
 - 5.1.4 The provision of information and referral to other agencies as needed
 - 5.1.5 Make initial contact with clients to include a preliminary screening in the following areas:
 - 5.1.5.1 A client's need for long-term services and supports
 - 5.1.5.2 A client's need for referral to other programs or services
 - 5.1.5.3 A client's eligibility for financial and program assistance
 - 5.1.5.4 The need for a comprehensive long-term care client assessment

5.1.5.5 Maintain client records including documentation of the referrals and outcome utilizing the Department's prescribed system

5.1.6 Clients shall be notified at the time of their application for publicly funded long-term services and supports that they have the right to appeal actions of the SEP agency. The notification shall include the right to request a fair hearing before an Administrative Law Judge.

6.0 FUNCTIONAL NEEDS ASSESSMENT AND FUNCTIONAL ELIGIBILITY

6.1 The Contractor shall perform all Initial and Continued Stay Review Functional Needs Assessments and Functional Eligibility for the operation of a SEP agency in accordance with §25.5-6-104, C.R.S., 10 CCR 2505-10, Section 8.401, and 10 CCR 2505-10, Sections 8.393.2 *et seq.*

6.1.1 The Contractor shall conduct an Initial Functional Needs Assessment and Functional Eligibility in accordance with the following timelines:

6.1.1.1 Ten (10) Business Days after receiving confirmation that the Medicaid application has been received by the county department of human or social services.

6.1.1.2 Ten (10) Business Days after receiving a referral from a provider for the Program for All-Inclusive Care for the Elderly (PACE).

6.1.1.3 Five (5) Business Days after completed referral from the nursing facility.

6.1.1.4 Two (2) Business Days after referral from the hospital.

6.1.1.5 The Contractor shall conduct a Continued Stay Review (CSR) Functional Needs Assessment and Functional Eligibility no earlier than ninety (90) days prior to and no later than the previous Functional Needs Assessment and Functional Eligibility end date.

6.1.1.5.1 In the event the Contractor fails to conduct the CSR Functional Needs Assessment and Functional Eligibility for a client enrolled in a HCBS waiver, the Contractor shall be responsible for reimbursing any providers for services rendered during the gap in eligibility.

6.1.1.5.2 The Contractor shall not utilize SEP agreement funds to reimburse providers.

6.1.2 The Contractor shall conduct an Initial and CSR Functional Needs Assessment and Functional Eligibility to include, not limited to, all of the following:

6.1.2.1 Verification of Medicaid eligibility or Medicaid application submission

6.1.2.2 Conduct all Functional Needs Assessment face-to-face with the individual, at minimum, and in the place where the individual resides.

6.1.2.3 Receipt and Review of the Professional Medical Information Page (PMIP).

6.1.2.3.1 The Contractor shall verify that an individual needs an institutional level of care by receiving a Professional Medical Information Page (PMIP) signed by a medical professional and dated no earlier than six (6) months from the certification start date and no later than ninety (90) days from the evaluation date of an Initial Functional Needs Assessment and Functional Eligibility; and within ninety (90) calendar days of the certification start date and before the certification end date

for a Continued Stay Review (CSR) for all applicants and individuals currently receiving services through an HCBS waiver.

- 6.1.2.4 Review of all supportive information (documentation and interviews) related to the functional capacity of the client.
- 6.1.2.5 Communicating level of care determination status to the appropriate eligibility site
- 6.1.2.6 Representing the Department in all appeals relevant to a long-term service and supports program eligibility
- 6.1.2.7 Review of Home and Community Based Services waiver target criteria for applicant or client participation
- 6.1.2.8 Determine client level of care eligibility for enrollment in an HCBS waiver, PACE, or nursing facility admission.
- 6.1.2.9 Provide a notice of action to clients or applicants of all appealable actions related to their eligibility in a long-term services and supports program.
- 6.1.2.10 Maintaining applicant or client records including all relevant information utilizing the Department's prescribed system

