

STATE OF COLORADO CONTRACT

COVER PAGE

State Agency Department of Health Care Policy and Financing	Contract Number 21-160442
Contractor The Resource Exchange, Inc.	Contract Performance Beginning Date The later of the Effective Date or July 1, 2020
Contract Maximum Amount No Maximum for any SFY	Initial Contract Expiration Date June 30, 2021

Contract 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 Region/District.

Exhibits and Order of Precedence
The following Exhibits and attachments are included with this Contract:

1. Exhibit A – HIPAA Business Associates Addendum
2. Exhibit B – Statement of Work
3. Exhibit C – Terminology
4. Exhibit D – Contractor’s Administrative Requirements
5. Exhibit E – Sample Option Letter
6. Exhibit F – Federal Provisions
7. Exhibit G – Supplemental Provisions of Federal Awards
8. Exhibit H – Colorado County Designations

In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Exhibit A, HIPAA Business Associates Addendum.
2. Exhibit G, Federal Provisions
3. Colorado Special Provisions in §18 of the main body of this Contract.
4. The provisions of the other sections of the main body of this Contract.
5. Exhibit B, Statement of Work.
6. Exhibit C, Terminology
7. Exhibit D, Contractor’s Administrative Requirements
8. Exhibit E, Rates.
9. Exhibit F, Sample Option Letter.

Principal Representatives

For the State: Yasmin Gardner Department of Health Care Policy and Financing 1570 Grant Street Denver, CO 80203 Yasmin.Gardner@state.co.us	For Contractor: Nancy Vigil The Resource Exchange, Inc. 1645 S. Murray Boulevard Colorado Springs, CO 80916 nvigil@tre.org
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SIGNATURE PAGE**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

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

CONTRACTOR The Resource Exchange, Inc. Colleen Batchelor, CEO DocuSigned by:  B22CCE3FDC224DB... By: _____ Date: <u>4/16/2020</u>	STATE OF COLORADO Jared S. Polis, Governor Department of Health Care Policy and Financing Kim Bimestefer, Executive Director By: _____ Date: _____
	LEGAL REVIEW Phil Weiser, Attorney General By: _____ <u>N/A</u> Date: _____
In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Effective Date: _____	

TABLE OF CONTENTS

1.	PARTIES	2
2.	TERM AND EFFECTIVE DATE	2
3.	DEFINITIONS	3
4.	STATEMENT OF WORK	6
5.	PAYMENTS TO CONTRACTOR	6
6.	REPORTING - NOTIFICATION	8
7.	CONTRACTOR RECORDS	8
8.	CONFIDENTIAL INFORMATION-STATE RECORDS	9
9.	CONFLICTS OF INTEREST	10
10.	INSURANCE	11
11.	BREACH OF CONTRACT	13
12.	REMEDIES	13
13.	DISPUTE RESOLUTION	15
14.	NOTICES AND REPRESENTATIVES	15
15.	RIGHTS IN WORK PRODUCT AND OTHER INFORMATION	15
16.	GENERAL PROVISIONS	16
17.	COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)	19
	EXHIBIT A, HIPAA BUSINESS ASSOCIATES ADDENDUM	1
	EXHIBIT B, STATEMENT OF WORK	1
	EXHIBIT C, TERMINOLOGY	1
	EXHIBIT D, CONTRACTOR'S GENERAL REQUIREMENTS	1
	EXHIBIT E, SAMPLE OPTION LETTER	1
	EXHIBIT F, FEDERAL PROVISIONS	1
	EXHIBIT G, SUPPLEMENTAL PROVISIONS FOR FEDERAL AWARDS	1
	EXHIBIT H, COLORADO COUNTY DESIGNATIONS	1

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

B. Initial Term

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

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract 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 contract or modification extending the total term of this Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract 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 Contract by the State for breach by Contractor, which shall be governed by **§12**.

i. **Method and Content**

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, 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, Contractor shall be subject to the rights and obligations set forth in **§12**.

iii. **Payments**

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

3. **DEFINITIONS**

The following terms shall be construed and interpreted as follows:

- A. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Contract, 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 Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **"Business Day"** means any day other than Saturday, Sunday, or a Legal Holiday as listed in C.R.S. §24-11-101(1).
- C. **"Chief Procurement Officer"** means the individual to whom the Executive Director has delegated his or her authority, pursuant to C.R.S. §24-102-202(6), to procure or supervise the procurement of all supplies and services needed by the state.
- D. **"Contract"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- E. **"Contract Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.

- F. **“Contractor Pre-Existing Material”** means material, code, methodology, concepts, process, systems, technique, trade or service marks, copyrights, or other intellectual property developed, licensed or otherwise acquired by Contractor prior to the Effective Date of this Contract and independent of any services rendered under any other contract with the State.
- G. **“Colorado Open Records Act (CORA)”** means C.R.S. §24-72-200.1, *et. seq.*
- H. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Cover Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Cover Page for this Contract.
- I. **“End of Term Extension”** means the time period defined in **§2.D**
- J. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- K. **“Extension Term”** means the time period defined in **§2.C**
- L. **“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 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.
- M. **“Federal Award 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 Contract.
- N. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- O. **“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 C.R.S. §24-37.5-401, *et. seq.* 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.
- P. **“Initial Term”** means the time period defined in **§2.B**
- Q. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- R. **“Personal Health Information (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.

- S. **“Personally Identifiable Information (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 C.R.S. §24-72-501.
- T. **“Provider”** means 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.
- U. **“Recipient”** means the State agency shown on the Signature and Cover Page of this Contract, for the purpose of this Federal Award.
- V. **“Services”** means the services to be performed by Contractor as set forth in this Contract and shall include any services to be rendered by Contractor in connection with the Goods.
- W. **“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.
- X. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to C.R.S. §24-30-202(13)(a).
- Y. **“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.
- Z. **“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.
- AA. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- BB. **“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 Contract, Contractor is a Subrecipient.
- CC. **“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.

DD. “**Work**” means the Goods delivered and Services performed pursuant to this Contract.

EE. “**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, 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 Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit, including the terminology in Exhibit D.

4. **STATEMENT OF WORK**

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

The State, at its discretion, shall have the option to increase or decrease the statewide quantity of Goods and Services based upon rates established in this Contract, and increase the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this contract. Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract.

5. **PAYMENTS TO CONTRACTOR**

A. Maximum Amount

Payments to Contractor are limited to the payments described in Exhibit B, Section 7, based on the quantity of services performed and the number of Member’s served by the Contractor.

B. Payment Procedures

i. Invoices and Payment

- a. The compensation under the Contract shall consist of Fee for Service (FFS) per deliverable payment and Per Member Per Month (PMPM) reimbursement for ongoing case management services. Detailed payment procedures are located in Section 8.0 of this Contract.
- b. The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit B, Statement of Work, Section 7.0 titled Compensation and Invoicing.
- c. The State shall remit payment to the Contractor within forty-five (45) days for services and deliverables for the previous month. These payments will be based on data pulled from Department prescribed systems and submitted deliverables,

so long as the services and deliverables correctly represent Work completed by Contractor and is accepted by the State during the term that the payment covers.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of deliverables and services shall bear interest on the unpaid balance beginning on the 45th day at the rate of one percent per month, as required by C.R.S. §24-30-202(24)(a), until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor 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 Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within ten days following the earlier to occur of Contractor'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 Contractor 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 Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract 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 Contract Funds, the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, 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 Contract were terminated in the public interest as described in §2.E.

v. The rates shown in Section 7.1.1. of Exhibit B, Statement of Work, are determined by a standardized rate setting methodology used by the Department. The State, at its discretion, shall have the option to increase or decrease the rates shown in Exhibit B, Statement of Work (SOW), Section 7.0 titled Compensation and Invoicing as the State determines is necessary to account for changes in the scope of the work of the Contract. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Exhibit E, Sample Option Letter, and any new rates

table or exhibit shall be effective as of the effective date of that notice unless the notice provides for a different date.

6. REPORTING - NOTIFICATION

A. Litigation Reporting

If Contractor 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 Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 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 on the Cover Page of this Contract.

B. Performance Outside the State of Colorado or the United States, C.R.S. §24-102-206.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with **§14** and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date three years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two 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, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor 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 Contract, permitted by law or approved in Writing by the State. Contractor 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 Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Contractor 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 Contract. Contractor 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. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor 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. Contractor shall provide the State with access, subject to Contractor'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 Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation

from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor 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 Contractor under this Contract. Such a conflict of interest would arise when a Contractor's 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 Contract.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a

conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

10. INSURANCE

Contractor 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 Contract. All insurance policies required by this Contract 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 Contractor 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 one 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 and 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 Contractor and Subcontractors.

H. Primacy of Coverage

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

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days' prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

J. Subrogation Waiver

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

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.* (the "GIA"), Contractor 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, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, 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

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven 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. Contractor shall provide all certificates electronically to the individual designated as the Department's Principal Representative on the Cover Page for this Contract, unless the Department has

specifically directed otherwise.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor 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 Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section, in addition to all other remedies set forth in this Contract 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 Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor 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, Contractor 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, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor 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 Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this

Contract had been terminated in the public interest under **§2.E.**

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, 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 Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor 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 Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor'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 Contractor'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 Contract 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, Contractor 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. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in **§11** and the dispute resolution process in **§13** shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in **§13.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Department's Procurement Official as described in C.R.S. §24-101-301(30), for resolution in accordance with the provisions of C.R.S. §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505 (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract 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 on the Cover Page of this Contract 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 of this Contract. 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 Contract. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor 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. Whether or not Contractor is under contract with the State at the time, Contractor 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. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered a work made for hire under applicable law, Contractor 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 Contractor cannot make any of the assignments required by this section, Contractor 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.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, 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”). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor 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 Contractor

Contractor retains the exclusive rights, title, and ownership to any and all Contractor Pre-Existing Material and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Contractor Property”). Contractor 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 Contract; **(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.

16. GENERAL PROVISIONS

A. Assignment

Contractor’s rights and obligations under this Contract 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 Contractor’s rights and obligations approved by the State shall be subject to the provisions of this Contract

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. The State may reject any such Subcontractor, and Contractor 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 the Contractor enters into a subcontract or subgrant would also be considered a Subrecipient, then the subcontract or subgrant entered into by Contractor shall also contain provisions permitting both Contractor and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **§16.A.**, all provisions of this Contract, 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 Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Contract 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 Contract 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 Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

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

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

Any reference in this Contract 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 Contract.

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 Contractor'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 Contract.

L. Severability

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

M. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract shall survive the termination or expiration of this Contract 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 Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§16.A.**, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, 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 Contract,

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 Contract and the performance measures and standards required under C.R.S. §24-106-107, if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

T. Indemnification

i. General Indemnification

Contractor 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 Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the 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 Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Contractor 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. Additional Provisions

Contractor shall comply with all requirements shown Exhibit A and Exhibit G.

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

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

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

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. C.R.S. §24-30-202(5.5)

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

F. CHOICE OF LAW, 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.

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. C.R.S. §§24-18-201 and 24-50-507

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

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

[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. C.R.S. §8-17.5-101, *et seq.*

[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

established under Pub. L. 104-208 or the State verification program established pursuant to C.R.S. §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101, *et seq.*, the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

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

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

EXHIBIT A, HIPAA BUSINESS ASSOCIATES ADDENDUM

This HIPAA Business Associate Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as “Covered Entity” and the Contractor is referred to as “Business Associate”. Unless the context clearly requires a distinction between the Contract and this Agreement, all references to “Contract” shall include this Agreement.

1. PURPOSE

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

2. DEFINITIONS

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

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

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

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

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Permitted Uses and Disclosures.

- i. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.
- i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
- ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
 - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
 - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
- iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.

d. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).

e. Impermissible Uses and Disclosures.

- i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
- ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.

f. Business Associate's Subcontractors.

- i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions,

conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.

- ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
 - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- g. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available at <http://oit.state.co.us/about/policies>.
- h. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.
- i. Amendment of PHI.
- i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
 - ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
- j. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
- k. Restrictions and Confidential Communications.
- i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
 - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
 - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
 - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.

- iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.
- l. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.
- m. Audit, Inspection and Enforcement.
 - i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.
 - ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.
- n. Appropriate Safeguards.
 - i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
 - ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
 - iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
 - iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.
- o. Safeguard During Transmission.
 - i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.

- ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

p. Reporting of Improper Use or Disclosure and Notification of Breach.

- i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.
- ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
- iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.
- iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.

q. Business Associate's Insurance and Notification Costs.

- i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:
 - A. loss of PHI data;
 - B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and
 - C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
- ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
- iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
- iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

r. Subcontractors and Breaches.

- i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
- ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.

s. Data Ownership.

- i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.

- t. Retention of PHI. Except upon termination of this Agreement as provided in Section 5 below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 1.j above, for a period of six years.

4. OBLIGATIONS OF COVERED ENTITY

- a. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.
- b. Notice of Changes.
 - i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.
 - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. TERMINATION

a. Breach.

- i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.
- ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

u. Effect of Termination.

- i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.
- ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. INJUNCTIVE RELIEF

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

7. LIMITATION OF LIABILITY

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

8. DISCLAIMER

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

9. CERTIFICATION

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

10. AMENDMENT

- a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
 - i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
 - ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.
 - iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
 - iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
 - A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
 - B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI

sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.

- v. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

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

12. INTERPRETATION AND ORDER OF PRECEDENCE

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

13. SURVIVAL

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

APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

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

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

1. PURPOSE

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

2. ADDITIONAL TERMS

- b. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
 - i. Reserved.
- c. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
 - i. Reserved.
- c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:
 - i. Reserved.
- d. Definition of Receipt of PHI. Business Associate’s receipt of PHI under this Contract shall be deemed to occur, and Business Associate’s obligations under the Agreement shall commence, as follows:
 - i. Reserved.
- e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate’s use and disclosure of PHI under the Contract:
 - i. Reserved.
- f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:
 - i. Reserved.

