STATE OF COLORADO GRANT AGREEMENT

Cover Page

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| State Agency  Insert Department's or IHE's Full Legal Name | | | | | Agreement Number  Insert CMS number or Other Agreement Number |
| Grantee  Insert Grantee's Full Legal Name.  **Grantee UEI**  Insert Grantee's Unique Entity ID | | | | | Agreement Performance Beginning Date  The later of the Effective Date or Month Day, Year |
| Initial Agreement Expiration Date  Month Day, Year |
| Agreement Maximum Amount  Initial Term | | | | | **Fund Expenditure End Date**  Month Day, Year |
|  | State Fiscal Year 20xx | $0.00 | | |
| Extension Terms | | | | | Agreement Authority – For grant agreements that are 100% General Fund as a result of HB24-1466, all references to federal requirements in the grant agreement template are not applicable, except for Exhibit D, Federal Provisions.  Insert Brief Description of the Authority to enter into the Agreement. Include federal authority if appropriate. |
|  | 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 | |
| Agreement Purpose - Briefly describe the Agreement's purpose | | | | | |
| Exhibits and Order of Precedence  The following Exhibits and attachments are included with this Agreement:   1. Exhibit A, Statement of Work. 2. Exhibit B, Sample Option Letter. 3. Exhibit C, Budget. 4. Exhibit D, Federal Provisions. 5. Exhibit E, PII Certification 6. Exhibit F, HIPAA BAA   In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:   1. Exhibit F, HIPAA BAA 2. Exhibit D, Federal Provisions 3. Colorado Special Provisions in §18 of the main body of this Agreement. 4. The provisions of the other sections of the main body of this Agreement. 5. Exhibit A, Statement of Work. 6. Exhibit E, PII Certification 7. Exhibit B, Sample Option Letter. 8. Exhibit C, Budget. | | | | | |
| Principal Representatives | | | | | |
| For the State: | | | | For Grantee: | |
| Name | | | | Name | |
| Department Name | | | | Company Name | |
| Address | | | | Address | |
| Address | | | | Address | |
| City, State Zip | | | | City, State Zip | |
| Email | | | | Email | |

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

|  |  |
| --- | --- |
| **GRANTEE**  INSERT-Legal Name of Grantee  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: Name & Title of Person Signing for Grantee  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **STATE OF COLORADO**  Jared S. Polis, Governor  INSERT-Name of Agency or IHE  INSERT-Name & Title of Head of Agency or IHE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: Name & Title of Person Signing for Agency or IHE  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 2nd State or Grantee Signature if Needed  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: Name & Title of Person Signing for Signatory  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **LEGAL REVIEW**  Philip J. Weiser, Attorney General  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: Assistant Attorney General  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.  **STATE CONTROLLER**  **Robert Jaros, CPA, MBA, JD**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: Name of Agency or IHE Delegate-Please delete if agreement will be routed to OSC for approval  Effective Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

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1. PARTIES

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

1. TERM and Effective Date
   1. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date, except as described in **§5.D**, or after the Fund Expenditure End Date. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in Exhibit Insert Exhibit Number.

* 1. Initial Term

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

* 1. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement 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 this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Grantee in a form substantially equivalent to Sample Option Letter attached to this Agreement.

* 1. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Grantee as provided in **§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 Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

* 1. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Grantee, which shall be governed by **12.A.i.**

* + 1. Method and Content

The State shall notify Grantee 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 Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

* + 1. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in **§12.A.i.a.**

* + 1. Payments

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

* 1. Grantee’s Termination Under Federal Requirements

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

1. DEFINITIONS

The following terms shall be construed and interpreted as follows:

* 1. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
  2. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
  3. “**Breach of Agreement**”means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
  4. “**Budget**” means the budget for the Work described in Exhibit C.
  5. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
  6. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
  7. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
  8. “**Effective Date**” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
  9. “**End of Term Extension**” means the time period defined in **§2.D**.
  10. “**Exhibits**” means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
  11. “Extension Term” means the time period defined in **§2.C.**
  12. “**Federal Award**” means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
  13. “**Federal Awarding Agency**” means a Federal agency providing a Federal Award to a Recipient. Insert Federal Awarding Agency's Full Legal Name and Acronym is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
  14. “**Goods**” means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
  15. “**Grant Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
  16. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq*. C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records 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.
  17. “**Initial Term**” means the time period defined in **§2.B**.
  18. “**Matching Funds**” means the funds provided Grantee as a match required to receive the Grant Funds.
  19. “**Party**” means the State or Grantee, and “Parties” means both the State and Grantee.
  20. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.
  21. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
  22. “**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.
  23. “**Recipient**” means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
  24. “**Services**” means the services to be performed by Grantee as set forth in this Agreement, and shall include any services to be rendered by Grantee in connection with the Goods.
  25. “**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, PCI, Tax Information, CJI, 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 Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, 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.
  26. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
  27. “**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.
  28. “**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.
  29. “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees of grant funds.
  30. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Grantee is a Subrecipient.
  31. “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
  32. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
  33. “**Work**” means the Goods delivered and Services performed pursuant to this Agreement.
  34. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

1. STATEMENT OF WORK

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

1. PAYMENTS TO GRANTEE
   1. Maximum Amount

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

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

Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Grantee shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

* + 1. Payment Disputes

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

* + 1. Available Funds-Contingency-Termination

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

* + 1. Federal Recovery

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

* 1. Matching Funds

Grantee shall provide Matching Funds as provided in **§5.A** and Exhibit A. Grantee shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Grantee’s obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Grantee and paid into Grantee’s treasury or bank account. Grantee represents to the State that the amount designated “Grantee’s Matching Funds” in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Grantee does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee’s laws or policies.

* 1. Reimbursement of Grantee Costs

Only with prior written approval, the State shall reimburse Grantee’s allowable costs, not exceeding the maximum total amount described in Exhibit A and **§5.A** for all allowable costs described in this Grant and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit A. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Grantee’s costs for Work performed after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:

* + 1. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
    2. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).
  1. Close-Out

Grantee shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement due to Grantee’s failure to submit required documentation, then Grantee may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

1. REPORTING - NOTIFICATION
   1. Quarterly Reports

In addition to any reports required pursuant to **§16** or pursuant to any other Exhibit, for any Agreement having a term longer than three months, Grantee shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

* 1. Litigation Reporting

If Grantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Grantee’s ability to perform its obligations under this Agreement, Grantee shall, within ten 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 for this Agreement.

* 1. Performance and Final Status

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

* 1. Violations Reporting

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

1. GRANTEE RECORDS
   1. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records for a period (the “Record Retention Period”) of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

* 1. Inspection

Grantee shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two 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.

* 1. Monitoring

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

* 1. Final Audit Report

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

1. CONFIDENTIAL INFORMATION-STATE RECORDS
   1. Confidentiality

Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Agreement as an Exhibit, if applicable; **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI; **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI; and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, if applicable. Grantee shall immediately forward any request or demand for State Records to the State’s Principal Representative.

* 1. Other Entity Access and Nondisclosure Agreements

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

* 1. Use, Security, and Retention

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

* 1. Incident Notice and Remediation

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

* 1. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a “Third-Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit \_\_ on an annual basis Contractor’s duty and obligation to certify as set forth in Exhibit \_\_ shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

1. CONFLICTS OF INTEREST
   1. Actual Conflicts of Interest

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

* 1. Apparent Conflicts of Interest

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

* 1. Disclosure to the State

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

* 1. Contractor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Contract.

1. INSURANCE

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

* 1. Workers’ Compensation

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

* 1. 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:

* + 1. $1,000,000 each occurrence;
    2. $1,000,000 general aggregate;
    3. $1,000,000 products and completed operations aggregate; and
    4. $50,000 any one fire.
  1. 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.

* 1. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation, or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

* + 1. $1,000,000 each occurrence; and
    2. $2,000,000 general aggregate.
  1. Professional Liability Insurance

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

* + 1. $1,000,000 each occurrence; and
    2. $1,000,000 general aggregate.
  1. Crime Insurance

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

* + 1. $1,000,000 each occurrence; and
    2. $1,000,000 general aggregate.
  1. Additional Insured

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

* 1. Primacy of Coverage

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

* 1. Cancellation

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

* 1. Subrogation Waiver

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

* 1. Public Entities

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

* 1. Certificates

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

1. BREACH of Agreement

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

1. REMEDIES
   1. State’s Remedies

If Grantee is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§11,** shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

* + 1. Termination for Breach

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

* + - 1. Obligations and Rights

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

* + - 1. Payments

Notwithstanding anything to the contrary, the State shall only pay Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee’s action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.E**.