7.0 HCBS CASE MANAGEMENT

7.1 Comprehensive Assessment

- 7.1.1.1 The Contractor shall conduct an initial Comprehensive Assessment and periodic reassessment, as needed by the client to determine the need for any medical, educational, social or other services.
- 7.1.1.2 The Contractor shall conduct a reassessment at minimum annually or when the client's condition changes such that a new support need is identified.
- 7.1.1.3 The Comprehensive Assessment shall include but is not limited the following:
 - 7.1.1.3.1 Initial and annual completion of the Instrumental Activities of Daily Living (IADL) assessment.
 - 7.1.1.3.2 Review of the Functional Needs Assessment and Functional Eligibility information.
 - 7.1.1.3.3 Review of any relevant medical, educational, social, or other services records.
- 7.1.2 The Contractor shall follow 10 C.C.R. 2505-10, Section 8.393.6 when transferring a client from one county to another county or from one SEP District to another district.
- 7.1.3 Processing information regarding client Medicaid eligibility within two (2) Business Days of receipt from the eligibility site.

7.2 Support Planning

- 7.2.1 The Contractor shall provide support plans as part of the operations of a SEP agency in accordance with §25.5-6-104, C.R.S. and 10 CCR 2505-10, Sections 8.393.2.E. *et seq.*
- 7.2.2 The Contractor shall create and maintain a support plan for member's in accordance with the following timelines:

- 7.2.2.1 Within fifteen (15) Business Days after determination of program eligibility for HCBS waivers.
- 7.2.3 The Contractor shall provide necessary information and support to ensure that the member directs the process to the maximum extent possible and is able to make informed choices and decisions, and create a support plan to include, not limited to, all of the following:
 - 7.2.3.1 Occurs at a time and location convenient to the member receiving services
 - 7.2.3.2 Is led by the individual, family members and/or member's representative with the case manager
 - 7.2.3.3 Includes people chosen by the member
 - 7.2.3.4 Addresses the goals, needs and preferences identified by the member throughout the planning process
 - 7.2.3.5 Addresses the needs identified in through the Comprehensive Assessment.
 - 7.2.3.6 Offers informed choice to the member regarding the services and supports they receive and from whom, as well as the documentation of services needed, including type of service, specific functions to be performed, duration and frequency of service, type of provider and services needed by that may not be available;
 - 7.2.3.7 Include strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants;
 - 7.2.3.8 Reflect cultural considerations of the individual and be conducted by providing information in plain language and in a manner, that is accessible to individuals with disabilities and person who are limited English proficient;
 - 7.2.3.9 Formalize the support plan agreement, including appropriate signatures, in accordance with program requirements;
 - 7.2.3.10 Contain prior authorization for services, in accordance with program directives, including cost containment requirements;
 - 7.2.3.11 Include a method for the individual to request updates to the plan as needed;
 - 7.2.3.12 Include an explanation of complaint procedures to the member
 - 7.2.3.13 Include an explanation of critical incident procedures to the individual
 - 7.2.3.14 Explain the appeals process to the member. The Contractor shall enter all Support Plan information into the Department's prescribed system(s).
 - 7.2.3.14.1 PERFORMANCE STANDARD: Support Plan entered into systems and verified within 15 business days from date determined eligible; revisions entered within 10 business days from the date need/revision identified
 - 7.2.3.14.2 PERFORMANCE STANDARD: Support Plan is finalized in the systems within 5 business days from authorization date (notice of financial eligibility)
- 7.3 Referral and Related Activities
 - 7.3.1 The Contractor shall refer clients for HCBS and other services, as identified through the Comprehensive Assessment and documented in the Support Plan.