EXHIBIT B, STATEMENT OF WORK

1. CASE MANAGEMENT OBLIGATIONS

1.1. Contractor's Obligations

- 1.1.1. 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:
 - 1.1.1.1. Colorado Revised Statutes, Title 25.5, Article 6, Sections 104 through and including 107.
 - 1.1.1.2. Colorado Department of Health Care Policy and Financing written communications.
 - 1.1.1.3. The Contractor shall comply with all State Medicaid regulations promulgated by the Department. These regulations include, but are not limited to:
 - 1.1.1.3.1. Long Term Care Single Entry Point System - 10 CCR 2505-10, Sections 8.390 through 8.393 *et seq.*
 - 1.1.1.3.2. Home and Community Based Services Waiver for Persons with Brain Injury (HCBS-BI) – 10 CCR 2505-10, Section 8.515.
 - 1.1.1.3.3. 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.
 - 1.1.1.3.4. Community Mental Health Supports Waiver (HCBS-CMHS) 10 CCR 2505-10, Section 8.509.
 - 1.1.1.3.5. Home and Community Based Service Waiver for Persons with Spinal Cord Injury (HCBS-SCI) 10 CCR 2505-10, Section 8.517.
 - 1.1.1.3.6. Waiver for Children with a Life Limiting Illness (HCBS-CLLI) 10 CCR 2505-10, Section 8.504.
 - 1.1.1.3.7. Long-Term Care 10 CCR 2505-10, Sections 8.400 through 8.409.
 - 1.1.1.3.8. Program for All-Inclusive Care for the Elderly (PACE) Section 25.5-5-412, Section 6a-b., C.R.S.
 - 1.1.1.3.9. Recipient Appeals, 10 CCR 2505-10, Section 8.057.
- 1.1.2. 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.
- 1.1.3. The general Business Functions of the Contractor shall include, but is not limited to, all of the following:
 - 1.1.3.1. Providing access to its facilities for Clients and Members, 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 and Members 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.
 - 1.1.3.2. Overcoming any geographic barriers within the Region/District, including distance from the agency office to provide timely assessment and case management services to Clients and Members.

- 1.1.3.3. Protecting Clients' and Members' rights as they relate to the responsibilities of SEP agencies as described in this Contract.
- 1.1.3.4. Providing access to a telephone system and trained staff to ensure timely response to messages and telephone calls received after hours.
- 1.1.3.5. 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.
- 1.1.3.6. The Contractor shall support the Department's National Core Indicators (NCI) efforts.
- 1.1.3.7. The Contractor shall consult with the Medical Consultant(s) regarding medical and diagnostic concerns and long-term home health prior authorizations.
- 1.1.4. **Collaboration with other Care Coordination Entities or Entry Point and Case Management Agencies**
 - 1.1.4.1. Regional Accountable Entities (RAE)
 - 1.1.4.1.1. The Contractor shall support the Department's RAE efforts and ensure collaboration occurs for all shared Clients and Members.
 - 1.1.4.1.1.1. The RAE is responsible for promoting physical and behavioral health. The RAE promotes the population's health and functioning, coordinates care across disparate providers, interfaces with LTSS providers, and collaborates social, educational, justice, recreational, and housing agencies to foster healthy communities and address complex needs that span multiple agencies and jurisdictions. The RAE manages a network of primary care physical health providers and behavioral health providers to ensure access to appropriate care for Medicaid Clients.
 - 1.1.4.1.2. The Contractor shall collaborate with the RAE when a Client or Member needs assistance in accessing or coordinating the Client's or Member's physical, behavioral, or mental health needs. This shall include, but is not limited to:
 - 1.1.4.1.2.1. Coordinating with the RAE for shared Clients or Members who admit to a hospital, to include, but not limited to, communicating reasons for admission, Client's or Member's hospital status, and plans for discharge.
 - 1.1.4.1.2.2. Collaborating with the RAE for shared Clients or Members discharging from the hospital to ensure all support needs are reflected in the Support Plan and the Client or Member is connected to the necessary services to support a successful discharge.
 - 1.1.4.1.2.3. Sharing of all information necessary for the RAE to assist Clients or Members in accessing and coordinating physical and behavioral health needs.
 - 1.1.4.1.2.4. The Contractor shall honor Clients' or Members' preferences for case management and care coordination, when applicable, while ensuring collaboration with the RAE occurs.
 - 1.1.4.2. **Entry Point and Case Management Agencies**
 - 1.1.4.2.1. Community Centered Boards (CCB) are the agencies responsible for determining eligibility for LTSS programs targeted to Members with intellectual and developmental disabilities (I/DD). These programs include four (4) HCBS waivers

and three (3) State General Funded programs. In addition to determining eligibility for these programs, the CCB also manages the waiting list for one (1) HCBS waiver. The CCB may also act as a Case Management Agency (CMA) and may also provide direct services. A CMA is responsible for providing case management services to Members enrolled in a HCBS waiver targeted to Members with I/DD. Case Management includes assessing a Member's needs, developing a Support Plan, referring for services, and monitoring the receipt of those services, along with the health and welfare of Members.

- 1.1.4.2.2. The Contractor shall collaborate with CCBs and CMAs, this may include, but is not limited to:
 - 1.1.4.2.2.1. Coordinating the transfer of Members switching to or from an HCBS waiver targeted for Members with I/DD or specific to children with disabilities and connecting Clients or Members to the appropriate CCB or CMA.
 - 1.1.4.2.2.2. Sharing information necessary for the CCB and/or CMA to assist Clients in accessing LTSS programs targeted for Clients with I/DD or children with disabilities.
 - 1.1.4.2.2.3. Coordinating the receipt of LTSS when a Member is enrolled in an HCBS waiver not targeted for Members with I/DD and a State General Funded program.

1.2. **Qualification and Training Requirements**

- 1.2.1. 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.*
- 1.2.2. The Contractor shall ensure all newly hired case managers meet the qualification requirements established in 10 C.C.R. 2505-10, Section 8.393.1.L. *et seq.*
- 1.2.3. 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 , Department approved vendor, or the Contractor. Training must include the following areas:
 - 1.2.3.1. Long Term Services and Supports Eligibility
 - 1.2.3.2. Intake and Referral
 - 1.2.3.3. ULTC 100.2 (Functional Eligibility Assessment)
 - 1.2.3.4. Support Plan Development
 - 1.2.3.5. Notices and Appeals
 - 1.2.3.6. Department Information Management Systems Documentation
 - 1.2.3.7. Long Term Home Health (LTHH)
 - 1.2.3.8. Monitoring
 - 1.2.3.9. Applicable Federal and State laws and regulations for LTSS programs
 - 1.2.3.10. Critical Incident Reporting
 - 1.2.3.11. Waiver requirements and services

- 1.2.3.12. Mandatory reporting
- 1.2.3.13. Pre-Admission Screening and Resident Review (PASRR)
- 1.2.3.14. Nursing Facility admissions
- 1.2.3.15. Disability and Cultural Competency
- 1.2.3.16. Participant Directed Training
- 1.3. The Contractor shall utilize training materials provided by the Department where applicable related to Section **Error! Reference source not found.** of this Contract.
- 1.4. The Contractor shall participate in Department trainings. Participation can be at the time of the presented training or following the training using the materials available on the Department Website.
- 1.5. Case Management staff hired by the Contractor with a minimum of one-year immediate prior experience working for a Colorado SEP, may perform case management activities prior to completion of the training requirements. All outlined training at Section 1.2.3. must be completed within one-hundred twenty (120) calendar days after the staff member's hire date, unless the Contractor can provide documentation that the required training has occurred.
- 1.6. The Contractor may elect to perform additional training not outlined in the Contract, but applicable to the Scope of Work. The Contractor may utilize the Department's Case Management Training Template to identify trainings attended that are not required by the Department.
- 1.7. The Contractor shall provide the date all case management staff, including new and existing staff, were hired and the dates of received training in the areas identified in Section **Error! Reference source not found.**, using the reporting template provided by the Department for review, approval and payment.
 - 1.7.1. **DELIVERABLE:** Case Management Training
 - 1.7.2. **DUE:** Semi-Annually, trainings held between July 1 and December 31st are due January 15th, and trainings held between January 1st through June 29th are due June 30th
- 1.8. 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.
- 1.9. **Complaints and Grievances**
 - 1.9.1. The Contractor shall receive, document and track any complaint received by the Contractor as it relates to the services provided through this Contract to include, but not limited to, general business functions, administration, and case management functions. Complaints received outside of the scope of this Contract 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.
 - 1.9.2. The Contractor shall analyze complaints for trends quarterly and shall submit all complaint-oriented trends observed since the Effective Date of this Contract and the remedial actions taken to address them to the Department.

- 1.9.3. Trend analysis shall include an examination of information including but not limited to:
 - 1.9.3.1. A comparison of complaint types and number of complaints over a period of time.
 - 1.9.3.2. Number of type of complaint against the Contractor, time, location, individual involved, staff involved, and/or any additional relevant information.
 - 1.9.3.3. An examination of potential reasons for the increase or decrease in complaints by total number, subcontractor, individual, or staff.
 - 1.9.3.4. An examination of preventative measures that can be implemented to reduce the number or frequency of future complaints.
 - 1.9.3.5. Implementation of a plan of action or any future actions to take place.
 - 1.9.3.6. An analysis of whether the plan of action and changes made were effective or if additional changes need to occur.
- 1.9.4. As part of the complaint process the Contractor shall include, but is not limited to, all of the following:
 - 1.9.4.1. Document complaints received
 - 1.9.4.2. Address substantiated complaints
 - 1.9.4.3. Respond to complaints received and document actions taken to resolve and/or mitigate complaints
 - 1.9.4.4. Conduct a quarterly trend analyses of all complaints received for the full period of the Contract.
- 1.9.5. 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.
- 1.9.6. The Contractor shall submit the Complaint Trends Analysis to the Department for review, approval, and payment.
 - 1.9.6.1.1. **DELIVERABLE:** Complaint Trend Analysis
 - 1.9.6.1.2. **DUE:** Quarterly, by October 31st, January 31st, April 30th and June 30th

1.10. Appeals

- 1.10.1. 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 Contract. The Contractor shall coordinate with the Department for any adverse actions necessitating Department attendance at a hearing.
- 1.10.2. The Contractor shall represent its actions at Administrative Law Judge hearings when the Client or Member appeals a denial or adverse action affecting Client's or Member's program eligibility or receipt of services.
- 1.10.3. 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.
- 1.10.4. The Contractor shall develop an Appeals Packet which contains all relevant documentation to support the Contractor's denial or adverse action.
- 1.10.5. The Contractor shall develop an Appeals Packet no earlier than twenty (20) Business Days prior to the date of a scheduled hearing.

- 1.10.6. The Contractor shall submit exceptions when applicable and include all relevant information.
- 1.10.7. The Contractor shall cooperate with the Office of the State Attorney General for any case in which it is involved.
- 1.10.8. The Contractor shall document all appeals where the Contractor attends any hearing in an Administrative Law Court.
- 1.10.9. The Contractor shall make the Appeal Packets available to the Department upon request.
- 1.10.10. The Contractor shall document all Appeals Creation of the Packet and Attendance at the Hearing information, no later than the tenth (10th) day of the month following the month when the packet or hearing was completed, and follow-up in the Department prescribed system and maintain detailed documentation. The Department will review internal data reports to verify the number of Appeal Packets completed and number of Hearings attended for payment purposes.
- 1.10.10.1. **PERFORMANCE STANDARD:** One hundred (100%) percent of Appeal Packets and Hearings Attended are added to the Department prescribed system monthly by the tenth (10th) day of the month following the month when the packet or hearing was completed.

1.11. Critical Incident Reporting

- 1.11.1. The Contractor shall be responsible for entering critical incident reports (CIR) in the Department prescribed system as soon as possible, but no later than 24 hours (one business day) following notification.
- 1.11.2. The Contractor shall ensure 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).
- 1.11.3. The Contractor shall document all CIR follow-up information in accordance with Department direction in the Department prescribed system and maintain detailed documentation. The Department will review internal data reports of CIRs MANE and Other to verify the number of CIRs-MANE and CIRs-Other for payment purposes.
- 1.11.3.1. **PERFORMANCE STANDARD:** One hundred (100%) percent of CIRs (CIRs-MANE and CIRs-Other) are added to the Department prescribed system within one (1) Business day.

1.11.4. Critical Incident Trend Analysis

- 1.11.4.1. The Contractor shall review and analyze all Critical Incidents to identify trends and problematic practices and documenting appropriate action.
- 1.11.4.2. The Critical Incident Trend analysis shall include an examination of information including but not limited to:
 - 1.11.4.2.1. 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.
 - 1.11.4.2.2. An examination of potential reasons for the increase or decrease in critical incidents.

- 1.11.4.2.3. An examination of preventative measures that can be implemented to reduce the number or frequency of future critical incidents.
- 1.11.4.2.4. Identify the root cause of the critical incident and analyze to determine if intervention is needed to prevent similar critical incidents in the future.
- 1.11.4.2.5. Implementation of a plan of action or any future actions to take place.
- 1.11.4.2.6. An analysis of whether the plan of action and changes made were effective or if additional changes need to occur.
- 1.11.4.3. The Contractor shall submit the Critical Incident Trend Analyses on the Department's prescribed template for the Departments review, approval, and payment.
- 1.11.4.3.1. **DELIVERABLE:** Critical Incident Trend Analyses
- 1.11.4.3.2. **DUE:** Quarterly, by October 31st, January 31st, April 30th and June 30th

1.12. **Corrective Action Plan**

- 1.12.1. When the Department determines that the Contractor is not in compliance with any term of this Contract, the Contractor, upon written notification by the Department, shall develop a corrective action plan. Corrective action plans shall include, but not be limited to:
 - 1.12.1.1. A detailed description of actions to be taken including any supporting documentation.
 - 1.12.1.2. A detailed time frame specifying the actions to be taken.
 - 1.12.1.3. Contractor's employee(s) responsible for implementing the actions.
 - 1.12.1.4. The implementation time frames and a date for completion.
- 1.12.2. 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.
 - 1.12.2.1. **DELIVERABLE:** Corrective Action Plan
 - 1.12.2.2. **DUE:** Within ten (10) Business Days of receipt of a written request from the Department
- 1.12.3. The Contractor shall notify the Department in writing, within three (3) Business Days, if it will not be able to present the Corrective Action Plan by the due date. 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.
- 1.12.4. Upon receipt of the Contractor's Corrective Action Plan, the Department will accept, modify or reject the proposed Corrective Action Plan. Modifications and rejections shall be accompanied by a written explanation.
 - 1.12.4.1. In the event of a rejection of the Contractor's Corrective Action Plan the Contractor shall re-write a revised Corrective Action Plan and resubmit it along with requested documentation to the Department for review.
 - 1.12.4.1.1. **DELIVERABLE:** Revised Corrective Action Plan
 - 1.12.4.1.2. **DUE:** Within five (5) Business Day of the Department's rejection
- 1.12.5. Upon acceptance by the Department the Contractor shall implement the Corrective Action Plan.

