NOTICE
Please read this entire agreement carefully because it contains important terms and conditions governing your participation in the programs administered by the Department and your access and use of the provider portal.

PROVIDER PARTICIPATION AGREEMENT

This provider participation agreement is entered into between the Colorado Department of Health Care Policy and Financing (the "**Department**"), and the Provider that has electronically consented to or accepted the terms of this agreement (each, a "**party**;" collectively, the "**parties**"). The parties agree as follows:

1. DEFINITIONS

1.1. "**Covered Services**" means medical care, services, or goods provided to Members by the Provider in accordance with Program requirements.

1.2. "**Department**" means the Colorado State governmental agency responsible for the administration of the Program pursuant to Title XIX of the Social Security Act and Title 25.5 of the Colorado Revised Statutes, and includes the Department's agents.

1.3. "**Member**" means an individual enrolled or to be enrolled in the Program.

1.4. "**Portal**" means the Department's provider web portal created for the purpose of facilitating providers' enrollment, reimbursement, and participation in the Program.

1.5. "**Program**" means Health First Colorado (Colorado's Medicaid program), Child Health Plan Plus (CHP+ or Children's Basic Health Plan), the old age pension health and medical care program, the supplemental old age pension health and medical care program, and all other programs administered by the Department.

1.6. "**Provider**" means the person, public or private institution, agency, or business concern enrolled or applying to be enrolled in the Program, and includes owners, members, shareholders, operators, employees, contractors, subcontractors, agents, and third-party service providers, such as vendors, billing agents, or clearinghouses of the Provider.

2. INTRODUCTION

2.1. This agreement governs the Provider's revocable right to participate in the Program and constitutes the provider agreement required by 42 C.F.R. § 431.107.

3. PROVIDER OBLIGATIONS

3.1. Compliance with Laws

3.1.1. The Provider shall comply with all applicable provisions of the Social Security Act, and all other applicable federal and state statutes, regulations, and published official guidance such as provider billing manuals, provider bulletins, memo series, and fee schedules, as amended from time to time, including the following (the "**Laws**"):

3.1.1.1. Inclusion of the Provider's National Provider Identifier (NPI) on all submitted claims (42 C.F.R. § 431.107(b)(5) and all other NPI requirements set forth in 10 C.C.R. 2505-10 § 8.126);

3.1.1.2. Compliance with advance directive requirements for hospitals, nursing facilities, home health care agencies, hospices, and HMOs (42 C.F.R. § 431.107(b)(4));

3.1.1.3. Consenting to criminal background checks (42 C.F.R. § 455.434);

3.1.1.4. Announced or unannounced on-site visits to the Provider by the Department, the Colorado Attorney General's Medicaid Fraud Control Unit (MFCU), and the U.S. Department of Health and Human Services (HHS), or their designees, including for the purposes of Life Safety Code surveys if applicable (42 C.F.R. §§ 455.432, 431.108);

3.1.1.5. Establishing written policies that provide detailed information about preventing and detecting fraud, waste, and abuse in the Program pursuant to the federal False Claims Act (31 U.S.C. §§ 3729–3733) and the Colorado Medicaid False Claims Act (C.R.S. §§ 25.5-4-303.4, et seq.);

3.1.1.6. Maintenance of licensure and/or certification granted by the State licensing agencies or accreditation bodies that regulate the provided Covered Services pursuant to applicable law; and

3.1.1.7. Compliance with the requirements for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) (10 C.C.R. 2505-10 § 8.280).

3.1.2. If the Department determines that the Provider failed to comply with any of the Laws or terms of this agreement, including the claims submission requirements described below in section 3.2, the Department has the discretion to impose any sanction authorized by law, including suspension of payments to the Provider when there is a credible allegation of fraud, suspending the Provider's use of the Portal, placing the Provider on prospective review and/or inactivating the Provider's participation agreement, initiating administrative, state, or federal legal proceedings against the Provider, or terminating the Provider for cause in accordance with section 7 of this agreement. The Provider acknowledges that failure to comply may also result in administrative action, criminal investigation, prosecution, and all other actions authorized by the Laws.