- 7.3.2 The Contractor shall assist clients in the selection of providers for HCBS waiver services as desired by the client, and may include, but is not limited to the following methods:
 - 7.3.2.1 Provide a list of approved providers;
 - 7.3.2.2 Provide information on the Department's website for searching for providers;
 - 7.3.2.3 Provide recommendations for providers based off of the client's preferences.
- 7.3.3 Upon the selection of the provider(s) the Contractor shall contact the provider(s) to refer for services.
- 7.3.4 Upon acceptance from the provider(s) the Contractor shall develop the Prior Authorization Request (PAR).
 - 7.3.4.1 The PAR shall be entered into the Department's prescribed system, no later than five (5) Business Days from finalization of the Support Plan.
 - 7.3.4.2 The Contractor shall ensure authorized services are connected to a personal goal and/or identified need.
 - 7.3.4.3 The Contractor shall ensure Department or its Contractor approval is received prior to services beginning for PARs exceeding cost-containment.
 - 7.3.4.4 Upon final PAR approval, the Contractor shall ensure all providers identified in the Support Plan receive the approved Prior Authorization (PA) number and necessary information from the Support Plan to provide services.
 - 7.3.4.5 The Contractor shall revise the PAR no less than annually or when the client experiences a change in needs, warranting a change in HCBS waiver services.
- 7.4 Monitoring
 - 7.4.1 The Contractor shall conduct monitoring for each client enrolled in an HCBS waiver.
 - 7.4.2 Monitoring shall be conducted in accordance with 10 CCR 2505-10, Section 8.393.2.G.4 and pursuant to the specific waiver requirements.
 - 7.4.3 Monitoring shall occur at the frequency and in the method identified in the HCBS waiver for which the client is enrolled.
 - 7.4.4 The Contractor shall conduct additional monitoring as needed by the client.
 - 7.4.5 At minimum, monitoring includes, but is not limited to the following:
 - 7.4.5.1 Review of the Support Plan;
 - 7.4.5.2 Review client's satisfaction with services;
 - 7.4.5.3 Review receipt of services to ensure services are provided in accordance with the approved Support Plan and PAR;
 - 7.4.5.4 Review health and safety concerns;
 - 7.4.5.5 Review of any critical incidents;
 - 7.4.5.6 Contact with providers, as necessary, but no less than every six (6) months;
 - 7.4.5.7 Referrals to other agencies or services as needed;

- 7.4.5.8 Obtaining collateral information as needed.
- 7.4.6 The Contractor shall document all monitoring activities in the Department's prescribed system within five (5) business days from the date of activity.
- 7.5 Committee Updates
 - 7.5.1 The Contractor shall perform all necessary business functions for the operation of a SEP Agency as defined in the state statutes and regulations including, but not limited to the following:
 - 7.5.1.1 Establishing a community advisory committee for the purpose of providing public input and guidance for SEP Agency operation. The committee shall meet at least twice a year or more often as necessary.
 - 7.5.1.2 Establishing a Resource Development committee to facilitate the development of local resources to meet the long-term care needs of individuals who reside within the SEP District.
 - 7.5.1.2.1 At least annually, the Contractor shall provide written Committee Updates to the Department. Active, on-going participation by key management or administrative staff in area provider or interest group meetings to discuss Resource Development issues are an acceptable substitute as long as complete documentation of the discussions and progress made in developing relevant solutions is incorporated into the committee updates.
 - 7.5.1.2.1.1 DELIVERABLE: Committee Updates
 - 7.5.1.2.1.2 DUE: Annually, June 30th of each year
- 7.6 Client Count
 - 7.6.1 Client Count and Activities Worksheet
 - 7.6.1.1 The Contractor shall submit to the Department the Client Count and Activities Worksheet on a monthly basis.
 - 7.6.1.1.1 DELIVERABLE: Client Count and Activities Worksheet
 - 7.6.1.1.2 DUE: Within fifteen (15) days of the end of the month for which the worksheet covers. Within ten (10) days of the end of the month for the June worksheet.
- 7.7 Certification
 - 7.7.1 The Department or a designee shall review the performance of the Contractor.
 - 7.7.2 Performance monitoring may include a review of log notes, support plans, assessments and other documentation relevant to the long-term care services provided the client. The Contractor shall be notified within thirty (30) days of the outcome of a review that may result in approval, provisional approval, denial or termination of certification. The Department may appoint a designee to monitor and/or make certification recommendations.
 - 7.7.3 The Department, in accordance with the state statutes and regulations, shall certify the Contractor. Certification shall be based upon, but not limited to, results of on-site visits, evaluation results of the quality of service provided, compliance with Program

requirements, service timeliness, performance of administrative functions, costs per client, communications with clients, client monitoring, targeting populations served, community coordination and outreach and financial accountability.