- 1.12.6. If corrections are not made by the timeline and/or quality specified by the Department then funds may be withheld from this Contract. Payments of funds from this Contract will resume beginning the month that the correction is made and accepted by the Department.
- 1.12.7. 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.
- 1.12.8. 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.
- 1.12.9. In the event of a rejection of the Contractor's supporting documentation to the Corrective Action Plan, the Contractor shall correct and resubmit the supporting documentation to the Department for review.
- 1.12.10. If a Corrective Action Plan or any supporting activities or documentation are required to correct a deficiency, are not submitted within the requested timeline and/or quality specified by the Department, funds may be suspended or withheld from this Contract.
- 1.12.10.1. **DELIVERABLE:** Revised Supporting Documentation
- 1.12.10.2. **DUE:** Within five (5) Business Day of the Department's rejection
- 1.12.11. If corrections are not made by the timeline and quality specified by the Department then funds may be withheld from this Contract. Payments of funds from this Contract will resume beginning the month that the correction is made and accepted by the Department.

2. INTAKE, SCREENING, AND REFERRAL

- 2.1. The Contractor shall perform all intake, screening and referral functions/activities 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, the following:
 - 2.1.1. Facilitating the Medicaid application process and responding to all referrals of potentially eligible Clients within Department prescribed timeframes.
 - 2.1.2. Processing information regarding Client Medicaid eligibility within two (2) Business Days of receipt from the eligibility site.
 - 2.1.3. Ask referring agencies to complete and submit an intake and screening form to initiate the process.
 - 2.1.4. Providing information and referral to other agencies as needed.
 - 2.1.5. Making initial contact with Clients to include a preliminary screening in the following areas:
 - 2.1.5.1. A Client's need for LTSS.
 - 2.1.5.2. A Client's need for referral to other programs or services.
 - 2.1.5.3. A Client's eligibility for financial and program assistance.
 - 2.1.5.4. The need for a functional eligibility assessment.
 - 2.1.5.5. Maintain Client records including documentation of the referrals and outcome utilizing the Department's prescribed system.

- 2.1.5.5.1. The Contractor shall ensure documentation includes the Client's need for LTSS and/or the Client's request for a Functional Eligibility Assessment, even though the screening indicates the Client may not be eligible for LTSS.
- 2.1.5.6. Clients shall be notified at the time of their application for publicly funded LTSS 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.
- 2.1.5.6.1. **PERFORMANCE STANDARD:** One hundred (100%) percent of Referrals are entered into the Department prescribed system monthly by the tenth (10th) day of the following month for the previous month

3. FUNCTIONAL ELIGIBILITY ASSESSMENT

- 3.1. The Contractor shall perform all Initial and Continued Stay Review Functional Eligibility Assessments 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.*
- 3.1.1. The Contractor shall conduct Initial and Continued Stay Review (CSR) Functional Eligibility Assessments for the following LTSS programs:
 - 3.1.1.1. HCBS waivers;
 - 3.1.1.2. Program of All-Inclusive Care for the Elderly (PACE);
 - 3.1.1.3. Nursing Facility;
 - 3.1.1.4. Hospital Back-Up (HBU); and
 - 3.1.1.5. Long Term Home Health.
- 3.1.2. The Contractor shall conduct an Initial and CSR Functional Eligibility Assessment in accordance with the following timelines:
 - 3.1.2.1. Ten (10) Business Days after receiving confirmation that the Medicaid application has been received by the county Department of Human or Social Services for Clients residing in the community.
 - 3.1.2.2. Ten (10) Business Days after receiving a referral from a provider for the PACE.
 - 3.1.2.3. Five (5) Business Days after receiving a completed referral from the nursing facility.
 - 3.1.2.4. Five (5) Business Days after receiving a completed approval for the CLLI Waiver.
 - 3.1.2.5. Two (2) Business Days after receiving a completed referral from the hospital.
- 3.1.3. Initial Functional Eligibility Assessments shall include the following Assessment Event Types:
 - 3.1.3.1. Initial Review (IR)
 - 3.1.3.2. Deinstitutionalization (DI)
 - 3.1.3.3. Reverse Deinstitutionalization (RDI)
 - 3.1.3.4. Program of All-Inclusive Care for the Elderly (PACE)
 - 3.1.3.5. Hospital back-up Unit (HBU)
 - 3.1.3.6. Nursing Facility (NF)
 - 3.1.3.7. Long Term Home Health (LTHH)

- 3.1.4. The Contractor shall conduct a CSR Functional Eligibility Assessment no earlier than ninety (90) days prior to and no later than the previous Functional Eligibility Assessment end date.
- 3.1.4.1. CSR Functional Eligibility Assessments shall include the following Assessment Event Types:
 - 3.1.4.1.1. Continued Stay Review
 - 3.1.4.1.2. Nursing Facility Transfers
 - 3.1.4.1.3. Unscheduled Review
 - 3.1.4.1.3.1. An Unscheduled Review Assessment Event Type shall be utilized when a Functional Eligibility Assessment is completed due to a change in the Member functioning and support needs.
- 3.1.4.2. In the event the Contractor fails to conduct the CSR Functional Eligibility Assessment for a Member enrolled in a HCBS waiver, the Contractor shall be responsible for reimbursing any providers for services rendered during the gap in eligibility.
- 3.1.4.3. In the event the Contractor fails to discontinue waiver services for a Member, found ineligible for a HCBS waiver, the Contractor shall be responsible for reimbursing any providers for services rendered.
- 3.1.4.4. The Contractor shall conduct an Initial and CSR Functional Eligibility Assessment to include, but not limited to, the following:
 - 3.1.4.4.1. Verification of Medicaid eligibility or Medicaid application submission.
 - 3.1.4.4.2. Conduct all Functional Eligibility Assessments face-to-face with the Client or Member, at minimum, and in the place where the Client or Member resides.
 - 3.1.4.4.3. Receipt and Review of the Professional Medical Information Page (PMIP).
 - 3.1.4.4.3.1. The Contractor shall verify that a Client or Member needs an institutional level of care by receiving a 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 Eligibility Assessment; and within ninety (90) calendar days of the certification start date and before the certification end date for a CSR for all Clients and Members currently receiving services through an HCBS waiver.
 - 3.1.4.4.4. Review of all supportive information (documentation and interviews) related to the functional capacity of the Client or Member.
 - 3.1.4.4.5. Communicating Functional Eligibility status to the appropriate eligibility site.
 - 3.1.4.4.6. Representing the Department in all appeals relevant to a LTSS program eligibility.
 - 3.1.4.4.7. Review of HCBS waiver target criteria for applicant, Client or Member participation.
 - 3.1.4.4.8. Determine Client or Member Functional Eligibility for enrollment in an HCBS waiver, PACE, LTHH, HBU or NF admission.
 - 3.1.4.4.9. Provide a notice of action to Clients or Members of all appealable actions related to their eligibility in a LTSS program.
 - 3.1.4.4.10. Maintaining Client or Member records including all relevant information utilizing the Department's prescribed system.

- 3.1.4.5. Contactor shall document all Initial and CSR Functional Eligibility Assessment information in the Department prescribed system according to assessment timeline identified at 10 CCR 2505-10, Sections 8.393.2.C *et seq.*
- 3.1.4.5.1. **PERFORMANCE STANDARD:** One hundred (100%) percent of Initial Functional Eligibility Assessments and Continued Stay Review Functional Eligibility Assessments are completed within required timelines at 10 CCR 2505-10, Sections 8.393.2.C *et seq.* and are entered into the Department prescribed system. Assessments must be verified by the tenth (10th) day of the month for the previous month to be eligible for payment.

4. ON-GOING HCBS CASE MANAGEMENT

4.1. Case Management Services

- 4.1.1. Case Management services shall include, but is not limited to:
 - 4.1.1.1. A range of deliberate activities to organize and facilitate the appropriate delivery of HCBS waiver services that support Member health and well-being.
 - 4.1.1.2. The Contractor shall use a Person-Centered Approach to Case Management, which takes into consideration the preferences and goals of Members and then connects them to the resources required to address assessed needs, goals, and preferences.
 - 4.1.1.3. The Contractor shall not duplicate Care Coordination provided through the RAEs and other programs designed for special populations; rather, the Contractor shall work to link the different Care Coordination activities to promote a holistic approach to a Member's care.
 - 4.1.1.4. The Contractor shall ensure that Case Management:
 - 4.1.1.4.1. Is accessible to Members.
 - 4.1.1.4.2. Is culturally responsive.
 - 4.1.1.4.3. Respects Member preferences.
 - 4.1.1.4.4. Protects Members' Privacy.
 - 4.1.1.4.5. Supports regular communication between service providers, other agencies, and the Member.
 - 4.1.1.4.6. Reduces duplication and promotes continuity by collaborating with the Member and the Member's service providers.

4.2. Functional Needs Assessment

- 4.2.1. The Contractor shall conduct an Initial Functional Needs Assessment and periodic reassessment, as needed by the Member, to determine the need for any medical, educational, social or other services.
- 4.2.2. The Contractor shall conduct a reassessment at minimum annually or when the Member's condition changes such that a new support need is identified.
- 4.2.3. The Functional Needs Assessment shall include but is not limited to the following:
 - 4.2.3.1. Initial and annual completion of the Instrumental Activities of Daily Living (IADL) assessment.

- 4.2.3.2. Review of the Functional Eligibility Assessment information.
- 4.2.3.3. Review of any relevant medical, educational, social, or other services records.
- 4.2.4. The Contractor shall follow 10 C.C.R. 2505-10, Section 8.393.6 when transferring a Member from one county to another county or from one SEP Region/District to another Region/District.
- 4.2.5. The Contractor shall take action regarding Member Medicaid eligibility within one (1) Business Day of receipt from the eligibility site.

4.3. **Support Planning**

- 4.3.1. The Contractor shall develop 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.*
- 4.3.2. The Contractor shall create and maintain a Support Plan for Members in accordance with the following timelines:
 - 4.3.2.1. Within fifteen (15) Business Days after determination of program eligibility for HCBS waivers.
- 4.3.3. 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. This Support Plan shall include, but not be limited to, the following:
 - 4.3.3.1. Ensure the Support Planning occurs at a time and location convenient to the Member receiving services;
 - 4.3.3.2. Be led by the individual, family members and/or Member's representative with the case manager;
 - 4.3.3.3. Includes people chosen by the Member;
 - 4.3.3.4. Addresses the goals, needs and preferences identified by the Member throughout the planning process;
 - 4.3.3.5. Addresses the needs identified in the Functional Eligibility and Functional Needs Assessments;
 - 4.3.3.6. 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 that may not be available;
 - 4.3.3.7. Include strategies for solving conflict or disagreement within the process, including clear conflict-of-interest guidelines for all planning participants;
 - 4.3.3.8. Reflect cultural considerations of the Member and be conducted by providing information in plain language and in a manner, that is accessible to individuals with disabilities and persons who are limited English proficient;
 - 4.3.3.9. Formalize the Support Plan, including appropriate signatures, in accordance with program requirements;
 - 4.3.3.10. Contain prior authorization for services, in accordance with program directives, including cost containment requirements;

- 4.3.3.11. Include a method for the Member to request updates to the plan as needed;
- 4.3.3.12. Include an explanation of complaint procedures to the Member;
- 4.3.3.13. Include an explanation of critical incident procedures to the Member; and
- 4.3.3.14. Explain the appeals process to the Member.
- 4.3.3.15. The Contractor shall enter all Support Plan information into the Department's prescribed system(s).
- 4.3.4. The SEP Agency shall complete the following portion of the Support Plan for all Members admitting to a Nursing Facility:
 - 4.3.4.1. Support Plan Information,
 - 4.3.4.2. Medicaid Long Term Care Disclosures,
 - 4.3.4.3. Roles and Responsibilities,
 - 4.3.4.4. Complaint Process,
 - 4.3.4.5. Service and Provider Choice,
 - 4.3.4.6. Statement of Agreement, and
 - 4.3.4.7. Support Plan Participants
- 4.3.5. The Contractor shall document all Support Plan information into the Department's prescribed system(s) within the Department's prescribed timelines.
 - 4.3.5.1. **PERFORMANCE STANDARD:** One hundred (100%) of Support Plans are entered into the Department prescribed systems and verified by the required timeframe.
 - 4.3.5.2. **PERFORMANCE STANDARD:** One hundred (100%) of Support Plans are finalized in the Department prescribed systems by the required timeframe.
- 4.4. **Referral and Related Activities**
 - 4.4.1. The Contractor shall refer Members for HCBS and other services, as identified through the Functional Eligibility and Functional Needs Assessments and documented in the Support Plan.
 - 4.4.2. The Contractor shall assist Members in the selection of providers for HCBS waiver services as desired by the Member. The Contractor may use, but is not limited to, the following methods:
 - 4.4.2.1. Providing a list of qualified provider agencies;
 - 4.4.2.2. Providing the Department's webpage address and information on how to search for a qualified provider agency;
 - 4.4.2.3. Providing resources for accessing information about provider agency quality, such as survey information, that is available to the public;
 - 4.4.2.4. Providing information regarding qualified provider agencies based on the Member's preferences.
 - 4.4.3. Upon the selection of the provider(s) the Contractor shall contact the provider(s) to refer for services.