* + - 1. Damages and Withholding

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

* + 1. Remedies Not Involving Termination

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

* + - 1. Suspend Performance

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

* + - 1. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

* + - 1. Deny Payment

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

* + - 1. Removal

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

* + - 1. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Grantee shall, as approved by the State **(i)** secure that right to use such Work for the State and Grantee; **(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.

* 1. Grantee’s Remedies

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

1. Dispute Resolution
   1. Initial Resolution

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

* 1. Resolution of Controversies

If the initial resolution described in **§13.A** fails to resolve the dispute within ten Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S. (the “Resolution Statutes”), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

1. NOTICES AND REPRESENTATIVES

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

1. RIGHTS IN WORK PRODUCT And Other Information
   1. Work Product
      1. Copyrights

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

* + 1. Patents

In addition, Grantee grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Grantee that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

* + 1. Assignments and Assistance

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

* 1. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, “State Materials”). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee’s obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

* 1. Exclusive Property of Grantee

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

1. STATEWIDE Contract MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Agreement is $100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Grantee agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State’s Agreement management system (“Contract Management System” or “CMS”). Grantee’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

1. GENERAL PROVISIONS
   1. Assignment

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

* 1. Subcontracts

Grantee shall not enter into any subgrant or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Grantee shall submit to the State a copy of each such subgrant or subcontract upon request by the State. All subgrants and subcontracts entered into by Grantee in connection with this Agreement 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 Agreement. If the entity with whom Grantee enters into a subcontract or subgrant would also be considered a Subrecipient, then the subcontract or subgrant entered into by Grantee shall also contain provisions permitting both Grantee and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

* 1. Binding Effect

Except as otherwise provided in **§17.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.

* 1. Authority

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

* 1. Captions and References

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

* 1. Counterparts

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

* 1. Entire Understanding

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

* 1. Digital Signatures

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

* 1. Modification

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

* 1. Statutes, Regulations, Fiscal Rules, and Other Authority

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

* 1. External Terms and Conditions

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

* 1. Severability

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

* 1. Survival of Certain Agreement Terms

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

* 1. Taxes

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

* 1. Third Party Beneficiaries

Except for the Parties’ respective successors and assigns described in **§** **17.A,** this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

* 1. Waiver

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

* 1. CORA Disclosure

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

* 1. Standard and Manner of Performance

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

* 1. Licenses, Permits, and Other Authorizations

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

* 1. Indemnification
     1. General Indemnification

Grantee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

* + 1. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Grantee in violation of **§8** may be cause for legal action by third parties against Grantee, the State, or their respective agents. Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys’ fees and costs) incurred by the State in relation to any act or omission by Grantee, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

* + 1. Intellectual Property Indemnification

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

* + 1. Accessibility Indemnification

Grantee shall indemnify, save, and hold harmless 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 Grantee’s failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

* 1. Compliance with State and Federal Law, Regulations, and Executive Orders

Grantee shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Grant.

* 1. Accessibility
     1. Grantee shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, *et seq*., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor’s Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Grantee shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
     2. The State may require Grantee’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Grantee’s Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

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

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

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

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

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

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

* 1. **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 Agreement 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.

* 1. **INDEPENDENT CONTRACTOR.**

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee 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 Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee 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.