8.0 ACCOUNTING

8.1 Accounting

- 8.1.1 The Contractor's accounting methods shall conform to the standards of Generally Accepted Accounting Principles (GAAP), and any updates thereto, throughout the Term of the Agreement.
- 8.1.2 The Contractor shall establish and maintain internal control systems and standards that apply to the operation of the organization.
- 8.1.3 The Contractor shall assure funds are used solely for authorized purposes, all financial documents are filed in a systematic manner to facilitate audits, all prior years' expenditure documents are maintained for use in the budgeting process and for audits, and records and source documents are made available to the Department, its contracted representative, or an independent auditor for inspection, audit, or reproduction.
- 8.1.4 The Contractor shall establish any necessary cost accounting systems to identify the application of funds and record the amounts spent.
- 8.1.5 The Contractor shall document all transactions and funding sources and this documentation shall be available for examination by the Department within ten (10) Business Days of the Department's request.
- 8.1.5.1 DELIVERABLE: Transaction and Funds Documentation
- 8.1.5.2 DUE: Within ten (10) Business Days of the Department's Request

9.0 SUBRECIPIENT STATUS AND REQUIREMENTS

- 9.1 The Contractor has been determined to be a Subrecipient under 2 CFR Chapter I, Chapter II, Part 200 et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule (the "Final Rule"), released December 26, 2013 and subsequently updated, and thus shall be required to follow all requirements and guidance contained in the Final Rule.
- 9.2 Single Audits
 - 9.2.1 Under the Final Rule, all Non-Federal Entities, as defined in the Final Rule, expending \$750,000.00 or more from all federal sources (direct or from pass-through entities) must have a single or program-specific audit conducted for that year in accordance with Subpart F of the Final Rule.
 - 9.2.2 The Contractor shall notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$750,000.00.
 - 9.2.3 If the expected or actual expenditures of federal assistance from all sources do not equal or exceed \$750,000.00 the Contractor shall provide an attestation to the State that they do not qualify for a Single Audit.
 - 9.2.4 Pursuant to the Final Rule §200.512 (a)(1) the Single Audit must be completed and submitted to the Department within the earlier of thirty (30) calendar days after receipt of

the auditor's report(s), or nine (9) months after the end of the audit period. If the due date falls on a Saturday, Sunday, or federal holiday, the reporting package is due the next Business Day.

9.2.4.1 DELIVERABLE: Single Audit

9.2.4.2 DUE: Within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period

9.2.5 If the Contractor did not receive enough federal funds to require a Single Audit, the Contractor shall submit an attestation form stating a Single Audit was not required utilizing the Department's template.

9.2.5.1 DELIVERABLE: Attestation Form

9.2.5.2 DUE: Within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period

9.2.6 The audit period shall be the Contractor's fiscal year.

10.0 COMPENSATION AND INVOICING

10.1 Compensation

10.1.1 The compensation under the Agreement shall consist of fixed monthly prices per client as follows:

10.1.2 Fixed Monthly Price Per Client

10.1.2.1 A Screening and Referral price for each Client for whom the Contractor provided Screening and Referral services during the month. The Contractor shall continue to provide Screening and Referral services for all clients regardless of compensation.

10.1.2.2 An Eligibility Determination price for each Client for whom the Contractor provided Eligibility Determination services during the month. The Contractor shall continue to provide Eligibility Determination services for all clients regardless of compensation. The Contractor will be paid for initial eligibility determinations; the Contractor will not be paid for eligibility redeterminations.

10.1.2.3 A Case Management price for each Client who resided in a Region for which the Contractor provides case management services and/or receives services under an HCBS waiver. The Contractor shall continue to provide Case Management services for all clients regardless of compensation.

10.1.3 Annual Per County-Served Amount

10.1.3.1 Per 10 C.C.R. 2505-10, Section 8.392, A. 1 and 2, the Contractor, if serving a multi-county district, will receive a single annual payment of \$5,333.33 for each county included in the district.