- 4.4.4. Upon acceptance from the provider(s) the Contractor shall develop the Prior Authorization Request (PAR).
- 4.4.4.1. The Contractor shall ensure authorized services are connected to a personal goal and/or identified need.
- 4.4.4.2. The Contractor shall ensure the scope, frequency, and duration of services authorized correlate to an assessed need and/or personal goal and are within the limitations set forth in each of the current federally approved waivers.
- 4.4.4.3. The Contractor shall ensure the services authorized are not duplicative of another service, including but not limited to:
 - 4.4.4.3.1. State plan benefits;
 - 4.4.4.3.2. Third party resources;
 - 4.4.4.3.3. Natural supports;
 - 4.4.4.3.4. Charitable organizations; or
 - 4.4.4.3.5. Other public assistance programs.
- 4.4.5. The Contractor shall ensure the Department or its Contractor's approval is received prior to services beginning for PARs exceeding cost-containment.
- 4.4.6. 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.
- 4.4.7. The Contractor shall create or revise the PAR no less than annually, when the Member experiences a change in needs warranting a change in HCBS waiver services and when required by the Department.
- 4.4.8. The PAR shall be entered into the Department's prescribed system, no later than five (5) Business Days from finalization of the Support Plan and provider selection and acceptance.
- 4.4.8.1. **PERFORMANCE STANDARD:** 100% of PARs shall be entered into the Department's prescribed system by the required timeframe.
- 4.5. **Monitoring**
 - 4.5.1. The Contractor shall conduct monitoring for each Member enrolled in an HCBS waiver.
 - 4.5.2. Monitoring shall be conducted in accordance with 10 CCR 2505-10, Section 8.393.2.G.4 and pursuant to the specific waiver requirements.
 - 4.5.3. Monitoring shall occur at the frequency and in the method identified in the HCBS waiver and Department regulations for which the Member is enrolled.
 - 4.5.4. At minimum, monitoring includes, but is not limited to the following:
 - 4.5.4.1. Review of the Support Plan.
 - 4.5.4.2. Review of the Member's satisfaction with services.
 - 4.5.4.3. Review of the receipt of services to ensure services are provided in accordance with the approved Support Plan and Prior Authorization.
 - 4.5.5. The Contractor shall conduct a review of service utilization to ensure each Member is receiving at least one (1) HCBS waiver service every thirty (30) calendar days and to detect

overutilization and/or underutilization of authorized HCBS waiver services, which may result in a revision to the Support Plan and Prior Authorization.

- 4.5.6. The Contractor shall review health and safety concerns;
- 4.5.7. The Contractor shall conduct a review of any Critical Incidents;
- 4.5.8. The Contractor shall contact providers, as necessary, but no less than every six (6) months;
- 4.5.8.1.1. Referrals to other agencies or services as needed; to include contacting and collaborating with the RAE when the Monitoring indicates the Member's needs for physical and/or behavioral health care; and obtaining collateral information as needed.
- 4.5.9. The Contractor shall obtain collateral information as needed.
- 4.5.9.1. Results of the Monitoring may lead to the need for the Contractor to revise the Support Plan and Prior Authorization. When this occurs, the Contractor shall comply with Department regulations and this Contract.
- 4.5.9.2. The Contractor shall conduct In-Person Monitoring at least one (1) time during the Support Plan year.
- 4.5.9.2.1. The Contractor shall ensure one required monitoring is conducted in-person with the Member, in the Member's place of residence.
- 4.5.9.2.2. The Department will reimburse the Contractor for up to one (1) additional In-Person Monitoring during the Support Plan year. The additional In-Person Monitoring shall be determined by the Member's needs or be at the direction of the Member or the Department. The additional In-Person Monitoring may occur, but is not limited to the following:
 - 4.5.9.2.2.1. Upon transfer from one SEP to another SEP;
 - 4.5.9.2.2.2. Following a Critical Incident;
 - 4.5.9.2.2.3. Change in residential setting or following discharge from a hospital or nursing facility that did not require a Functional Eligibility Assessment.
- 4.5.9.3. The Contractor shall conduct additional monitoring as needed by the Member and in a method as needed or requested by the Member.
- 4.5.9.4. The Contractor shall document all In-Person Monitoring activities in the Department's prescribed system and maintain detailed documentation. The Department will review internal data reports to verify the number of In-Person Monitoring activities for payment purposes.
- 4.5.9.4.1. **PERFORMANCE STANDARD:** One hundred (100%) of In-Person Monitoring activities shall occur at the frequency specified in the HCBS waiver for which the Member is enrolled.
- 4.5.9.4.2. **PERFORMANCE STANDARD:** One hundred (100%) of In-Person Monitoring activities shall be documented in the Department's prescribed system within the required timeframe.

4.6. Committee Updates

- 4.6.1. 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:
 - 4.6.1.1. 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.
 - 4.6.1.2. Establishing a Resource Development committee to facilitate the development of local resources to meet the LTSS needs of Clients and Members who reside within the SEP Region/District.
- 4.6.2. At least bi-annually, the Contractor shall provide written Committee Updates to the Department. Active, on-going participation by key management or administrative staff in other 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.
- 4.6.3. The Contractor shall submit the Committee Updates on the Department prescribed template for the Department's review, approval, and payment
 - 4.6.3.1. **DELIVERABLE:** Committee Updates
 - 4.6.3.2. **DUE:** Bi-Annually, for meetings held between July 1 and December 31st, Committee Updates are due January 15th, and for meetings held between January 1st through June 29th, Committee Updates, are due June 30th

4.7. **Certification**

- 4.7.1. The Department or a designee shall review the performance of the Contractor.
- 4.7.2. Performance monitoring may include a review of log notes, support plans, assessments and other documentation relevant to the long-term care services provided the Member. 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.
- 4.7.3. The Department, in accordance with 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 Member, communications with Members, Member monitoring, targeting populations served, community coordination and outreach and financial accountability.

5. **ACCOUNTING**

- 5.1. 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 Contract.
- 5.2. The Contractor shall establish and maintain internal control systems and standards that apply to the operation of the organization.
- 5.3. The Contractor shall assure, 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.

- 5.4. The Contractor shall establish any necessary cost accounting systems to identify the application of funds and record the amounts spent.
- 5.5. 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.
 - 5.5.1. **DELIVERABLE:** Transaction and Funds Documentation
 - 5.5.2. **DUE:** Within ten (10) Business Days of the Department's Request

6. SUBRECIPIENT STATUS AND REQUIREMENTS

- 6.1. 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.
- 6.2. Single Audits
 - 6.2.1. 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.
 - 6.2.2. The Contractor shall notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$750,000.00.
 - 6.2.3. 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.
 - 6.2.4. 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.
 - 6.2.4.1. **DELIVERABLE:** Single Audit
 - 6.2.4.2. **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
 - 6.2.5. 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.
 - 6.2.5.1. **DELIVERABLE:** Attestation Form
 - 6.2.5.2. **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
 - 6.2.6. The audit period shall be the Contractor's fiscal year.

7. COMPENSATION AND INVOICING

- 7.1. Administrative Compensation
 - 7.1.1. The compensation under the Contract shall consist of Fee for Service (FFS) per deliverable

payment and Per Member Per Month (PMPM) reimbursement for ongoing case management services. The Department shall pay the Contractor at the rates shown in the following table upon the Department's approval of all deliverables and services:

SEP ADMINISTRATIVE RATE TABLE		
DELIVERABLE DESCRIPTION	PAYMENT FREQUENCY	RATE
Operations Guide	One Time Payment per Initial Guide	\$7,197.33
Operations Guide Update and Summary	Each Annual Update	\$1,294.64
Complaint Trend Analysis	Per Quarterly Deliverable	\$3,511.49
Critical Incident - MANE	Each Critical Incident	\$103.21
Critical Incident - Other	Each Critical Incident	\$32.45
Critical Incident Trend Analysis	Per Quarterly Deliverable	\$1,292.71
Training Deliverable	Per Bi-Annual Deliverable	\$590.62
Committee Updates	Per Bi-Annual Deliverable	\$975.72
Appeals – Creation of Packet	Per Appeal Packet	\$488.87
Appeals – Attendance at Hearing	Per Appeal Hearing Attended	\$277.56
Initial Functional Eligibility	Payment per Assessment	\$260.82
Continued Stay Review – Functional Eligibility	Payment per Assessment	\$181.29
In Person Monitoring	Payment per In-Person Monitoring Visit (Up to 2 Visits per Year)	\$82.23
On-Going Case Management PMPM Tier One (1-700)	Payment per Member per Month	\$83.47
On-Going Case Management PMPM Tier Two (701-2750)	Payment per Member per Month	\$79.42
On-Going Case Management PMPM Tier Three (2751+)	Payment per Member per Month	\$68.33

Rural Travel Add-On (Initial, CSR, Monitoring) for Rural and Frontier Counties	Payment per Activity	\$34.45
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- 7.1.2. The rates shown above are determined by the approved appropriation from the Colorado General Assembly. The Department, at its discretion, shall have the option to increase or decrease these rates as the Department determines is necessary based on its approved appropriation or to correct an administrative error in rate calculations. In order to exercise this option, the Department shall provide written notice to Contractor in a form substantially similar to the Sample Option Letter shown as an exhibit to Appendix B, and any new rates table or exhibit shall be effective as of the effective date of that notice unless the notice provides for a different date.
- 7.1.3. The Contractor shall be reimbursed for Administrative Functions and on-going case management at the frequency and criteria identified in Section 8 of this Exhibit, Invoicing and Payment Procedures.

8. INVOICING AND PAYMENT PROCEDURES

8.1. Operations Guide

- 8.1.1. The Contractor shall submit the Operations Guide and all required components defined in Exhibit D, Section 1.13. of this Contract. The Contractor shall receive payment for the Operations Guide only after the Department has received, reviewed, and approved the Deliverable.

8.2. Operations Guide Update

- 8.2.1. The Contractor shall review its Operations Guide as defined in Exhibit D, Section 1.13.5. of this Contract on an annual basis and determine if any modifications are required to account for any changes in the Work, in the Department's processes and procedures, or in the Contractor's processes and procedures and update the Operations Guide as appropriate to account for any changes. The Contractor shall submit an Operations Guide Update, as well as, a Summary of all changes to the Department or an explanation demonstrating that the Operations Guide Update was reviewed, and the Contractor determined that no edits were needed. The Department shall review the update summary and determine whether significant modifications to the Operations Guide Update were completed. The Contractor shall receive payment for an Operations Guide Update only after the Department has determined that significant changes were made. If minor changes or no changes were completed the Contractor shall not receive payment for this Deliverable.
- 8.2.2. The Department does not consider changes such as updating dates, contact information or locations to be significant changes. Significant changes would include, but are not limited to, an update to the Contractor's current practices or procedures.

8.3. Complaint Trends Analysis

- 8.3.1. The Contractor shall receive payment for the quarterly Complaint Trends Analysis deliverable as defined in Section 1.6. of this Exhibit, once the Department has reviewed and accepted the Deliverable. If the original submission is rejected by the Department, the Contractor shall not receive payment until a revised deliverable has been received and accepted by the Department. If the Deliverable shows that zero (0) complaints were received

and no trends were identified that quarter, the Contractor shall not receive payment for the deliverable.

8.4. Critical Incident – MANE

8.4.1. The Contractor shall ensure all Critical Incident-MANE are input into the Department prescribed system and adhere to all requirements listed in Section 1.8. of this Exhibit. The Department will pay for each Critical Incident MANE– reported in the Departments prescribed system. The Department will review internal data on the tenth (10th) day, of the month for Critical Incidents-MANE from the previous month.

8.5. Critical Incident – Other

8.5.1. The Contractor shall ensure all Critical Incidents - Other are input into the Department prescribed system and adhere to all requirements listed in Section 1.8. of this Exhibit. The Department will pay for each Critical Incidents - Other, reported in the Departments prescribed system. The Department will review internal data on the tenth (10th) day of the month for Critical Incidents-Other from the previous month.

8.6. Critical Incident Reporting Trends Analysis

8.6.1. The Contractor shall receive payment for the quarterly Critical Incident Reporting Trends Analysis Deliverable as defined in Section 1.8.4. of this Exhibit, once the Department has reviewed and accepted the Deliverable. If the original submission is rejected by the Department, the Contractor shall not receive payment until a revised Deliverable has been received and accepted by the Department. If the Deliverable shows that zero (0) Critical Incidents were received and no trends were identified that quarter, the Contractor shall not receive payment for the deliverable.

8.7. Case Management Training

8.7.1. The Contractor shall receive payment for the Case Management Training Deliverable as defined in Section 1.2. of this Exhibit, once the Department has reviewed and accepted the Deliverable. If the original submission is rejected by the Department, the Contractor shall not receive payment until a revised Deliverable has been received and accepted by the Department. If a case manager did not receive one or more of the required trainings or a training was received past the required one-hundred and twenty (120) calendar days from hire, the Contractor shall not receive payment for the Deliverable until all trainings have been provided. The Contractor shall have thirty (30) calendar days to provide any outstanding trainings and resubmit the Deliverable.

8.8. Committee Updates

8.8.1. The Contractor shall receive payment for the Committee Updates Deliverable as defined in Section 4.6. of this Exhibit, once the Department has reviewed and accepted the Deliverable. If the Deliverable shows that no committee meeting updates have been included, the Contractor shall not receive payment for the Deliverable.

8.9. Appeals – Creation of Packet

8.9.1. The Contractor shall ensure that all Appeals – Creation of Packet are input in the Department prescribed system and adhere to all requirements listed in Section 1.7.4. of this Exhibit. The Department will review internal data on the tenth (10th) day of the month for Creation of Appeals Packet from the previous month. Payment for Appeals – Creation of Packet will be made once the deliverable is reviewed and accepted by the Department.

8.10. Appeals – Attendance at Hearing

8.10.1. The Contractor shall ensure all Appeals - Attendance at Hearing information are input in the Department prescribed system and adhere to all requirements listed in Section 1.7. of this Exhibit. The Department will review internal data on the tenth (10th) day of the month for Appeals - Attendance at Hearing from the previous month. Payment for Appeals - Attendance at Hearing will be made for the previous month.

8.11. Initial Functional Eligibility Assessment

8.11.1. The Contractor shall receive payment for conducting all Initial Functional Eligibility Assessments as identified in Sections 3 and 4.2. of this Exhibit. The Department will pay for Initial Functional Eligibility Assessments from data pulled from the Department prescribed system on the tenth (10th) day of the month for assessments from the previous month.

8.12. Continued Stay Review – Functional Eligibility

8.12.1. The Contractor shall receive payment for conducting all Continued Stay Review - Functional Eligibility Assessments as identified in Section 3 of this Exhibit. The Department will pay for Continued Stay Review – Functional Eligibility Assessments from data pulled from the Department prescribed system on the tenth (10th) day of the month for assessments from the previous month.

8.13. In-Person Monitoring

8.13.1. The Contractor shall receive payment for conducting Case Management Monitoring in person, at least one (1) time and no more than two (2) times during the Support Plan year and adhere to all requirements indicated in Section 4.5. of this Exhibit. The Department will pay for Case Management Monitoring based on data pulled from the Department prescribed system on the tenth (10th) day of the month for Case Management Monitoring from the previous month.

8.14. Case Management Per Member Per Month (PMPM)

8.14.1. The Contractor shall receive payment for performing any activity under Section 4.0., On-Going HCBS Case Management, on monthly basis in accordance with the Exhibit, Statement of Work. The Department will pay Case Management services PMPM, based on data pulled from the Department prescribed system on the tenth (10th) day of the month for Case Management services from the previous month.

