

# STATE OF COLORADO CONTRACT

## COVER PAGE

<b>State Agency</b> Department of Health Care Policy and Financing	<b>Contract Number</b> 25-195174
<b>Contractor</b> Gainwell Technologies LLC	<b>Contract Performance Beginning Date</b> The later of the Effective Date or May 1, 2025
<b>Contract Maximum Amount</b> Initial Term State Fiscal Year 2025 \$265,598.00 State Fiscal Year 2026 \$1,619,028.00 Extension Term State Fiscal Year 2027 \$135,979.00 Total for All State Fiscal Years \$2,020,605.00	<b>Initial Contract Expiration Date</b> June 30, 2026
<b>Contract Purpose</b> The Department is contracting with Gainwell Technologies to provide interim electronic data interchange (EDI) services during the MMIS transition. Gainwell Technologies will provide business critical EDI Services from 5/1/2025 until the go-live date for the new EDI Services provided by Edifecs, estimated for late-2025 or early 2026.	
<b>Exhibits and Order of Precedence</b> The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"> <li>Exhibit A – HIPAA Business Associates Addendum</li> <li>Exhibit B – Statement of Work</li> <li>Exhibit C – Rates</li> <li>Exhibit D – Terminology</li> <li>Exhibit E – Contractor’s Administrative Requirements</li> <li>Exhibit F – Sample Option Letter</li> <li>Exhibit G – Federal Provisions</li> <li>Exhibit H – Information Technology Provisions</li> <li>Exhibit I – PII Certification</li> </ol> <p>In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> <li>Exhibit A, HIPAA Business Associates Addendum</li> <li>Exhibit G, Federal Provisions</li> <li>Colorado Special Provisions in §18 of the main body of this Contract</li> <li>Exhibit H, Information Technology Provisions</li> <li>The provisions of the other sections of the main body of this Contract</li> <li>Exhibit B, Statement of Work</li> <li>Exhibit D, Terminology</li> <li>Exhibit E, Contractor’s Administrative Requirements</li> <li>Exhibit C, Rates</li> <li>Exhibit I, PII Certification</li> <li>Exhibit F, Sample Option Letter</li> </ol>	
<b>Principal Representatives</b> <div> <div> <b>For the State:</b>            Kristen Lindblom            Dept. of Health Care Policy and Financing            303 E. 17<sup>th</sup> Ave, Suite 1100            Denver, CO 80203  <a href="mailto:Kristen.Lindblom@state.co.us">Kristen.Lindblom@state.co.us</a> </div> <div> <b>For Contractor:</b>            Roger Gunter            Gainwell Technologies LLC            1560 Broadway, Suite 600            Denver, Colorado 80202  <a href="mailto:roger.gunter@gainwelltechnologies.com">roger.gunter@gainwelltechnologies.com</a> </div> </div>	

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<p><b>CONTRACTOR</b> Mark Knickrehm, Chairman &amp; CEO Gainwell Technologies LLC</p> <p>Signed by:</p> <p><i>Mark Knickrehm</i></p> <p>By: _____ Mark Knickrehm, Chairman &amp; CEO</p> <p>Date: 04/30/2025   08:59 MDT</p>	<p><b>STATE OF COLORADO</b> <b>Jared S. Polis, Governor</b> Department of Health Care Policy and Financing Kim Bimestefer, Executive Director</p> <p>DocuSigned by:</p> <p><i>KB</i></p> <p>By: _____ OB6A84797EA8493...</p> <p>Date: 04/30/2025   10:47 MDT</p>
<p>In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.</p> <p><b>STATE CHIEF INFORMATION OFFICER</b> David Edinger, Chief Information Officer and Executive Director</p> <p>DocuSigned by:</p> <p><i>Eric Panoushek</i></p> <p>By: _____ Eric Panoushek</p> <p>Date: 04/30/2025   14:21 MDT</p>	<p>In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>DocuSigned by:</p> <p><i>Robert Jaros</i></p> <p>By: _____ Robert Jaros or Controller Delegate</p> <p>Effective Date: 04/30/2025   14:33 MDT</p>

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## 1. PARTIES

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

## 2. TERM AND EFFECTIVE DATE

### A. Effective Date

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

### B. Initial Term

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

### C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide 30 calendar days written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

### D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§15**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Contract.

### E. Early Termination in the Public Interest

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

apply to a termination of this Contract by the State for Breach of Contract by Contractor, which shall be governed by **§13.A.i.**

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§15**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§13.A.i.a.**

iii. Payments

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

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Affiliate"** means a person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by another person or entity or is under common control with another person or entity or beneficially owns or has the power to vote or direct the vote of at least a majority of any class of voting stock (or of any form of voting equity interest in the case of a person that is not a corporation) of such other person or entity. For purposes of this definition, "control", including the terms "controlling" and "controlled", means the power to direct or cause the direction of the management and policies of an entity, directly or indirectly, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.
- B. **"Breach of Contract"** means the failure of a Party to perform material obligations in accordance with this Contract, in whole or in part consistent with the requirements set forth in this Contract. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- C. **"Business Day"** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.