10.1.4 The sole compensation for the Agreement, up to the maximum Agreement value, shall consist of the following:

10.1.4.1 The Screening and Referral fixed rate per client per month as stated in the table below multiplied by the number of clients for whom the Contractor provided Screening and Referral services during the month.

- 10.1.4.2 The Eligibility Determination fixed rate per client per month as stated in the table below, multiplied by the number of clients for whom the Contractor provided Eligibility Determination services during the month.
- 10.1.4.3 The Case Management fixed rate per client per month as stated in in the table below, multiplied by each Client who resided in a Region for which the Contractor provides case management services and/or receives services under an HCBS waiver during the month.
- 10.1.4.4 The annual Per County-Served Amount.
- 10.1.5 The price per client for each of the three (3) principal sections (Screening and Referral; Eligibility Determination; and Case Management) will serve as the price per client for any future renewal years.

PRICES PER MONTH FOR SEP SERVICES

Screening and Referral	\$35.00 per client per month
Eligibility Determination	\$55.00 per client per month
Case Management	\$88.00 per client per month

ANNUAL PER COUNTY-SERVED AMOUNT

Annual Per County-Served Payment	\$16,000.00 per year
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10.2 Invoicing and Payment Procedures

- 10.2.1 The client count and activities worksheet shall serve as the monthly invoice
- 10.2.2 The Contractor shall invoice the Department on a monthly basis, within fifteen (15) days of the end of the month for which the invoice covers, by using the client count and activities worksheet provided by the Department. The Contractor shall invoice the Department within ten (10) days of the end of the month for the June invoice. The Contractor shall not submit any invoice for a month prior to the last day of that month.

10.3 Payment

- 10.3.1 The Department shall remit payment to the Contractor, for all amounts shown on the invoice, within forty-five (45) days of the Department's acceptance of that invoice. Acceptance of an invoice shall not imply the acceptance or sufficiency of any work performed or deliverables submitted to the Department during the month for which the invoice covers or any other month.
- 10.3.2 The Department shall not make any payment on an invoice prior to its acceptance of that invoice.
- 10.3.3 The Department shall review that invoice, and compare the information contained in the invoice to the Department's information. The Department will not accept an invoice until

it has reviewed the information contained on the invoice and determined that all amounts are correct.

10.3.4 In the event that the Department determines that all information on an invoice is correct, the Department shall notify the Contractor of its acceptance of the invoice, upon the completion of the Department's review of that invoice.

10.3.5 In the event that the Department determines that any information on an invoice is incorrect, the Department shall notify the Contractor of this determination and what is incorrect on the invoice, upon completion of the Department's review of that invoice. The Contractor shall correct any information the Department determined to be incorrect and resubmit that invoice to the Department for review.

10.3.5.1 The Department will review the invoice to ensure that all corrections have been made.

10.3.5.2 If all information on the invoice is correct, the Department will accept the invoice.

10.3.5.3 If any information on the invoice is still incorrect, then the Department will return the invoice to the Contractor for correction and resubmission.

10.4 Payment and Billing Errors

10.4.1.1 The Contractor shall notify the Department of any errors in billing or payment within ten (10) Business Days of receiving a payment summary to ensure over and under payments are adjusted.

10.4.1.2 The Department shall notify the Contractor of any overpayment or underpayment identified through an internal review process.

10.4.1.3 If an overpayment is confirmed by the Department, the overpayment amount will be withheld from the next monthly reimbursement to the Contractor and, if necessary, from each monthly payment thereafter to the Contractor, until all overpayment of funds is recovered.

10.4.1.4 If an underpayment is confirmed, the amount will be included on the next monthly reimbursement to the Contractor.

10.5 Unexpended Funds

10.5.1 The Contractor shall remit any funds disbursed under this Agreement that are not expended by close of the State's fiscal year. If the Contractor does not expend all funds distributed under this agreement, the Department shall invoice for repayment of all unspent funds no later than September 30th of the following fiscal year.

10.6 Closeout Payments

10.6.1 Notwithstanding anything to the contrary in this Agreement, all payments for the final month of this Agreement shall be paid to Contractor no sooner than 10 days after the Department has determined that Contractor has completed all of the requirements of the Closeout Period.