8.15. Rural Travel Add-On (Initial, CSR, Monitoring) for Rural and Frontier Counties

8.15.1. The Contractor shall receive an additional payment for Rural Travel Add-On for Rural and Frontier Counties for the following activities only: Initial Functional Eligibility, Continued Stay Review – Functional Eligibility, and In-Person Monitoring based on data pulled from the Department prescribed system on the tenth (10th) day of the month for assessments from the previous month.

8.16. The due dates identified in this section shall be adhered to, and information entered into the Department's prescribed systems and/or submitted to the Department by a date identified in this section. For the month of June, the Department will notify the Contractor of the modified due date to account for year-end closing.

8.17. **Payment and Billing Errors**

- 8.17.1. The Contractor shall review all payments made by the Department to ensure accuracy within ten (10) Business Days of receiving a payment summary.
- 8.17.2. The Contractor shall notify the Department of any errors in billing or payment within ten (10) Business Days of receiving a payment summary on the Department's prescribed template to ensure over and under payments are adjusted.
 - 8.17.2.1. **DELIVERABLE:** Payment Correction Form
 - 8.17.2.2. **DUE:** Within ten (10) Business Days of receiving a payment summary from the Department
- 8.17.3. The Department shall notify the Contractor of any overpayment or underpayment identified through an internal review process.
- 8.17.4. 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.
- 8.17.5. If an underpayment is confirmed, the amount will be included on the next monthly reimbursement to the Contractor.
- 8.18. **Closeout Payments**
 - 8.18.1. Notwithstanding anything to the contrary in this Contract, all payments for the final month of this Contract 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 C, TERMINOLOGY

1. TERMINOLOGY

- 1.1. In addition to the terms defined in §3 of this Contract, the following list of terms shall be construed and interpreted as follows:
 - 1.1.1. Appeal – the process a case manager participates in when a Client or Member appeals an adverse action made by the case manager.
 - 1.1.2. Benefits Utilization System (BUS) – the online data system maintained by the Department for recording case management activities associated with Long Term Services and Supports.
 - 1.1.3. Bridge – the online data system maintained by the Department for authorization of member services.
 - 1.1.4. 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.
 - 1.1.5. Case Management – the assessment of a Member eligible to receive or receiving long-term services and supports, the development and implementation of a Support Plan for such Member, referral and related activities, the coordination and monitoring of long-term service and supports delivery, the evaluation of service effectiveness, and the periodic reassessment of such Member’s needs.
 - 1.1.6. Case Management Agency (CMA) – a public or private not-for-profit or for-profit agency that meets all applicable state and federal requirements and is certified by the Department to provide case management services for specific Home and Community Based Services waivers pursuant to section 25.5-10-209.5, C.R.S. and pursuant to a provider participation agreement with the state department.
 - 1.1.7. Case Management Redesign – the evaluation and redesign of the entry point and case management structure for LTSS in Colorado.
 - 1.1.8. Case Manager – a person who provides case management services and meets all regulatory requirements for case manager. Client – any individual applying for or seeking information for LTSS.
 - 1.1.9. Client – any individual applying for or seeking information for LTSS.
 - 1.1.10. Closeout Period – The period beginning on the earlier of 90 days prior to the end of the last Extension Term or notice by the Department of its decision to not exercise its option for an Extension Term, and ending on the day that the Department has accepted the final deliverable for the Closeout Period, as determined in the Department-approved and updated Closeout Plan, and has determined that the closeout is complete.
 - 1.1.11. Colorado Revised Statutes (C.R.S.) – The legal code of Colorado; the legal codified general and permanent statutes of the Colorado General Assembly.
 - 1.1.12. Community Centered Board (CCB) – a private corporation, for-profit or not-for profit, that is designated pursuant to section 25.5-10-209 C.R.S., responsible for, but not limited to conducting Developmental Disability determinations, waiting list management, Level of Care Evaluations for Home and Community Based Service waivers specific to individuals with intellectual and developmental disabilities, and management of State Funded programs

for individuals with intellectual and developmental disabilities.

- 1.1.13. Complaints and Grievances – any complaint received by the Contractor as it relates to the services provided through this Contract to include, but not limited to: general business functions, administration, and administrative case management functions. Complaints received outside of the scope of this Contract shall not be included.
- 1.1.14. Contractor – the individual, entity or subrecipient selected to complete the Work contained in the Contract. Contractor and subrecipient will be used interchangeably throughout this Contract.
- 1.1.15. 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.
- 1.1.16. Critical Incident – 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.
- 1.1.17. Critical Incident Report (CIR) Mistreatment, Abuse, Neglect or Exploitation (MANE) – a Critical Incident Report entered into the Department prescribed system with a category of Mistreatment, Abuse, Neglect, or Exploitation.
- 1.1.18. Critical Incident Report (CIR) Non-MANE – a Critical Incident Report entered into the Department prescribed system with a category of criminal activity, damage to consumer’s property/theft, death, injury/illness, medication management issues, missing persons, other high risk issues, and unsafe housing/displacement.
- 1.1.19. 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.
- 1.1.20. 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.
- 1.1.21. Department – the Colorado Department of Health Care Policy and Financing, a Department of the government of the State of Colorado.
- 1.1.22. 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.
- 1.1.23. District – a Department defined distinct geographic county-based service area. Each District is served by a single SEP Agency.
- 1.1.24. Eligibility Determination – determination of eligibility for Long Term Services and Supports (LTSS) programs.
- 1.1.25. Functional Eligibility – an individual meets functional criteria for a Long Term Services and Supports program as determined by the Department and the Uniform Long Term Care (ULTC) 100.2, which includes the initial and continued stay review functional eligibility assessments.
- 1.1.26. Functional Needs Assessment – a comprehensive evaluation with the individual seeking services and appropriate collaterals (such as family members, friends, and/or caregivers)

which also includes, but is not limited to a written evaluation by the case manager utilizing 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.

- 1.1.27. Fraud – An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person and includes any act that constitutes fraud under any federal or state law.
- 1.1.28. Health First Colorado – Colorado's Medicaid Program.
- 1.1.29. Health Insurance Portability and Accountability Act (HIPAA) – The Health Insurance Portability and Accountability Act of 1996, as amended.
- 1.1.30. Home and Community Based Services (HCBS) Waivers – 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).
- 1.1.31. Hospital Back Up- an LTSS program for Members who have complex wound care and/or are ventilator-dependent or medically complex.
- 1.1.32. Intake, Screening and Referral – the initial contact with Clients by the Single Entry Point agency and shall include, but is not limited to a preliminary screening in the following areas: a Client's need for long term services and supports; a Client's need for referral to other programs or services; a Client's eligibility for financial and program assistance; and the need for a Functional Eligibility Assessment of the Client seeking services.
- 1.1.33. Key Personnel – The position or positions that are specifically designated as such in this Contract.
- 1.1.34. Long Term Services and Supports (LTSS) – the services and supports used by Members 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.
- 1.1.35. Member – Any individual enrolled in the Colorado Medicaid program, Colorado's CHP+ program or the Colorado Indigent Care Program, as determined by the Department.
- 1.1.36. Monitoring – a role of case managers to ensure that Members get the authorized services in accordance with their Support Plan, to include, but not limited to monitoring the quality of services and supports provided to Members enrolled in an HCBS waiver.
- 1.1.37. National Core Indicators-Aging and Disabilities (NCI-AD) – 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 ADvancing States 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 measures 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.

- 1.1.38. No Wrong Door – Department led initiative to connect all Coloradoans to LTSS regardless of age, disability or pay source.
- 1.1.39. Operational Start Date – When the Department authorizes Contractor to begin fulfilling its obligations under the Contract.
- 1.1.40. Other Personnel – Individuals and Subcontractors, in addition to Key Personnel, assigned to positions to complete tasks associated with the Work.
- 1.1.41. Person-centered Approach – respecting and valuing Clients' and Members' preferences, strengths, and contributions.
- 1.1.42. Pre-Admission Screening and Resident Review (PASRR) – the review that occurs for all Clients 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 provides and whether Clients who need nursing facility services also need specialized services.
- 1.1.43. Professional Medical Information Page (PMIP) – the medical information document signed by a licensed medical professional used as a component of the Functional Eligibility Assessment to determine the Client's or Member's need for a LTSS program.
- 1.1.44. Program – 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).
- 1.1.45. 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.
- 1.1.46. 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.
- 1.1.47. 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 June 30.
- 1.1.48. Reassessment – a periodic comprehensive evaluation with the Member receiving services, appropriate collaterals, and case manager, with supporting diagnostic information from the Member's medical provider to re-determine the Member's level of functioning, service needs, available resources, and potential funding resources.
- 1.1.49. Region – a distinct geographic area, determined by the Department, which is comprised of

one or more Districts.

- 1.1.50. Regional Accountable Entity (RAE) – a single regional entity responsible for duties previously performed by Regional Care Collaborate Organizations and Behavioral Health Organizations (BHO).
- 1.1.51. Resource Development – the study, establishment and implementation of additional resources or services that extend the capabilities of community based LTSS systems to better serve LTSS Clients and Members and those likely to need community based LTSS in the future.
- 1.1.52. Single Entry Point (SEP) – the availability of a single access or entry point within a local area where a current or potential LTSS Client or Member can obtain LTSS information, screening, Functional Eligibility Assessment, Functional Needs Assessment, and referral to appropriate LTSS programs and case management services.
- 1.1.53. Single Entry Point Agency (SEP Agency) – the organization selected to provide intake, screening, referral, Functional Eligibility Assessment, and case management functions for persons in need of or receiving LTSS within a Single Entry Point District.
- 1.1.54. Start-Up Period – The period starting on the Effective Date and ending on the Operational Start Date.
- 1.1.55. Support Plan – the written document that specifies identified and needed services, to include Medicaid and non-Medicaid services regardless of funding source, to assist a Member 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 Member's change in condition such that a new support need is identified.
- 1.1.56. Support Planning – the process of working with the Member receiving services and people chosen by the Member to identify goals, needed services, individual choices and preferences, and appropriate service providers based on the Member seeking or receiving services, assessment and knowledge of the Member and of community resources. Support planning informs the Member receiving services of his or her rights and responsibilities.

2. ACRONYMS AND ABBREVIATIONS

- 2.1. The following list is provided to assist the reader in understanding certain acronyms and abbreviations used in this Contract:
 - 2.1.1. CFR – Code of Federal Regulations
 - 2.1.2. CHP+ –Child Health Plan Plus
 - 2.1.3. CMS – the Federal Centers for Medicare and Medicaid Services
 - 2.1.4. CORA –Colorado Open Records Act, C.R.S. §24–72–200.1, et. seq.
 - 2.1.5. C.R.S. – Colorado Revised Statutes
 - 2.1.6. HIPAA – Health Insurance Portability and Accountability Act of 1996, as amended.
 - 2.1.7. MFCU – the Colorado Medicaid Fraud Control Unit in the Colorado Department of Law
 - 2.1.8. PHI – Protected Health Information
 - 2.1.9. PII – Personally Identifiable Information
 - 2.1.10. SFY – State Fiscal Year

- 2.1.11. U.S.C. – United States Code
- 2.1.12. VARA – Visual Rights Act of 1990

EXHIBIT D, CONTRACTOR'S GENERAL REQUIREMENTS

1. CONTRACTOR'S GENERAL REQUIREMENTS

- 1.1. The Department will contract with only one 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 Contract.
- 1.2. The Contractor shall serve as the Single Entry Point Agency for the following counties:
 - 1.2.1. El Paso County.
 - 1.2.2. Park County.
 - 1.2.3. Teller County.
- 1.3. 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 Contract, 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 Contract.
- 1.4. 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 Contract 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.
- 1.5. 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 Contract.
- 1.6. 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 Contract. The Contractor shall make such records available to the Department upon request throughout the term of the Contract.
- 1.7. Deliverables
 - 1.7.1. All Deliverables shall meet Department-approved format and content requirements. The Department will specify the number of copies and media for each Deliverable.
 - 1.7.2. All Deliverables shall be submitted to the Department by close of business on the due date determined by the Department.
 - 1.7.2.1. 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:
 - 1.7.2.1.1. Gather and document requirements for the Deliverable.
 - 1.7.2.1.2. Create a draft in the Department-approved format for the individual Deliverable.

- 1.7.2.1.3. Perform internal quality control review(s) of the Deliverable, including, but not limited to:
 - 1.7.2.1.3.1. Readability.
 - 1.7.2.1.3.2. Spelling.
 - 1.7.2.1.3.3. Grammar.
 - 1.7.2.1.3.4. Completion.
- 1.7.2.1.4. Adhere to all required templates or development of templates.
- 1.7.2.2. The Department will review the Deliverable and may direct Contractor to make changes to the Deliverable. Contractor shall make all changes within five Business Days following the Department's direction to make the change unless the Department provides a longer period in writing.
 - 1.7.2.2.1. 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.
 - 1.7.2.2.2. 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.
- 1.7.2.3. 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. The Contractor shall not receive payment for a Deliverable until it has been received and accepted by the Department. Deliverables requiring correction shall not be paid until receipt of a revised and accepted Deliverable by the Department.
- 1.7.3. Contractor shall employ an internal quality control process to ensure that all Deliverables 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. Contractor shall retain all draft and marked-up documents and checklists utilized in reviewing Deliverables for reference as directed by the Department.
- 1.7.4. 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.
- 1.7.5. 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 Contract shall be considered to be in Mountain Time, adjusted for Daylight Saving Time as appropriate, unless specifically stated otherwise.
- 1.7.6. No Deliverable, report, data, procedure or system created by Contractor for the Department that is necessary to fulfilling Contractor's responsibilities under the Contract, as determined by the Department, shall be considered proprietary.

1.7.7. 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 Contract.

1.7.7.1. Any Deliverable described as an update of another Deliverable shall be considered a version of the original Deliverable for the purposes of this subsection.

1.8. Stated Deliverables and Performance Standards

1.8.1. 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.

1.9. Communication with the Department

1.9.1. 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.

1.9.2. The Department will use a transmittal process to provide the Contractor with official direction within the scope of the Contract. 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:

1.9.2.1. The date the transmittal will be effective.

1.9.2.2. Direction to the Contractor regarding performance under the Contract.

1.9.2.3. A due date or timeline by which the Contractor shall comply with the direction contained in the transmittal.

1.9.2.4. The signature of the Department employee who has been designated to sign transmittals.

1.9.2.4.1. 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.