3.1.3. The Provider warrants and represents that at the time of entering into this agreement, the Provider is not identified in the HHS Office of the Inspector General Exclusions Database (available at https://exclusions.oig.hhs.gov/). In the event the Provider becomes an excluded individual or entity after entering into this agreement or otherwise fails to disclose its excluded status, the Provider must (A) within five business days, notify the Department of such excluded status and (B) immediately remove such individual or entity from any involvement with the Provider's business operations related to participation in the Program, or cease participation in the Program entirely if an excluded individual or entity cannot be removed from the Provider's business operations.

3.2. Submission of Claims for Reimbursement

3.2.1. The Provider acknowledges and agrees that the Provider is legally responsible for all claims submitted for reimbursement under the Provider's NPI or Colorado Medical Assistance

Program ID, whether the claims were submitted by the Provider or by a third party on the Provider's behalf.

3.2.2. Before submitting or causing to be submitted any claims for reimbursement to the Program, the Provider must submit claims to, and obtain adjudication from, any payor that is primary to the Program, including other health plans covering the Member.

3.2.3. Subject to section 3.2.2, the Provider shall only submit or cause to be submitted claims for reimbursement for Covered Services that:

3.2.3.1. has been provided prior to the submission of the claim;

3.2.3.2. was medically necessary or considered covered preventive Covered Services;

3.2.3.3. was provided to individuals for whom the Provider has verified eligibility for the Program before rendering Covered Services, unless otherwise required by law;

3.2.3.4. was rendered personally by the Provider or by qualified and licensed personnel under the Provider's direct and personal supervision in accordance with the Provider's licensure or certification requirements; and

3.2.3.5. is billed in accordance with all applicable Laws and standard billing practices.

3.2.4. The Provider agrees that Department payment by electronic funds transfer (EFT) and advisement by deposit notice or remittance statement represents the Provider's confirmation that funds were accepted for Covered Services rendered and billed.

3.2.5. If the Provider ever learns of, or has reason to believe or suspect that, one or more of the Provider's submissions was made in violation of this agreement or Law, the Provider shall immediately notify the Department in writing of the problem.

3.3. Prohibition from Collecting Payment from Program Members

3.3.1. The Provider agrees that a Member will not be liable for the cost or the cost remaining after payment by the Program, Medicare, or a private insurer of medical benefits authorized by Title XIX of the Social Security Act. The Provider acknowledges and agrees that a Member's liability to the Provider is limited to payments allowed by Law.

3.3.2. The Provider will not bill supplemental charges to Members, including direct primary care program fees, except for amounts designated as co-payments by the Department.

3.3.3. The Provider agrees that a Member will only be liable for the cost of an item or service if it is not a medical benefit authorized by Title XIX of the Social Security Act and the Provider has entered into a written agreement signed by the Program member that states the specific item or service that is not authorized, the cost of that item or service, and that the Member explicitly agrees to pay for that item or service.

3.3.4. The Provider further acknowledges that billing Members in the manner described in sections 3.3.1 or 3.3.2 violates both federal and state law.

3.3.5. If the Provider: (A) provides Covered Services to a person who subsequently becomes a Member, and such enrollment is backdated to include the date(s) upon which services were rendered, resulting in eligibility for reimbursement of the Qualifying Services; or (B) following billing to a Member or person, is later reimbursed by the Department for any Covered Services, whether following audits or appeals by the Provider, or by any other form of determination by the Department that Covered Services are eligible for reimbursement; or (C) seeks any claim for reimbursement that is not payable to a third-

party under contractual or other legal entitlement; or (D) is ineligible for payment due to the Provider failing to follow any Law or Department rules governing timely filing, billing contractors directly, billing primary insurance first, or submitting a prior authorization request; then the Provider shall, upon written notice by the Department, take all of the following remedial actions, as applicable:

3.3.5.1. Stop billing the Member and return any payment made by the Member;

3.3.5.2. Cancel any collections action initiated by the Provider against the Member;

3.3.5.3. Reverse any adverse credit mark, to the greatest extent possible under law;

3.3.5.4. Within 14 days of the Department's notice, vacate any judgment, including any judgment for garnishment; and

3.3.5.5. Dismiss any litigation initiated against the Member to collect payment.

3.4. Nondiscrimination

3.4.1. The Provider represents and warrants that it will provide Covered Services to Members without discrimination on the basis of race, color, ethnic or national origin, ancestry, age, sex, gender, sexual orientation, gender identity and expression, religion, creed, political beliefs, or disability.

3.4.2. The Provider further represents and warrants that it will comply with all applicable laws prohibiting discrimination, including the Americans with Disabilities Act of 1990 and its implementing regulations (28 C.F.R., Part 35) and the Colorado Anti Discrimination Act (Parts 300 through 800 of article 34 of title 24 of the Colorado Revised Statutes).

3.5. Records and Compliance with Audits, Investigations, and Utilization Management

3.5.1. The Provider shall maintain records that fully and accurately disclose the nature and extent of benefits provided to each Member in accordance with the Laws and applicable standards of care.

3.5.2. The Provider shall provide the Department or its designees with access to records, including medical records and billing information, as required by the Laws. The Provider will provide copies of or access to records at no cost to the Department or its designees.

3.5.3. The Provider shall maintain records for 7 years unless an additional retention period is required under state or federal regulations, such as an audit started before the 7-year period ended or unless modified by a specific contract between the Provider and the Department.

3.5.4. The Provider shall promptly comply with all requests for information, reviews, investigations, and audits conducted by HHS, MFCU, the Department, or their designees, as required by the Laws, including quality of care investigations conducted by the Department and its designees.

3.5.5. The Provider shall review and change policies and procedures to address audit or review findings.

3.5.6. The Provider's obligation to maintain records, the Department's right to inspect records, and the Department's authority to audit the Provider all survive the termination or inactivation of this agreement.

3.5.7. The Provider is required to comply with Department utilization management determinations, quality management, care management, and prescription drug management programs.

3.6. Consent to Background Checks

In accordance with 42 C.F.R. § 455.434, the Provider consents to criminal background checks, including fingerprinting when required to do so under state or federal law or by the level of screening based on risk of fraud, waste, or abuse as determined for the Provider's categorical risk level. The Provider agrees to provide the Department with such information as the Department deems necessary to conduct background checks on the Provider and such other persons involved in the Provider's business operations related to participation in the Program.

3.7. Provider Disclosures

3.7.1. Pursuant to 42 C.F.R. § 455.106, before renewal of or entering into this agreement, or at any time upon written request by the Department, the Provider shall disclose the identity of any person who: (A) has ownership or control interest in the Provider, or is an agent or managing employee of the Provider; and (B) has been convicted of a criminal offense related to that person's involvement in the Program or any other program under Medicare Title XX since the inception of those programs.

3.7.2. At any time during the course of this agreement, the Provider shall notify the Department of any material or substantial change in information contained in the enrollment application given to the Department by the Provider. This notification must be made in the Portal within 35 calendar days of the event triggering the reporting obligation. A material or substantial change includes a change in: ownership; disclosures; licensure; federal tax identification number; bankruptcy; address, telephone number, or email address; or criminal convictions under 42 C.F.R. § 455.106.

3.7.3. In the event of such a material or substantial change in ownership, and unless otherwise designated on the Change of Ownership Form submitted through the Portal, the entity submitting the current Provider Enrollment Application shall be responsible for maintaining the records of and for any liabilities incurred by the previous ownership.