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Grantee Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Contract Number of the Original Contract
Current Agreement Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Option Agreement Number Insert CMS number or Other Contract Number of this Option Agreement Performance Beginning Date The later of the Effective Date or Month Day, Year Current Agreement Expiration Date Month Day, Year

1. OPTIONS:

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Agreement
- C. Option to change the quantity of Services under the Agreement
- D. Option to modify Agreement rates
- E. Option to initiate next phase of the Agreement

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Agreement, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.
- D. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
- E. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

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

<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p>By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>	<p style="text-align: center;">In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p style="text-align: center;">Option Effective Date: _____</p>
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EXHIBIT C, FEDERAL PROVISIONS

1.0 APPLICABILITY OF PROVISIONS

- 1.1 The Contract to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Contract, or any attachments or exhibits incorporated into and made a part of the Contract, the provisions of these Federal Provisions shall control.

2.0 DEFINITIONS

- 2.1 For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 2.1.1 “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.1.1 Awards may be in the form of:
- 2.1.1.1.1 Grants;
- 2.1.1.1.2 Contracts;
- 2.1.1.1.3 Cooperative Contracts, which do not include cooperative research and development Contracts (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 2.1.1.1.4 Loans;
- 2.1.1.1.5 Loan Guarantees;
- 2.1.1.1.6 Subsidies;
- 2.1.1.1.7 Insurance;
- 2.1.1.1.8 Food commodities;
- 2.1.1.1.9 Direct appropriations;
- 2.1.1.1.10 Assessed and voluntary contributions; and
- 2.1.1.1.11 Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 2.1.1.1.12 Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.
- 2.1.1.2 Award *does not* include:
- 2.1.1.2.1 Technical assistance, which provides services in lieu of money;
- 2.1.1.2.2 A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 2.1.1.2.3 Any award classified for security purposes; or
- 2.1.1.2.4 Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

- 2.1.2 “Contract” means the Contract to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3 “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4 “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5 “Entity” means all of the following as defined at 2 CFR part 25, subpart C;
- 2.1.5.1 A governmental organization, which is a State, local government, or Indian Tribe;
- 2.1.5.2 A foreign public entity;
- 2.1.5.3 A domestic or foreign non-profit organization;
- 2.1.5.4 A domestic or foreign for-profit organization; and
- 2.1.5.5 A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 2.1.6 “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7 “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8 “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9 “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10 “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.11 “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12 “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13 “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14 “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be

referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.

- 2.1.15 “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16 “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17 “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 2.1.17.1 Salary and bonus;
 - 2.1.17.2 Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3 Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4 Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5 Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.17.6 Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18 “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19 “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20 “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3.0 COMPLIANCE

- 3.1 Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party

executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4.0 SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS

- 4.1 SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2 DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

5.0 TOTAL COMPENSATION

- 5.1 Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1 The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 5.1.2 In the preceding fiscal year, Contractor received:
 - 5.1.2.1 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2 \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6.0 REPORTING

- 6.1 Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in this Exhibit are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract.

7.0 EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING

- 7.1 Reporting requirements in §8.0 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

- 7.2 The procurement standards in §9.0 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11.0 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8.0 SUBRECIPIENT REPORTING REQUIREMENTS

- 8.1 If Contractor is a Subrecipient, Contractor shall report as set forth below.
- 8.1.1 **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
- 8.1.1.1 Subrecipient DUNS Number;
 - 8.1.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3 Subrecipient Parent DUNS Number;
 - 8.1.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in § above are met; and
 - 8.1.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 8.1.2 **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
- 8.1.2.1 Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9.0 PROCUREMENT STANDARDS

- 9.1 **Procurement Procedures.** A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §200.318 through 200.326 thereof.
- 9.2 **Procurement of Recovered Materials.** If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10.0 ACCESS TO RECORDS

- 10.1 A Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §200.300 (Statutory and national policy requirements) through 200.309

(Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11.0 SINGLE AUDIT REQUIREMENTS