* 1. **COMPLIANCE WITH LAW.**

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

* 1. **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 Agreement. 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 Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

* 1. **PROHIBITED TERMS.**

Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee’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 Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

* 1. **SOFTWARE PIRACY PROHIBITION.**

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

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

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

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

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

Exhibit A, Statement of Work

Exhibit B, Sample Option Letter

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

1. OPTIONS:
2. Option to extend for an Extension Term
3. Option to change the quantity of Goods under the Agreement
4. Option to change the quantity of Services under the Agreement
5. Option to modify Agreement rates
6. Option to initiate next phase of the Agreement
7. REQUIRED PROVISIONS:
8. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Agreement referenced above,theState hereby exercises its option for an additional term, beginning Insert start dateand ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
9. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Agreement referenced above,theState hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Agreement, as amended.
10. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Agreement referenced above,theState hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.
11. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Agreement referenced above,theState hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start dateand end on Insert ending date at the cost/price specified in Section Number.
12. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement’s Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.
13. Option Effective Date:
14. The effective date of this Option Letter is upon approval of the State Controller or      , whichever is later.

|  |  |
| --- | --- |
| **STATE OF COLORADO**  Jared S. Polis, Governor  INSERT-Name of Agency or IHE  INSERT-Name & Title of Head of Agency or IHE  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: Name & Title of Person Signing for Agency or IHE  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.  **STATE CONTROLLER**  **Robert Jaros, CPA, MBA, JD**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Agency or IHE Delegate-Please delete if agreement will be routed to OSC for approval  Option Effective Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Exhibit C, Budget

Exhibit D, Federal Provisions

1. Applicability of Provisions.
   1. The Grant 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 Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
   2. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
2. Definitions.
   1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
      1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
      2. “Entity” means:
         1. a Non-Federal Entity;
         2. a foreign public entity;
         3. a foreign organization;
         4. a non-profit organization;
         5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
         6. a foreign non-profit organization (only for 2 CFR part 170) only);
         7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
         8. a foreign for-profit organization (for 2 CFR part 170 only).
      3. “Executive” means an officer, managing partner or any other employee in a management position.
      4. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
      5. “Grant” means the Grant to which these Federal Provisions are attached.
      6. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached. Grantee also means Subrecipient.
      7. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
      8. “Nonprofit Organization”means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
         1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
         2. Is not organized primarily for profit; and
         3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
      9. “OMB” means the Executive Office of the President, Office of Management and Budget.
      10. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
      11. “Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
      12. “Subaward” means an award by a Recipient to a Subrecipient or a Contractor funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
      13. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a 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 Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program. Subrecipient also means Grantee.
      14. “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>.
      15. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
          1. Salary and bonus;
          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;
          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;
          4. Change in present value of defined benefit and actuarial pension plans;
          5. Above-market earnings on deferred compensation which is not tax-qualified;
          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.
      16. “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.
      17. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee or Subrecipient at https://sam.gov/content/home.
      18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. 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.
3. Compliance.
   1. Subrecipient shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. 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, at its discretion, may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
4. System for Award Management (SAM) and UNIQUE ENTITY ID Requirements.
   1. SAM. Subrecipient shall maintain the currency of its information in SAM until the Subrecipient submits the final financial report required under the Award or receives final payment, whichever is later. Subrecipient shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
   2. Unique Entity ID. Subrecipient shall provide its Unique Entity ID to its Recipient, and shall update Subrecipient’s information at http://www.sam.gov at least annually after the initial registration, and more frequently if required by changes in Subrecipient’s information.
5. Total Compensation.
   1. Subrecipient shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
      1. The total Federal funding authorized to date under the Award is $30,000 or more; and
      2. In the preceding fiscal year, Subrecipient received:
         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. $30,000,000 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
         3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
6. Reporting.
   1. Pursuant to the Transparency Act, Subrecipient shall report data elements to SAM and to the Recipient as required in this Exhibit. No direct payment shall be made to Subrecipient for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Subrecipient’s obligations under this Grant.
7. Effective Date and Dollar Threshold for Reporting.
   1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is $30,000 or more. If the initial Award is below $30,000 but subsequent Award modifications result in a total Award of $30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $30,000. If the initial Award is $30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $30,000, the Award shall continue to be subject to the reporting requirements.
   2. The procurement standards in §9 below are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.
8. Subrecipient Reporting Requirements.
   1. Subrecipient shall report as set forth below.
      1. To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM ***for each*** Federal Award Identification Number (FAIN) assigned by a Federal agency to a Recipient no later than the end of the month following the month in which the Subaward was made:
         1. Subrecipient Unique Entity ID;
         2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
         3. Subrecipient parent’s organization Unique Entity ID;
         4. Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
         5. Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
         6. Subrecipient’s Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
      2. To Recipient. A Subrecipient shall report to its Recipient, upon the effective date of the Grant, the following data elements:
         1. Subrecipient’s Unique Entity ID as registered in SAM.
         2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
9. Procurement Standards.
   1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
   2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
   3. 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.
   4. Never contract with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never contract with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed $50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
   5. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Subrecipient is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.
10. Access to Records.
    1. A Subrecipient shall permit Recipient and its auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.
11. Single Audit Requirements.
    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.
       1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 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 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. 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.
       3. SubrecipientCompliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart 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 2 CFR 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 Subpart F-Audit Requirements.
12. RequireD Provisions for Subrecepient with Subcontractors.
    1. In addition to other provisions required by the Federal Awarding Agency or the Recipient, Subrecipients shall include all of the following applicable provisions;
       1. For agreements with Subrecipients – Include the terms in the Grant Federal Provisions Exhibit (this exhibit)
       2. For contracts with Subcontractors – Include the terms in the Contract Federal Provisions Exhibit.
13. Certifications.
    1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.
14. Exemptions.
    1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
    2. A Subrecipient 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.
15. Event of Default AND TERMINATION.
    1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant 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 Grant, at law or in equity.
    2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
       1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
       2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
       3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
       4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
       5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