1.9.3. 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.

1.9.3.1. 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.

- 1.9.4. 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.
- 1.9.5. 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.
- 1.9.6. Transmittals may not be used in place of an amendment, and may not, under any circumstances be used to modify the term of the Contract or any compensation under the Contract. 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.
- 1.9.7. The Contractor shall retain all transmittals for reference and shall provide copies of any received transmittals upon request by the Department.
- 1.9.8. **Client and Member Engagement**
 - 1.9.8.1. Person- and Family-Centered Approach
 - 1.9.8.1.1. The Contractor shall actively engage Members in their health and well-being by demonstrating the following:
 - 1.9.8.1.1.1. Responsiveness to Member and family/caregiver needs by incorporating best practices in communication and cultural responsiveness in service delivery.
 - 1.9.8.1.1.2. Utilization of various tools to communicate clearly and concisely.
 - 1.9.8.1.1.3. The Contractor shall align Member engagement activities with the Department's person- and family-centered approach that respects and values individual preferences, strengths, and contributions.
- 1.9.9. **Cultural Responsiveness**
 - 1.9.9.1. The Contractor shall provide and facilitate the delivery of services in a culturally competent manner to all Clients and Members, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation or gender identity.
 - 1.9.9.2. The Contractor shall provide all information for Clients and Members in a manner and format that may be easily understood and is readily accessible by Clients and Members.
 - 1.9.9.2.1. Readily accessible is defined as electronic information and services that comply with modern accessibility standards, such as Section 508 of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act.
- 1.9.10. **Language Assistance Services**
 - 1.9.10.1. The Contractor shall provide language assistance services including bilingual staff and/or interpreter services, at no cost to any Client or Member. Language assistance shall be provided at all points of contact, in a timely manner and during all hours of operation.
 - 1.9.10.2. The Contractor shall make oral interpretation available in all languages.

- 1.9.10.3. The Contractor shall assure the competence of language assistance provided by interpreters and bilingual staff.
- 1.9.10.4. The Contractor shall not use family and friends to provide interpretation services except by request of the Client or Member.
- 1.9.10.5. The Contractor shall provide interpreter services for all interactions with Clients and Members when there is no Contractor staff person available who speaks a language understood by a Client or Member.
- 1.9.10.6. The Contractor shall notify Clients and Members verbally regarding the Client's or Member's right to receive the following language assistance services, as well as how to access the following language assistance services.
 - 1.9.10.6.1. Oral interpretation for any language. Oral interpretation requirements apply to all non-English languages, not just those that the state identifies as prevalent.
 - 1.9.10.6.2. The Contractor shall ensure that language assistance services shall include, but are not limited to, the use of auxiliary aids such as TTY/TDY and American Sign Language.
 - 1.9.10.6.3. The Contractor shall ensure that customer service telephone functions easily access interpreter or bilingual services.
- 1.9.11. **Written Materials for Clients and Members**
 - 1.9.11.1. The Contractor shall ensure that all written materials it creates for distribution to Clients and Members meet all noticing requirements of 45 C.F.R. Part 92.
 - 1.9.11.2. The Contractor shall ensure that all written materials it creates for distribution to Clients and Members are culturally and linguistically appropriate to the recipient.
 - 1.9.11.3. The Contractor shall write all materials in easy to understand language.
- 1.9.12. **Client and Member Communications**
 - 1.9.12.1. The Contractor shall maintain consistent communication, both proactive and responsive, with Clients and Members.
 - 1.9.12.2. The Contractor shall assist any Client or Member who contacts the Contractor, including Clients and Members not in the Contractor's Region/District who need assistance with contacting his/her SEP, CCB, RAE, or other agencies.
- 1.9.13. **Client and Member Rights**
 - 1.9.13.1. The Contractor shall have written policies guaranteeing each Client's and Member's right to be treated with respect and due consideration for his or her dignity and privacy.
 - 1.9.13.2. The Contractor shall provide information to Clients and Members regarding their rights that include, but are not limited to:
 - 1.9.13.2.1. The right to be treated with respect and due consideration for their dignity and privacy.
 - 1.9.13.2.2. The right to participate in decisions regarding their services.
 - 1.9.13.2.3. The right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience or retaliation.

- 1.9.13.2.4. The right to request and receive a copy of their records.
- 1.9.13.2.5. The right to obtain available and accessible services under the Contract.
- 1.9.13.3. The Contractor shall post and distribute rights to individuals, including but not limited to:
 - 1.9.13.3.1. Clients/Members.
 - 1.9.13.3.2. Client's/Member's families.
 - 1.9.13.3.3. Providers.
 - 1.9.13.3.4. Case Workers.
 - 1.9.13.3.5. Stakeholders.

1.10. Start-Up Plan

- 1.10.1. The Contractor shall create a Start-Up Plan that contains, at a minimum, the following:
 - 1.10.1.1. A description of all steps, timelines, and milestones necessary to fully transition the services described in the Contract from a prior contractor to the Contractor.
 - 1.10.1.2. A description of all steps, timelines, milestones, and Deliverables necessary for the Contractor to be fully able to perform all Work by the Operational Start Date.
 - 1.10.1.3. A listing of all personnel involved in the start-up and what aspect of the start-up they are responsible for.
 - 1.10.1.4. An operational readiness review for the Department to determine if the Contractor is ready to begin performance of all Work.
 - 1.10.1.5. The risks associated with the start-up and a plan to mitigate those risks.
 - 1.10.1.6. Prepare Start-Up Plan and deliver them to the Department for review and approval.
 - 1.10.1.6.1. **DELIVERABLE:** Start-Up Plan
 - 1.10.1.6.2. **DUE:** No later than 90 (ninety) Days Prior to the Operational Start Date

1.11. Start-Up Period

- 1.11.1. With input from the Department, the Contractor shall complete all of the following during the Start-Up Period:
 - 1.11.1.1. Schedule and facilitate a Kickoff Meeting that includes the following:
 - 1.11.1.1.1. Key Personnel.
 - 1.11.1.1.2. Department Leadership.
 - 1.11.1.1.3. Department Project Team Members.
 - 1.11.1.1.4. Any other relevant and needed persons or organizations.
 - 1.11.1.2. Develop Kickoff Meeting materials and an agenda that contains, at a minimum, the following:
 - 1.11.1.2.1. Initial timelines for starting the Work and creating initial Deliverables.
 - 1.11.1.2.2. Establishment of Communication channels to describe how the Work is to be completed.
 - 1.11.1.2.3. Transmission methods and specific Deliverable templates or requirements.

- 1.11.1.2.4. Any other item required to initiate and ensure Work is started and completed on time.
- 1.11.1.3. Prepare Kickoff Meeting Minutes and deliver them to the Department for review and approval.

- 1.11.1.3.1. **DELIVERABLE:** Kickoff Meeting Agenda & Materials

- 1.11.1.3.2. **DUE:** Within three (3) Business Days after the Kickoff Meeting

1.12. Policy and Procedures Manual

- 1.12.1. Create a Policy and Procedures Manual that contains the policies and procedures for all systems and functions necessary for the Contractor to complete its obligations under the Contract.

- 1.12.2. Prepare all documents, forms, training materials, not developed by the Department, and any other documents, information and protocols that require approval by the Department prior to the end of the Start-Up Period and are necessary for the Contractor to begin work on the Operational Start Date. The Contractor shall deliver all documents, forms, training materials, and any other documents, information and protocols that require approval by the Department to the Department for review and approval in a timely manner that allows the Department to review and approve those documents prior to end of the Start-Up Period.

- 1.12.2.1. **DELIVERABLE:** Policies & Procedures Manual

- 1.12.2.2. **DUE:** No later than the Operational Start Date

1.13. Operations Guide

- 1.13.1. Contractor shall not engage in any Work under the Contract, other than the Work described in this Section 2.9 and 2.10, 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 Contract.

- 1.13.2. The Contractor shall create and implement an Operations Guide. The Operations Guide shall include the creation and management of the following:

- 1.13.2.1. Communication Plan.

- 1.13.2.2. Business Continuity Plan.

- 1.13.2.3. Start-Up Plan.

- 1.13.2.4. Closeout Plan.

- 1.13.3. The Contractor shall submit the Operations Guide to the Department for review approval, and payment.

- 1.13.3.1. **DELIVERABLE:** Operations Guide

- 1.13.3.2. **DUE:** Within 30 Business Days after the Effective Date

- 1.13.4. The Contractor shall review its Operations Guide on an annual basis and determine if any modifications are required to account for any changes in the Work, in the Department's processes and procedures or in the Contractor's processes and procedures and update the Guide as appropriate to account for any changes. The Contractor shall submit an Annual Operations Guide Update that contains all changes from the most recently approved prior Operations Guide or Annual Operations Guide Update or shall note that there were no

changes. If changes were made to the Operations Guide, the Contractor shall also compile and submit a summary of all changes to the Department.

1.13.5. The Contractor shall submit the Annual Operations Guide Update and Summary to the Department for review, approval, and payment.

1.13.5.1. **DELIVERABLE:** Annual Operations Guide Update and Summary

1.13.5.2. **DUE:** Annually, by June 30th of each year

1.13.6. The Operational Start Date shall not occur until Contractor has completed all requirements of the Operations Guide, unless the Department provides written approval otherwise.

1.13.7. Communication with Members, Providers, and Other Entities

1.13.7.1. The Contractor shall create a Communication Plan that includes, but is not limited to, all of the following:

1.13.7.1.1. 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.

1.13.7.1.2. 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.

1.13.7.1.3. 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.

1.13.7.1.4. 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.

1.13.7.1.5. A listing of the following individuals within the Contractor's organization, including cell phone numbers and email addresses:

1.13.7.1.5.1. An individual who is authorized to speak on the record regarding the Work, the Contract or any issues that arise that are related to the Work.

1.13.7.1.5.2. An individual who is responsible for any website or marketing related to the Work.

1.13.7.1.5.3. Back-up communication staff that can respond in the event that the other individuals listed are unavailable.

1.13.8. **Business Continuity Plan**

1.13.8.1. 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:

1.13.8.1.1. 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 Contract.

1.13.8.1.2. 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.

- 1.13.8.1.2.1. In the event of a Disaster, the plan shall also include how the Contractor will make all information available at its back-up facilities.
- 1.13.8.1.3. 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.
- 1.13.8.1.4. How the Contractor will minimize the effects on Members of any Business Interruption.
- 1.13.8.1.5. 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.
- 1.13.8.1.6. Planned long-term back-up facilities out of which the Contractor can continue operations after a Disaster.
- 1.13.8.1.7. The time period it will take to transition all activities from the Contractor's regular facilities to the back-up facilities after a Disaster.

1.13.9. **Closeout Plan**

- 1.13.9.1. 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 Contract from the Contractor to the Department or to another contractor selected by the Department to be the contractor after the termination of the Contract.
 - 1.13.9.1.1. The Closeout Plan shall include, but is not limited to:
 - 1.13.9.1.1.1. Transfer of Clients and Members
 - 1.13.9.1.1.1.1. Transfer of documentation to include all electronic and physical documentation.
 - 1.13.9.1.1.1.2. Transfer of all Client and Member records through the Department Case Management Systems.
 - 1.13.9.1.1.2. Transfer of services
 - 1.13.9.1.1.3. Transfer of Case Management Services
 - 1.13.9.1.2. 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 Clients and Members and the Department.
 - 1.13.9.1.2.1. The Contractor shall ensure all policy, procedures, training, and appeals information are transferred to the Department.
 - 1.13.9.1.3. The Contractor shall deliver the Closeout Plan to the Department for review and approval.
- 1.13.9.2. The Contractor shall be ready to perform all Work by the Operational Start Date.
- 1.13.9.3. In the event the Contractor is required to implement their Closeout Plan, the Contractor shall provide weekly updates to the Department demonstrating compliance and progression to toward meeting the milestones described herein and in the approved

Closeout Plan.

1.14. Closeout Period

- 1.14.1. During the Closeout Period, the Contractor shall complete all of the following:
 - 1.14.1.1. 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.
 - 1.14.1.2. 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.
 - 1.14.1.3. Ensure that all responsibilities under the Contract have been transferred to the Department, or to another contractor at the Department's direction, without significant interruption.
 - 1.14.1.4. Notify any Subcontractors of the termination of the Contract, as directed by the Department.
 - 1.14.1.5. 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.
 - 1.14.1.5.1. **DELIVERABLE:** Member Notifications
 - 1.14.1.5.2. **DUE:** Ninety (90) days prior to termination of the Contract
 - 1.14.1.6. Continue meeting each requirement of the Contract 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.
 - 1.14.1.7. The Closeout Period may extend past the termination of the Contract. 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 Contract, then any incomplete requirements shall survive termination of the Contract.

1.15. Performance Reviews

- 1.15.1. The Department may conduct desk reviews and/or on-site performance reviews or evaluations of the Contractor in relation to the Work performed under the Contract.
- 1.15.2. 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.
- 1.15.3. 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.

- 1.15.4. The Contractor shall provide all documentation requested by the Department to complete the performance review using the Departments identified process within ten (10) Business Days of the Department request. All documentation must be complied in the Departments prescribed manner to ensure a time efficient review.
- 1.15.5. The Department may conduct these performance reviews or evaluations at any point during the term of the Contract, or after termination of the Contract for any reason.
- 1.15.6. 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.
- 1.15.7. The Department may recoup funding as a result of any performance review or evaluation where payment was rendered for services not complete or not in alignment with federal and/or state regulations or this Contract.

1.16. Renewal Options and Extensions

- 1.16.1. The Department may, within its sole discretion, choose to not exercise any renewal option in the Contract for any reason. If the Department chooses to not exercise an option, it may reprocur the performance of the Work in its sole discretion.
- 1.16.2. The Parties may amend the Contract to extend beyond five 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 Contract with other Department contracts, to address state or federal programmatic or policy changes related to the Contract, or to provide sufficient time to transition the Work.

1.17. Department System Access

- 1.17.1. 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.
- 1.17.2. 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.

1.18. Provider Fraud

- 1.18.1. Contractor shall notify the Department and the Colorado Medicaid Fraud Control Unit of the Colorado Department of Law (MFCU) if it identifies or suspects possible Provider Fraud as a result of any activities in its performance of this Contract.
- 1.18.2. Upon identification or suspicion of possible Provider Fraud, the Contractor shall complete the Contractor Suspected Fraud Written Notice Form provided by the Department.
 - 1.18.2.1. For each incident of identified or suspected Provider Fraud, Contractor shall provide all of the following, at a minimum:
 - 1.18.2.1.1. Written documentation of the findings.