- 11.1 If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11.1.1 **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2 **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3 **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12.0 AGREEMENT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1 If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Contract.
- 12.1.1 **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.1.1 During the performance of this contract, the contractor agrees as follows:
- 12.1.1.1.1 Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take

affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 12.1.1.1.2 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.1.1.1.3 Contractor will send to each labor union or representative of workers with which he has a collective bargaining Contract or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.1.1.1.4 Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.1.1.1.5 Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.1.1.1.6 In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.1.1.1.7 Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."
- 12.1.2 **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29

CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 12.1.3 **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of "funding Contract" under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding Contract," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," and any implementing regulations issued by the awarding agency.
- 12.1.4 **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5 **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes

place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

13.0 CERTIFICATIONS

- 13.1 Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14.0 EXEMPTIONS

- 14.1 These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3 There are no Transparency Act reporting requirements for Vendors.

15.0 EVENT OF DEFAULT

- 15.1 Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT D – Supplemental Provisions for Federal Awards

For the purposes of this Exhibit only, Contractor is also identified as "Subrecipient." This Agreement has been funded, in whole or part, with an award of Federal Funds. In the event of a conflict between the provisions of these Supplemental Provisions for Federal Awards, the Special Provisions, the Agreement or any attachments or exhibits incorporated into and made a part of the Agreement, the Supplemental Provisions for Federal Awards shall control. In the event of a conflict between the Supplemental Provisions for Federal Award and the FFATA Supplemental Provisions (if any), the FFATA Supplemental Provisions shall control.

1) Federal Award Identification

- i. Subrecipient: The Resource Exchange, Inc.
- ii. Subrecipient Data Universal Numbering System (DUNS) Number: 116269028;
- iii. The Federal Award Identification Number (FAIN):
Appropriation 275 - 1805CO5ADM and 1805CO5MAP
Appropriation 157 – 1805CO5ADM
- iv. The Federal award date is July 1, 2019;
- v. The subaward period of performance start date is July 1, 2019 and the end date is June 30, 2020;
- vi. Federal Funds:

Contract or Fiscal Year	Amount of Federal Funds Obligated by this Contract	Total Amount of Federal Funds Obligated to the Subrecipient	Total Amount of the Federal Award by Appropriation
FY2019-20	\$1,541,887.00	\$1,541,887.00	APPR 275 – \$1,468,512.00 APPR 157 - \$73,375.00

- vii. Federal award project description: To serve as a Single Entry Point (SEP) Agency within a local area where a current or potential long-term care client can obtain long-term care information, screening, assessment of need, and referral to appropriate long-term care program and case management services for all Coloradoans within their designated district.
- viii. The name of the Federal awarding agency is the United States Department of Health and Human Services (HHS) the name of the pass-through entity is the Colorado Department of Health Care Policy & Financing (HCPF); and the contact information for the awarding official is Sarah McDonnell, SEP Contract Manager, Office of Community Living, 1570 Grant Street, Denver, CO 80203, sarah.mcdonnell@state.co.us, 303-866-3615.
- ix. The Catalog of Federal Domestic Assistance (CFDA) number is 93.778, the name is Medical Assistance Program, and the dollar amount is TOTAL FEDERAL FUNDS OBLIGATED
- x. This award is not for research & development.

EXHIBIT E, INFORMATION TECHNOLOGY PROVISIONS

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

1. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Agreement, if Contractor or any Subcontractor is given access to State Records by the State or its agents in connection with Contractor's performance under the Agreement, Contractor shall protect all State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Agreement.
- A. For the avoidance of doubt, the terms of this Exhibit shall apply to the extent that any of the following statements is true in regard to Contractor access, use, or disclosure of State Records:
 - i. Contractor provides physical or logical storage of State Records;
 - i. Contractor creates, uses, processes, discloses, transmits, or disposes of State Records;
 - ii. Contractor is otherwise given physical or logical access to State Records in order to perform Contractor's obligations under this Agreement.
- B. Contractor shall, and shall cause its Subcontractors, to do all of the following:
 - iii. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Agreement.
 - iv. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - v. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - vi. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - vii. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State's Office of Information Security ("OIS").
 - viii. Comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology ("OIT"), including project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at www.oit.state.co.us/about/policies.
- C. Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and

monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.