3.7.4. The Provider shall make best efforts to regularly update the "Accepting New Patients" indicator in the Portal, on at least a weekly basis, or more frequently as needed.

3.8. Monitoring and Recording

The Provider consents to and authorizes the Department and its designees to monitor and/or record any telephone conversations and other electronic communications with Department representatives. The Provider acknowledges and agrees that the Department will not remind the Provider of any monitoring or recording unless required by law to do so.

4. GENERAL ELECTRONIC DATA INTERCHANGE AND SYSTEM SECURITY

4.1. This section 4 applies if the Provider submits and receives data electronically through the Portal or otherwise as part of the Provider's participation in the Program.

4.2. The Provider shall submit and receive data, including submission of claims, using only approved transaction types as set forth in the standard HIPAA Implementation Guide and Companion Guides. The Guides are available on the Department's website at https://hcpf.colorado.gov/edi-support.

4.3. The Provider shall ensure that all required signatures, including, where applicable, appropriate signatures on behalf of the patient and required physician certifications are obtained before any claims are submitted to the Department, and are maintained on file in the Provider's office in accordance with the record retention requirements set forth in section 3.5 of this agreement.

4.4. The Provider may submit transactions either directly or through a contracted third-party service provider, such as a vendor, billing agent, or clearinghouse. The Provider shall ensure that any third-party service provider complies with this section 4 to the same extent as the Provider is required to comply.

4.5. The Provider shall institute and adhere to those procedures reasonably calculated to provide appropriate levels of security for the authorized transmission of data, and protection from improper access.

4.6. The Department is not responsible for errors or technical or operational difficulties that originate with the Provider's submission or receipt of data.

4.7. By this agreement, the Department does not warrant or guarantee uninterrupted availability of the Portal. While the Department intends to keep the Portal fully operational as much as is reasonably feasible, the Provider acknowledges and accepts that there will be periods in which the Portal is not available and that such periods are an ordinary and expected element of the creation, operation, and maintenance of a system that implements the complex programming of the Program. The Department cannot guarantee the accuracy of the data submitted to the Portal.

4.8. The Provider acknowledges and agrees that it is the Provider's responsibility to submit and receive data through transactions that comply with the standard HIPAA Implementation Guide and Companion Guides.

4.9. The Provider acknowledges and agrees that properly formatted transactions are only deemed to be received and accepted by the Department after an electronic acknowledgement indicating acceptance is sent to the Provider from the Department.

4.10. The Provider shall subject all information to a virus check before transmission to the Department.

4.11. The Provider must update its Portal user access controls immediately after any changes in staffing or other changes in access at the Provider. The Provider shall be solely responsible for all misdirected or improper payments requested and/or received from the Department, or any privacy or data breaches, resulting from failure to immediately update its user access controls after changes in staffing or other changes in access. The Provider acknowledges and agrees that the Department will not be liable for the Provider's losses resulting from failure to update user access controls.

4.12. The Provider shall ensure that the information, data, electronic files, and documents supplied by the Provider to the Department through the Portal or other secure means are accurate.

5. CONFIDENTIALITY AND PRIVACY COMPLIANCE

5.1. The Provider shall limit the use or disclosure of information and data concerning Members to authorized recipients for purposes directly connected with the administration of the Program.

5.2. The Provider shall comply with all applicable federal and state confidentiality and privacy laws, including:

5.2.1. 45 C.F.R. Parts 160 and 164, Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economics and Clinical Health Act (HITECH), and subsequent amendments.

5.2.2. 42 C.F.R. Part 2 (42 C.F.R. § 2.1, *et seq*.), Confidentiality of substance use disorder patient records.

5.3. The Providers must develop written policies to ensure that Members' Personal Identifying Information (PII) and Protected Health Information (PHI) are properly maintained and destroyed or disposed of when no longer needed. The Provider also must maintain reasonable security procedures and practices to protect PII and PHI. Requirements for private persons and entities are found at C.R.S. § 6-1-713, *et seq*. Governmental entity compliance requirements are located at C.R.S. § 24-73-101, *et seq*.

6. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES

6.1. THE PROVIDER SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS THE DEPARTMENT AGAINST ALL CLAIMS, DAMAGES, LIABILITY, AND COURT AWARDS INCLUDING COSTS, EXPENSES, AND ATTORNEY FEES INCURRED AS A RESULT OF ANY ACT OR OMISSION BY THE PROVIDER PURSUANT TO THE TERMS OF THIS AGREEMENT.

6.2. Notwithstanding anything in this agreement to the contrary, no term or condition shall be interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended from time to time (the "Immunity Act"), nor of the risk management self-insurance statutes at C.R.S. § 24-30-1501, et seq., as amended from time to time (the "Risk Management Act"). The parties understand and agree that the liability of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Immunity Act and the Risk Management Act. Any provision of this agreement, whether or not incorporated by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of the State to the above cited laws. In no event will the State be liable for any special, indirect, or consequential damages, even if the State has been advised of the possibility of such damages.

6.3. THE DEPARTMENT EXCLUDES ALL EXPRESS AND IMPLIED WARRANTIES. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE TERMS OF THIS AGREEMENT.

7. TERM AND TERMINATION

7.1. This agreement is effective on the earlier of the date of the Provider's lawful and rightful access to Portal, or the date of the Provider's acceptance of or electronic consent to this agreement.

7.2. This agreement remains in effect until the earlier of: (A) the Provider's acceptance of a new provider participation agreement with the Department that replaces the terms of this agreement; (B) the Provider's voluntary cessation of participation in the Program; (C) the Department's suspension of Provider's right to access the Portal until any final adjudication of such right as may be allowed under law; (D) the Department unilaterally terminates access to the Portal; or (E) the Department terminates the Provider's enrollment in the Program in accordance with the terms of this agreement or the Laws.

7.3. No termination shall relieve the Provider of obligations under this agreement or the Laws which have already accrued prior to termination, nor those terms which by their nature survive termination of this agreement.

7.4. The Provider agrees to re-validate its enrollment in the Program at least every 5 years, or earlier as required by the Department as a condition of the Provider's continued participation in the Program.

7.5. The Department has the authority to terminate the Provider with 30 days' written notice, unless the Department is authorized to terminate the Provider without prior notice as set forth in 10 C.C.R. 2505-10 § 8.076.5.D or in other Laws.

7.6. The Provider may appeal the Department's termination decision as set forth in 10 C.C.R. 2505-10 § 8.050.

8. MODIFICATION & SUBSEQUENT VERSIONS

8.1. THE PROVIDER ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT, IN ITS SOLE DISCRETION, HAS THE AUTHORITY TO MODIFY OR REPLACE THIS AGREEMENT AT ANY TIME WITH REASONABLE NOTICE TO THE PROVIDER.

8.2. REASONABLE NOTICE SHALL BE DEEMED GIVEN IF THE DEPARTMENT (A) POSTS THE REVISED TERMS ON THE DEPARTMENT'S WEBSITE AT HCPF.COLORADO.GOV OR THE PROVIDER PORTAL; (B) REQUIRES THE PROVIDER TO RENEW ITS ELECTRONIC CONSENT TO THIS AGREEMENT; OR (C) PUBLISHES THE REVISED TERMS IN A PROVIDER BULLETIN. THE PROVIDER AGREES IT IS THE PROVIDER'S RESPONSIBILITY TO REVIEW AND ASSESS THE IMPLICATIONS OF ANY MODIFICATION TO OR REPLACEMENT OF THIS AGREEMENT UPON NOTICE BY THE DEPARTMENT OF SUCH MODIFICATION OR REPLACEMENT.