**EXHIBIT E-PII CERTIFICATION**

**STATE OF COLORADO**

**Third Party INDIVIDUAL Certification for Access TO PII through a Database or Automated Network**

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT E-PII CERTIFICATION**

**STATE OF COLORADO**

**Third Party ENTITY / ORGANIZATION Certification for Access TO PII through a Database or Automated Network**

Pursuant to § 24-74-105, C.R.S., I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (legal name of entity / organization) (the “Organization”), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_

EXHIBIT F - HIPAA BUSINESS ASSOCIATE AGREEMENT

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.

# 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.

# 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:

## 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.

## 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.

## 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.

# Obligations and Activities of Business Associate

## Permitted Uses and Disclosures.

### Business Associate shall use and disclose PHI only to accomplish Business Associate’s obligations under the Contract.

### 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.

### 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:

### 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;

### the person notifies Business Associate of any Breach involving PHI of which it is aware.

### 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.

## 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).

## Impermissible Uses and Disclosures.

### Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.

### 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.

## Business Associate's Subcontractors.

### 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.

### 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.

### Business Associate shall provide to Covered Entity, on Covered Entity’s request, copies of any such agreements Business Associate has entered into with Subcontractors.

## 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.

## 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.

## Amendment of PHI.

### 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.

### Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.

## 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.

## Restrictions and Confidential Communications.

### Business Associate shall restrict the Use or Disclosure of an Individual’s PHI within ten days of notice from Covered Entity of:

### a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or

### a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.

### 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.

### 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.

## 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.

## Audit, Inspection and Enforcement.

### 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.

### 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.

## Appropriate Safeguards.

### 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.

### Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.

### Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.

### 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.

## Safeguard During Transmission.

### 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.

### 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.

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

### 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.

### 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.

### 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.

### Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.

## Business Associate’s Insurance and Notification Costs.

### Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:

### loss of PHI data;

### Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and

### claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.

### All such policies shall meet or exceed the minimum insurance requirements of the Contract 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).

### 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.

### 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.

## Subcontractors and Breaches.

### 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.

### Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.

## Data Ownership.

### Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

### 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.

## Retention of PHI. Except upon termination of this Agreement as provided in Section 5, below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h, above, for a period of six years.

# Obligations of Covered Entity

## 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.

## Notice of Changes.

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### 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.

### 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.

# Termination

## Breach.

### 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.

### 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.

## Effect of Termination.

### 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.

### 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.

### 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.

# 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.

# 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.

# 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.

# 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.

# Amendment

## 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.

### 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.

### 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:

### 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

### 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.

## 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.

# 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.

# 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.

# 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 s 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.

# 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.

# Additional Terms

## Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:

### Reserved.

## Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:

### Reserved.

## Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:

### Reserved.

## 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:

### Reserved.

## 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:

### Reserved.

## Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:

### Reserved.