- D. Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its respective employees and agents performing services or having access to State Records provided under this Agreement, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be deemed to be current.
 - ix. Contractor will provide notice to the Security and Compliance Representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
 - x. If Contractor will have access to Federal Tax Information under the Agreement, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

I. DATA HANDLING

- E. The State, in its sole discretion, may securely deliver State Records directly to the facility where such data is used to perform the Work. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- F. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- G. Upon request by the State made any time prior to 60 days following the termination of this Agreement for any reason, whether or not the Agreement is expiring or terminating, Contractor shall make available to the State a complete and secure download file of all data that is encrypted and appropriately authenticated. This download file shall be made available to the State within 10 Business Days of the State's request, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If legislation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore.
- H. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request

of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Agreement.

2. COMPLIANCE

I. In addition to the compliance obligations imposed by the main body of the Agreement, Contractor shall comply with:

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

J. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Agreement.

K. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information may include:

- xiii. The performance of security audit and penetration tests, as requested by OIS or its designee at any time under this Agreement;
- xiv. An annual SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by OIS.

3. INTELLECTUAL PROPERTY ESCROW

L. Upon request from the State and within the State's sole discretion, Contractor shall deposit the software, documentation, and/or all other related material(s) that are part of the Work with a reputable, State-approved software escrow agent ("Escrow Agent").

- a. For the purposes of this section, software is the source code accompanied by a running object code version submitted on a virus-free magnetic or optical media, compiled and ready to be read by a computer; documentation is all materials sufficient for a trained

computer programmer of general proficiency to maintain and support the software without further assistance from Contractor; and all other related material(s) is anything else related to the software or documentation necessary or required for the proper use of the same (such software, documentation and all other related material(s) hereinafter referred to collectively as the "Escrowed Software").

- b. Contractor shall also have a continuing obligation to deposit any maintenance modifications, updates, upgrades, new releases, or documentation related to the Escrowed Software for the term of the Agreement.

M. Contractor shall enter into an "Escrow Agreement" with the Escrow Agent, which will instruct the Escrow Agent to independently verify the operation of Escrowed Software and cause delivery of the Escrowed Software in Contractor's possession to the State if any one of the following events occurs:

- a. Contractor agrees in writing to the delivery.
- b. Contractor ceases to do business and the State has not approved a successor to assume Contractor's obligations to the State.
- c. Contractor has failed to support the Escrowed Software or has otherwise breached this Agreement and has exhausted all cure periods to avoid termination for such breach.
- d. Contractor files for liquidation under the U.S. Bankruptcy Code, or files for reorganization under the U.S. Bankruptcy Code and does not remain debtor in possession.

N. Contractor shall grant the appropriate license rights in the Escrow Agreement to the Escrow Agent to allow the Escrow Agent to exercise its rights under this Agreement. If the Escrow Agent delivers the Escrowed Software to the State, the State shall have the same license and rights to use the Escrowed Software as the State had under this Agreement, including, but not limited to, the right to utilize the source code and create updates and derivative works consistent with the purpose of this Agreement.

O. All costs and fees associated with the Escrow Agreement between Contractor and the Escrow Agent for the Escrowed Software shall be the sole responsibility of Contractor. Upon request by the State, Contractor shall provide the State with a copy of the Escrow Agreement.

4. TRANSITION OF SERVICES

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

5. LICENSE OR USE AUDIT RIGHTS

P. Contractor shall have the right, at any time during and throughout the Agreement Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Agreement that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Agreement (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which

shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.

- Q. If upon receipt of the State's Audit Certification, the Parties reasonably determine that: (i) the State's use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Agreement ("Overuse") and (ii) the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State in accordance with the notice provisions of the Agreement identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.
- R. Notwithstanding anything to the contrary in this Agreement , or incorporated as a part of Contractor's or any Subcontractor's website, click-through or online agreements, third-party agreements, or any other documents or agreements between the Parties, the State shall not be liable for the costs associated with any Overuse or Maintenance, regardless of whether the State may have been notified in advance of such costs.