8.3. SUBMISSION OF A CLAIM FOR REIMBURSEMENT, CONTINUING TO PROVIDE COVERED SERVICES TO MEMBERS, OR CONTINUED ENROLLMENT AS A PROVIDER IN THE PROGRAM WILL CONSTITUTE THE PROVIDER'S ACCEPTANCE OF ANY MODIFICATIONS TO OR REPLACEMENT OF THIS AGREEMENT.

8.4. IF THE PROVIDER DOES NOT WISH TO COMPLY WITH ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS MODIFIED FROM TIME TO TIME BY THE DEPARTMENT, THE PROVIDER MUST TERMINATE ITS PARTICIPATION IN THE PROGRAM.

9. GENERAL TERMS AND CONDITIONS

9.1. The Provider agrees that if it retains subcontractors to manage, process, or fulfill any of the Provider's work with respect to the Program or any of the Provider's obligations under this agreement or the Laws, such subcontractors shall comply with this agreement and the applicable Laws as though they were a party to this agreement. The Provider shall monitor, supervise, and evaluate such subcontractors to ensure their compliance with this agreement and the Laws. The Provider accepts the risk that nonperformance or violation by any subcontractor may cause the Provider to be in violation of Program requirements. The Provider agrees to thoroughly vet its subcontractors and is strongly encouraged to obtain a written certification or acknowledgement from any of its subcontractors

concerning the terms of this agreement and applicable Laws and the subcontractors' obligation to adhere to Program requirements.

9.2. The terms "include," "includes," and "including" will be interpreted in all instances to be without limitation.

9.3. The term "signing" includes electronically indicating consent.

9.4. A person who is not party to this agreement has no rights to enforce or challenge any term of this agreement. This agreement has no third-party beneficiaries.

9.5. This agreement cannot be assigned by the Provider without compliance with change of ownership or change of information requirements under the Laws.

9.6. This agreement contains the entire agreement between the parties and supersedes any previous understandings, commitments, or agreements, whether written or oral, concerning the subject matter of this agreement.

9.7. This agreement will be governed by and construed in accordance with the laws of the State of Colorado.

9.8. The Provider represents and warrants that it has full legal authority to enter into this agreement and comply with its terms.

9.9. The Provider will do and execute or procure to be done and executed all such further acts, deeds, things, and documents as may be necessary to give effect to the terms of this agreement, and to provide such assistance and records as the Department may request in connection with this agreement.

9.10. If any inconsistency or conflict between the provisions of this agreement and the Laws or any of the federal and state statutes, regulations, and official guidance that govern the parties arises, the Laws or other statutes, regulations, and guidance will prevail, and this agreement will be deemed to be amended to remove the inconsistency or conflict, but only to the extent necessary to remove such inconsistency or conflict. The parties agree a conflict does not exist merely because this agreement may add terms that govern the relationship between the parties, are not contained in the Laws, or specify terms designed to comply with the Laws or any other applicable federal or state statute, regulation, or official guidance.

9.11. Any provision of this agreement determined to be illegal or unenforceable is automatically reformed and construed to be valid, operative, and enforceable to the maximum extent permitted by law or equity while preserving the original intent; the invalidity of any part of this agreement will not render invalid the remainder of this agreement.

10. EXECUTION AND ATTESTATION

10.1. By completing, signing, and submitting the Provider Enrollment Application, which is incorporated by reference as if fully set forth in this agreement, or by otherwise indicating consent to or acceptance of the terms of this agreement, the Provider acknowledges and agrees that:

10.1.1. The Provider has read and understands this agreement;

10.1.2. The Provider will be bound by the terms and conditions of this agreement;

10.1.3. The Provider has the capacity to execute and perform its obligations under this agreement;

10.1.4. Compliance with the provisions of this agreement is a condition precedent to payment to the Provider; and

10.1.5. The individual completing, signing, and submitting the Provider Enrollment Application is the Provider or has the authority to legally bind the Provider to the terms and conditions of this agreement.