- 1.18.2.1.2. Information on any verbal or written reports.
- 1.18.2.1.3. All details of the findings and concerns, including a chronology of Contractor actions which resulted in the reports, in a format agreed to by the Department.
- 1.18.2.1.4. Information on the identification of any affected claims that have been discovered.
- 1.18.2.1.5. Any claims data associated with its report (in a mutually agreed upon format, if possible).
- 1.18.2.1.6. Any additional information as required by the Department.
- 1.18.3. For each incident of identified or suspected Provider Fraud, Contractor shall deliver the completed Contractor Suspected Fraud Written Notice Form to the Department and the MFCU.
- 1.18.3.1. **DELIVERABLE:** Completed Contractor Suspected Fraud Written Notice Form
- 1.18.3.2. **DUE:** Within three Business Days following the initial discovery of the Fraud or suspected Fraud
- 1.18.4. Contractor shall revise or provide additional information related to the Contractor Suspected Fraud Written Notice Form as requested by the Department or the MFCU.
- 1.18.4.1. **DELIVERABLE:** Contractor Suspected Fraud Written Notice Revisions and Additional Information
- 1.18.4.2. **DUE:** Within three Business Days following the Department's or the MFCU's request, unless the Department or MFCU provides for a different period in its request.

1.19. Member Fraud

- 1.19.1. Contractor shall notify the Department if it identifies or suspects possible Member Fraud as a result of any activities in its performance of this Contract.
- 1.19.2. Upon identification or suspicion of possible Member Fraud, the Contractor shall complete the Contractor Suspected Fraud Written Notice Form provided by the Department.
- 1.19.2.1. For each incident of identified or suspected Member Fraud, Contractor shall provide all of the following, at a minimum:
 - 1.19.2.1.1. All verbal and written reports related to the suspected fraud.
 - 1.19.2.1.2. All details of the findings and concerns, including a chronology of Contractor actions which resulted in the reports, and the Member's State ID number, and Member's date of birth if applicable.
 - 1.19.2.1.3. Information on the identification of any affected claims that have been discovered.
 - 1.19.2.1.4. Any claims data associated with its report in a format agreed to by the Department.
 - 1.19.2.1.5. Any additional information as required by the Department.
- 1.19.3. For each incident of identified or suspected Member Fraud, Contractor shall deliver the completed Contractor Suspected Fraud Written Notice Form to the Department at report.clientfraud@state.co.us, or at such other email address as provided by the Department from time to time.
- 1.19.3.1. **DELIVERABLE:** Completed Contractor Suspected Fraud Written Notice Form

- 1.19.3.2. **DUE:** Within three Business Days following the initial discovery of the Fraud or suspected Fraud
- 1.19.4. Contractor shall revise or provide additional information related to the Contractor Suspected Fraud Written Notice Form as requested by the Department.
- 1.19.4.1. **DELIVERABLE:** Contractor Suspected Fraud Written Notice Revisions and Additional Information
- 1.19.4.2. **DUE:** Within three Business Days following the Department's request, unless the Department provides for a different period in its request.

2. CONTRACTOR PERSONNEL

2.1. Personnel General Requirements

- 2.1.1. Contractor shall provide qualified Key Personnel and Other Personnel as necessary to perform the Work throughout the term of the Contract.
- 2.1.2. Contractor shall designate the following Key Personnel positions:
 - 2.1.2.1. Administrator
 - 2.1.2.1.1. The Administrator shall be responsible for all of the following:
 - 2.1.2.1.1.1. Serving as Contractor's primary point of contact for the Department.
 - 2.1.2.1.1.2. Ensuring the completion of all Work in accordance with the Contract's requirements. This includes, but is not limited to, ensuring the accuracy, timeliness and completeness of all work.
 - 2.1.2.1.1.3. Ensuring the timely submission and accuracy of all Deliverables submitted to the Department.
 - 2.1.2.1.1.4. Overseeing all other Key Personnel and Other Personnel and ensuring proper staffing levels throughout the term of the Contract.
 - 2.1.2.2. Case Management Supervisor(s)
 - 2.1.2.2.1. 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.*
- 2.1.3. Other Personnel
 - 2.1.3.1. 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.
 - 2.1.3.2. 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.1.d *et seq.*
 - 2.1.3.3. Contractor shall provide the Department with a final list of Key Personnel assigned to the Contract and appropriate contact information for those individuals.
 - 2.1.3.3.1. **DELIVERABLE:** Key Personnel assigned to the Contract
 - 2.1.3.3.2. **DUE:** Within five (5) Business Days after the Effective Date
 - 2.1.3.3.3. The Contractor shall provide the Department with a final list of individuals assigned to the Contract and appropriate contact information for those individuals.

- 2.1.3.3.3.1. **DELIVERABLE:** Final list of names of the individuals assigned to the Contract
- 2.1.3.3.3.2. **DUE:** Within five (5) Business Days after the Effective Date
- 2.1.3.3.4. The Contractor shall update this list as needed to account for changes in the individuals assigned to the Contract.
- 2.1.3.3.4.1. **DELIVERABLE:** Updated list of names of the individuals assigned to the Contract
- 2.1.3.3.4.2. **DUE:** Within five (5) Business Days after changes to the individuals assigned to the Contract are identified by the Contractor.
- 2.1.4. 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 Colorado 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.
- 2.1.5. Contractor shall not permit any individual proposed for assignment to Key Personnel positions to perform any Work prior to the Department's approval of that individual to be assigned as Key Personnel.
- 2.1.6. If any of the 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 the Contractor shall submit copies of such current licenses and certifications to the Department.
- 2.1.6.1. **DELIVERABLE:** A copy of all current professional licensure and certification documentation as specified for Key Personnel or Other Personnel
- 2.1.6.2. **DUE:** Within five (5) Business Days of receipt of updated licensure or upon request by the Department

2.2. **Personnel Availability**

- 2.2.1. The Contractor shall ensure Key Personnel and Other Personnel assigned to the Contract are available for meetings with the Department during the Department's normal business hours, as determined by the Department. The Contractor shall also make these personnel available outside of the Department's normal business hours and on weekends with prior notice from the Department.
- 2.2.2. The Contractor's Key Personnel and Other Personnel shall be available for all regularly scheduled meetings between the Contractor and the Department, unless the Department has granted prior written approval otherwise.
- 2.2.3. The Contractor shall ensure that the Key Personnel and Other Personnel attending all meetings between the Department and the Contractor have the authority to represent and commit the Contractor regarding work planning, problem resolution and program development.

- 2.2.4. 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.
- 2.2.5. All of the 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 provides telephone or video conferencing capabilities. If the Contractor has any personnel attend by telephone or video conference, the Contractor shall provide all additional equipment necessary for attendance, including any virtual meeting space or telephone conference lines.
- 2.2.6. The Contractor shall respond to all telephone calls, voicemails, and emails from the Department within two (2) Business Days of receipt by the Contractor, unless the situation is identified as urgent by the Department. For situations identified as urgent by the Department, the Contractor must respond to the Department the same business day but no later than twenty-four (24) hours following the request.

2.3. Other Personnel Responsibilities

- 2.3.1. The Contractor shall use its discretion to determine the number of Other Personnel necessary to perform the Work in accordance with the requirements of this Contract. If the Department determines that the Contractor has not provided sufficient Other Personnel to perform the Work in accordance with the requirements of this Contract, the Contractor shall provide all additional Other Personnel necessary to perform the Work in accordance with the requirements of this Contract at no additional cost to the Department.
- 2.3.2. The Contractor shall ensure that all Other Personnel have sufficient training and experience to complete all portions of the Work assigned to them. The Contractor shall provide all necessary training to its Other Personnel, except for Department provided training specifically described in this Contract.
- 2.3.3. The Contractor may subcontract to complete a portion of the Work required by the Contract. The conditions for using a Subcontractor or Subcontractors are as follows:
 - 2.3.3.1. The Contractor shall not subcontract more than forty (40%) percent of the Work. In this instance this requirement shall not apply to any Subcontractor that is substantially owned by the contractor.
 - 2.3.3.2. The Contractor shall provide the organizational name of each Subcontractor and all items to be worked on by each Subcontractor to the Department.
 - 2.3.3.2.1. **DELIVERABLE:** Name of each Subcontractor and items on which each Subcontractor will work
 - 2.3.3.2.2. **DUE:** Within five (5) Business Days after the Effective Date. The later of thirty (30) days prior to the subcontractor beginning work or the Effective Date.
 - 2.3.3.3. The Contractor shall obtain prior consent and written approval for any use of Subcontractor(s).

3. INFORMATION TECHNOLOGY RELATED REQUIREMENTS

3.1. Protection of System Data

- 3.1.1. In addition to the requirements of the main body of this Contract, 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 Contract, 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 Contract.

- 3.1.2. 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:
 - 3.1.2.1. Contractor provides physical or logical storage of State Records;
 - 3.1.2.2. Contractor creates, uses, processes, discloses, transmits, or disposes of State Records;
 - 3.1.2.3. Contractor is otherwise given physical or logical access to State Records in order to perform Contractor's obligations under this Contract.
- 3.1.3. Contractor shall, and shall cause its Subcontractors, to do all of the following:
 - 3.1.3.1. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
 - 3.1.3.2. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - 3.1.3.3. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - 3.1.3.4. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - 3.1.3.5. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State's Office of Information Security ("OIS").
 - 3.1.3.6. 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.
- 3.1.4. 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.
- 3.1.5. 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 Contract, 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.
 - 3.1.5.1. 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.

- 3.1.5.2. If Contractor will have access to Federal Tax Information under the Contract, 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.

3.2. Data Handling

- 3.2.1. 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.
- 3.2.2. 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.
- 3.2.3. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract 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.
- 3.2.4. 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 Contract.

EXHIBIT E, SAMPLE OPTION LETTER**OPTION LETTER**

State Agency Department of Health Care Policy and Financing	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract 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 Contract Number Insert CMS number or Other Contract Number of this Option Contract Performance Beginning Date The later of the Effective Date or Month Day, Year Current Contract 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 Contract.
- C. Option to change the quantity of Services under the Contract.
- D. Option to modify the Contract rates.
- E. Option to initiate next phase of the Contract.

2. Required Provisions

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract 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 Contract, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract 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 Contract 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 Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

3. Option Effective Date

- a. The Effective Date of this Option Letter is upon approval of the State Controller or the Effective Date of this Option Letter, whichever is later.

STATE OF COLORADO John W. Hickenlooper, Governor Department of Health Care Policy and Financing Kim Bimestefer, Executive Director By: Kim Bimestefer, Executive Director Date: _____	In accordance with C.R.S. §24-30-202, 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 By: _____ Greg Tanner, Controller; Department of Health Care Policy and Financing Option Effective Date: _____
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EXHIBIT F, FEDERAL PROVISIONS

1. 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. FFATA AND UNIFORM GUIDANCE REQUIREMENTS

2.1. Definitions.

- 2.1.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

- 2.1.1.1. “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.

- 2.1.1.1.1. Awards may be in the form of:

- 2.1.1.1.1.1. Grants;

- 2.1.1.1.1.2. Contracts;

- 2.1.1.1.1.3. 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);

- 2.1.1.1.1.4. Loans;

- 2.1.1.1.1.5. Loan Guarantees;

- 2.1.1.1.1.6. Subsidies;

- 2.1.1.1.1.7. Insurance;

- 2.1.1.1.1.8. Food commodities;

- 2.1.1.1.1.9. Direct appropriations;

- 2.1.1.1.1.10. Assessed and voluntary contributions; and

- 2.1.1.1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

- 2.1.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

- 2.1.1.1.2. Award **does not** include:

- 2.1.1.1.2.1. Technical assistance, which provides services in lieu of money;

- 2.1.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

- 2.1.1.1.2.3. Any award classified for security purposes; or

- 2.1.1.1.2.4. 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).
- 2.1.1.2. “Contract” means the Contract to which these Federal Provisions are attached and includes all Award types in §2.1.1.1.1 of this Exhibit.
- 2.1.1.3. “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.
- 2.1.1.4. “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>.
- 2.1.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;
 - 2.1.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 2.1.1.5.2. A foreign public entity;
 - 2.1.1.5.3. A domestic or foreign non-profit organization;
 - 2.1.1.5.4. A domestic or foreign for-profit organization; and
 - 2.1.1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 2.1.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.1.9. “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.”
- 2.1.1.10. “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.
- 2.1.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.1.13. “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.

- 2.1.1.14. “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.
- 2.1.1.15. “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.
- 2.1.1.16. “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>.
- 2.1.1.17. “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:
 - 2.1.1.17.1. Salary and bonus;
 - 2.1.1.17.2. 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;
 - 2.1.1.17.3. 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;
 - 2.1.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.1.17.6. 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.
- 2.1.1.18. “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.
- 2.1.1.19. “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.

- 2.1.1.20. “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.

2.2. Compliance.

- 2.2.1. 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.

2.3. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.

- 2.3.1. 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.
- 2.3.2. 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.

2.4. Total Compensation.

- 2.4.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 2.4.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 2.4.1.2. In the preceding fiscal year, Contractor received:
 - 2.4.1.2.1. 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
 - 2.4.1.2.2. \$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
 - 2.4.1.3. 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.

2.5. Reporting.

2.5.1. 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.

2.6. Effective Date and Dollar Threshold for Reporting.

2.6.1. Reporting requirements in §2.7 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.

2.6.2. The procurement standards in §2.8 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §2.10 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

2.7. Subrecipient Reporting Requirements.

2.7.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.

2.7.1.1. **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:

2.7.1.1.1. Subrecipient DUNS Number;

2.7.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

2.7.1.1.3. Subrecipient Parent DUNS Number;

2.7.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

2.7.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

2.7.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

2.7.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

2.7.1.2.1. Subrecipient's DUNS Number as registered in SAM.

2.7.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

2.8. Procurement Standards.

2.8.1. 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.

2.8.2. 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.

2.9. Access to Records

2.9.1. 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).

2.10. Single Audit Requirements

2.10.1. 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.

2.10.1.1. **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.

2.10.1.2. **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.

- 2.10.1.3. **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.

2.11. Contract Provisions for Subrecipient Contracts

- 2.11.1. 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.

- 2.11.1.1. **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.

- 2.11.1.1.1. During the performance of this contract, the contractor agrees as follows:

- 2.11.1.1.1.1. 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.

- 2.11.1.1.1.2. 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.

- 2.11.1.1.1.3. 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.
- 2.11.1.1.1.4. 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.
- 2.11.1.1.1.5. 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.
- 2.11.1.1.1.6. 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.
- 2.11.1.1.1.7. 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."
- 2.11.1.2. **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.

- 2.11.1.3. **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.
- 2.11.1.4. **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).
- 2.11.1.5. **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.
- 2.11.1.6. **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.

2.12. Certifications.

- 2.12.1. 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.

2.13. Exemptions.

- 2.13.1. 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 the individual may own or operate in their name.
- 2.13.2. 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.
- 2.13.3. There are no Transparency Act reporting requirements for Vendors.

2.14. Event of Default.

- 2.14.1. 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.

3. NONDISCRIMINATION UNDER FEDERAL AND STATE AUTHORITY

- 3.1. In addition to the statutes described in section 2.11 above, the Contractor shall also at all times during the term of this Contract strictly adhere to, and comply with, all applicable Federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this Contract. The Contractor shall also require compliance with these statutes and regulations in subcontracts and subgrants permitted under this Contract. Applicable Federal and State law and regulations include:

Age Discrimination Act of 1975, as amended	42 U.S.C. 6101, et seq., 45 CFR 90, 45 CFR 91
Age Discrimination in Employment Act of 1967	29 U.S.C. 621-634
Americans with Disabilities Act of 1990 (ADA)	42 U.S.C. 12101, et seq., 28 CFR Part 35
Equal Pay Act of 1963	29 U.S.C. 206(d)
Federal Water Pollution Control Act, as amended	33 U.S.C. 1251, et seq.
Immigration Reform and Control Act of 1986	8 U.S.C. 1324b
Section 504 of the Rehabilitation Act of 1973, as amended	29 U.S.C. 794, 45 CFR 84, 45 CFR 85
Section 508 of the Rehabilitation Act of 1973	29 USC 794, 36 CFR 1194
Title VI of the Civil Rights Act of 1964, as amended	42 U.S.C. 2000d, 45 CFR 80
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e, 29 CFR 1606.2
Title IX of the Education Amendments of 1972, as amended	20 U.S.C. 1681
Civil Rights Division	Section 24-34-301, CRS, <i>et seq.</i>

3.2. The Contractor also shall comply with any and all laws and regulations prohibiting discrimination in the specific program(s) which is/are the subject of this Contract. In consideration of and for the purpose of obtaining any and all federal and/or state financial assistance, the Contractor makes the following assurances, upon which the State relies.

3.2.1. The Contractor shall not discriminate against any person on the basis of race, color, ethnic or national origin, ancestry, age, sex, gender, sexual orientation, gender identity and expression, religion, creed, political beliefs, or disability, race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of Work under this Contract

3.2.2. At all times during the performance of this Contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor.

3.2.3. All websites and web content must meet Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standards, as issued by the World Wide Web Consortium.

3.3. Procurement Provisions

- 3.3.1. The Contractor shall take all necessary affirmative steps, as required by 45 C.F.R. 92.36(e), Colorado Executive Order and Procurement Rules, to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this Contract.

4. FEDERAL FINANCIAL PARTICIPATION RELATED INTELLECTUAL PROPERTY OWNERSHIP

- 4.1. In addition to the intellectual property ownership rights specified in the Contract, the following subsections enumerate the intellectual property ownership requirements the Contractor shall meet during the term of the Contract in relation to federal financial participation under 42 CFR §433.112 and 45 CFR §95.617.
- 4.1.1. The Contractor shall notify the State before designing, developing, creating or installing any new data, new software or modification of a software using Contract Funds. The Contractor shall not proceed with such designing, development, creation or installation of data or software without express written approval from the State.
- 4.1.2. If the Contractor uses Contract Funds to develop necessary materials, including, but not limited to, programs, products, procedures, data and software to fulfill its obligations under the Contract, the Contractor shall document all Contract Funds used in the development of the Work Product, including, but not limited to the materials, programs, procedures, and any data, software or software modifications.
- 4.1.2.1. The terms of this Contract will encompass sole payment for any and all Work Product and intellectual property produced by the Contractor for the State. The Contractor shall not receive any additional payments for licenses, subscriptions, or to remove a restriction on any intellectual property Work Product related to or developed under the terms of this Contract.
- 4.1.3. The Contractor shall provide the State comprehensive and exclusive access to and disclose all details of the Work Product produced using Contract Funds.
- 4.1.4. The Contractor shall hereby assign to the State, without further consideration, all right, interest, title, ownership and ownership rights in all work product and deliverables prepared and developed by the Contractor for the State, either alone or jointly, under this Contract, including, but not limited to, data, software and software modifications designed, developed, created or installed using Contract Funds, as allowable in the United States under 17 U.S.C.S. §201 and §204 and in any foreign jurisdictions.
- 4.1.4.1. Such assigned rights include, but are not limited to, all rights granted under 17 U.S.C.S §106, the right to use, sell, license or otherwise transfer or exploit the Work Product and the right to make such changes to the Work Product as determined by the State.
- 4.1.4.2. This assignment shall also encompass any and all rights under 17 U.S.C.S §106A, also referred to as the Visual Artists Rights Act of 1990 (VARA), and any and all moral rights to the Work Product.

- 4.1.4.3. The Contractor shall require its employees and agents to, promptly sign and deliver any documents and take any action the State reasonably requests to establish and perfect the rights assigned to the State or its designees under these provisions.
- 4.1.4.4. The Contractor shall execute the assignment referenced herein immediately upon the creation of the Work Product pursuant to the terms of this Contract.
- 4.1.5. The State claims sole ownership and all ownership rights in all copyrightable software designed, developed, created or installed under this contract, including, but not limited to:
 - 4.1.5.1. Data and software, or modifications thereof created, designed or developed using Contract Funds.
 - 4.1.5.2. Associated documentation and procedures designed and developed to produce any systems, programs, reports and documentation.
 - 4.1.5.3. All other Work Products or documents created, designed, purchased, or developed by the Contractor and funded using Contract Funds.
- 4.1.6. All ownership and ownership rights pertaining to Work Product created in the performance of this Contract will vest with the State, regardless of whether the Work Product was developed by the Contractor or any Subcontractor.
- 4.1.7. The Contractor shall fully assist in and allow without dispute, both during the term of this Contract and after its expiration, registration by the State of any and all copyrights and other intellectual property protections and registrations in data, software, software modifications or any other Work Product created, designed or developed using Contract Funds.
- 4.1.8. The State reserves a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such software, modifications, documentation and procedures created using Contract Funds on behalf of the State, the Federal Department of Health and Human Services (HHS) and its contractors. Such data and software includes, but is not limited to, the following:
 - 4.1.8.1. All computer software and programs, which have been designed or developed for the State, or acquired by the Contractor on behalf of the State, which are used in performance of the Contract.
 - 4.1.8.2. All internal system software and programs developed by the Contractor or subcontractor, including all source codes, which result from the performance of the Contract; excluding commercial software packages purchased under the Contractor's own license.
 - 4.1.8.3. All necessary data files.
 - 4.1.8.4. User and operation manuals and other documentation.
 - 4.1.8.5. System and program documentation in the form specified by the State.
 - 4.1.8.6. Training materials developed for State staff, agents or designated representatives in the operation and maintenance of this software.

EXHIBIT G, SUPPLEMENTAL PROVISIONS FOR FEDERAL AWARDS

For the purposes of this Exhibit only, Contractor is also identified as "Subrecipient." This Contract 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 Contract or any attachments or exhibits incorporated into and made a part of the Contract, 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

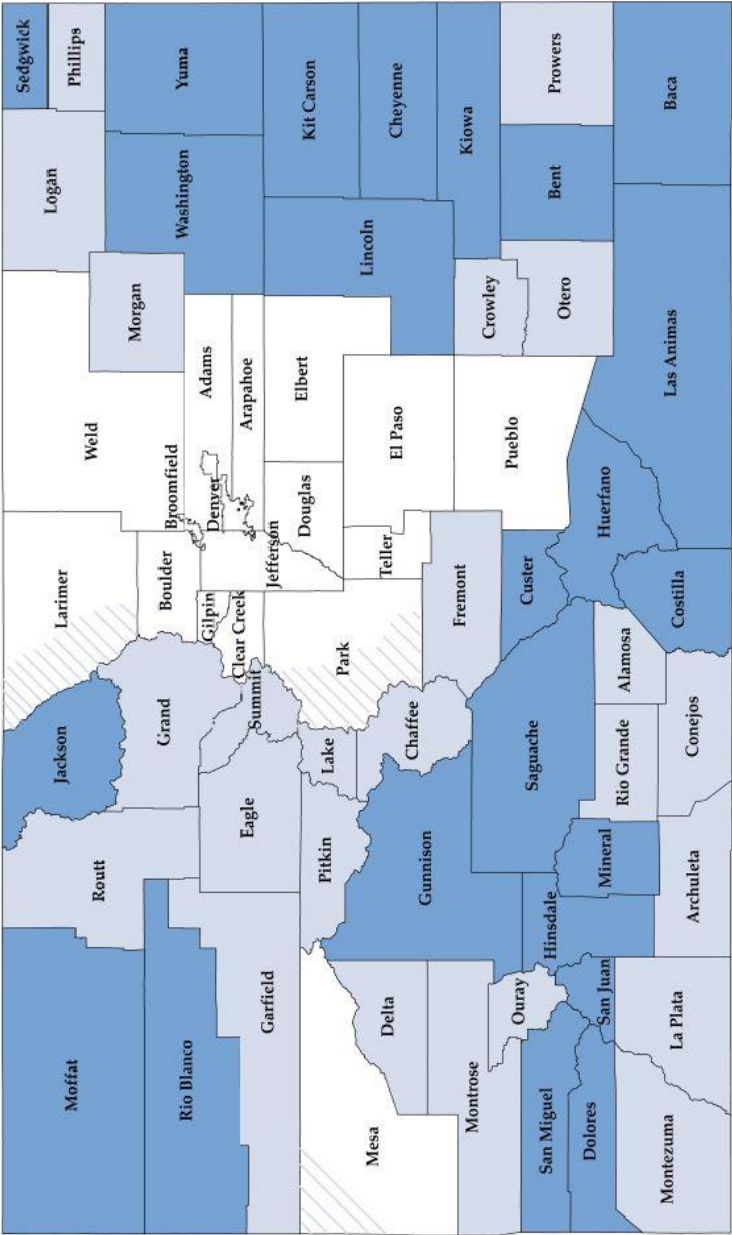
- i. Subrecipient: The Resource Exchange, Inc.
- ii. Subrecipient Data Universal Numbering System (DUNS) Number: 116269028
- iii. The Federal Award Identification Number (FAIN):
Appropriation 275 - 1805CO5ADM and 1805CO5MAP
Appropriation 157 – 1805CO5ADM
- iv. The Federal award date is July 1, 2020;
- v. The subaward period of performance start date is July 1, 2020 and the end date is June 30, 2021;
- 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
21-160442	TBD – Rate Methodology	TBD – Rate Methodology	TBD – Rate Methodology

- 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.



Colorado: County Designations, 2018



County Classifications

- Urban (17)
- Rural (24)
- Frontier (23)
- Rural areas of Urban Counties (approximate)

0 25 50 miles

Data Source Information:
Site addresses were collected and geocoded by the State Office of Rural Health, current as of January 2016.



RURAL HEALTH CENTER

The State Office of Rural Health

The definition of rural and frontier varies depending on the purpose of the program or policy in which they are used. Therefore, these are referred to as programmatic designations, rather than definitions. One designation commonly used to determine geographic eligibility for federal grant programs is based on information obtained through the Office of Management and Budget: All counties that are not designated as parts of Metropolitan Areas (MAs) are considered rural. The Colorado Rural Health Center frequently assumes this designation, as well as further classifies frontier counties as those counties with a population density of six or fewer persons per square mile. You may visit the Rural Health Grants Eligibility Advisor to determine if a county or address is designated rural, or contact the Office of Rural Health Policy at (301) 443-0835.

potential long-term care client can obtain long-term care information, screening, assessment of need, and referral to an appropriate long-term care program and on-going case management services within their designated Region/District. The Operations & Administration Division (OAD) and the Case Management & Quality Performance Division (CMQPD) conducted contract negotiations with the Private SEPs February 20th, and March 16th and 19th. These entities were awarded the SEP contract via RFP UHAA 2020000042. Likewise, the OAD and CMQP Division staff met with OCL leadership on 2/14/2020 to review this contract. Contract negotiations listed above did not result in material changes to the Statement of Work. Please note that the OAD will not be providing not to exceed maximum amounts for each individual entity as these contracts are rate based and driven, mostly, by case count. Instead the maximum amount payable statewide for all SEP Contractors will be provided based on available Long Bill appropriations. Please let me know if you have any questions or would like to discuss. Thanks!	2020...			Yasmin
	Single Entry Point Contract FY 2020...	Sent to Approver 1: Krug, Daniel	Fri Mar 27 2020	Gardner, Yasmin
	Single Entry Point Contract FY 2020...	Approved	Mon Mar 30 2020	Krug, Daniel
	Single Entry Point Contract FY 2020...	Sent to Approver 2: Lofgren, Amanda	Mon Mar 30 2020	Krug, Daniel
	Single Entry Point Contract FY 2020...	Approved	Mon Mar 30 2020	Lofgren, Amanda
	Single Entry Point Contract FY 2020...	Sent to Approver 3: Silva, Bonnie	Mon Mar 30 2020	Lofgren, Amanda
	Single Entry Point Contract FY 2020...	Approved	Wed Apr 01 2020	Silva, Bonnie
	Single Entry Point Contract FY 2020...	Sent to Approver 4: Rusk, Kate	Wed Apr 01 2020	Silva, Bonnie
	Single Entry Point Contract FY 2020...	Sent to Approver 4: Rusk, Kate	Mon Apr 06 2020	Gardner, Yasmin
	Single Entry Point Contract FY 2020...	Approved	Mon Apr 06 2020	Rusk, Kate
	Single Entry Point Contract FY 2020...	Sent to Approver 5: Bimestefer, Kim	Mon Apr 06 2020	Rusk, Kate
	Single Entry Point Contract FY 2020...	Approved	Sun Apr 12 2020	Bimestefer, Kim
	Single Entry Point Contract FY 2020...	All approvals complete	Sun Apr 12 2020	Bimestefer, Kim