- D. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority, pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the State.
- E. **“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.
- F. **“Contract”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- G. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- H. **“Contractor Pre-Existing Material”** means material, code, methodology, concepts, process, systems, technique, trade or service marks, copyrights, or other intellectual property (a) developed, licensed or otherwise acquired by Contractor (i) prior to the Effective Date of this Contract and/or (ii) independent of any services rendered under this or any other contract with the State and (b) any and all modifications, enhancements, and derivatives of the foregoing developed independent of any services rendered under this or any other contract with the State.
- I. **“Colorado Open Records Act (CORA)”** means §24-72-200.1, *et seq.*, C.R.S.
- J. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- K. **“Deliverable”** means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State by Contractor as provided in this Contract.
- L. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- M. **“End of Term Extension”** means the time period defined in **§2.D.**
- N. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- O. **“Extension Term”** means the time period defined in **§2.C.**
- P. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- Q. **“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.

- R. **“Initial Term”** means the time period defined in §2.B.
- S. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- T. **“Payment Card Information (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.
- U. **“Personal Health Information (PHI)”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- V. **“Personally Identifiable Information (PII)”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§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.
- W. **“Services”** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- X. **“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 Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- Y. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- Z. **“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.

- AA. **“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.
- A. **“Subcontractor”** means any individual or entity that enters into a contract with Contractor to perform either a material portion or all of the obligations of Contractor under this Contract. Notwithstanding the foregoing, a Subcontractor is not:
  - (i) an individual or entity that is engaged by Contractor to provide (a) services on a leveraged basis either globally or regionally for multiple Contractor customers; (b) IT Infrastructure, network, storage, hosting, or telecommunications services; (c) software or software support services; (d) contingent or supplemental staff; (e) professional services; or (f) back-office services;
  - (ii) a Gainwell Affiliate, who are subject to the terms of this Contract directly; or
  - (iii) an ordinary course of business vendor.
- BB. **“Subcontractor Pre-existing Material”** means material, code, methodology, concepts, process, systems, technique, trade or service marks, copyrights, or other intellectual property (a) developed, licensed or otherwise acquired by Subcontractor (i) prior to the Effective Date of this Contract and/or (ii) independent of any services rendered under this or any other contract with the State and (b) any and all modifications, enhancements and derivatives of the foregoing developed independent of any services rendered under this or any other contract with the State.
- CC. **“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.
- DD. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- EE. **“Work Product”** Work Product means those documents, text, software (including source code), research results reports, proposals, specifications, plans, results of studies, data, images, photographs, negatives, pictures, drawings, designs identified as being developed under this Contract on behalf of the State of Colorado, “Work Product” does not include Contractor Pre-existing Material, Subcontractor Pre-existing Material or third-party intellectual property contained therein or otherwise used in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit, including the terminology in Exhibit D.

#### 4. STATEMENT OF WORK

- A. Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit B and Exhibit E. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.
- B. The State, at its discretion, shall have the option to increase the statewide quantity of Goods and Services based upon rates established in this Contract, and increase the maximum amount payable accordingly, via a form substantially similar to Exhibit F, or an Amendment to this Contract. If exercising this option via an Option Letter, the State shall provide written notice



to Contractor within 10 Business Days prior to implementation of the increase in quantity. Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. If the increase is to occur via Amendment, the Parties will negotiate the rates and terms and the State will seek the appropriate approvals. The increase in service included in an Amendment will occur consistent with the terms of the Amendment.

- C. The State, at its discretion, shall have the option to decrease the statewide quantity of Goods and Services based upon rates established in this Contract, and modify the amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Exhibit F, or an Amendment to this Contract. If exercising this option via an Option Letter, the State shall provide written notice to Contractor within 10 Business Days prior to the decrease in quantity. Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. If the decrease is to occur via Amendment, the Parties will negotiate the rates and terms and the State will seek the appropriate approvals. The decrease in service included in an Amendment will occur consistent with the terms of the Amendment.
- D. Parties agree that Contractor may share or otherwise delegate any of the Services hereunder to an Affiliate whether inside or outside the United States, with 20 days prior notice to the State. However, it is understood that Contractor continues to be solely obligated and liable to the State for the satisfactory performance of any Work performed by such Affiliate pursuant to this Contract.

## **5. PAYMENTS TO CONTRACTOR**

### **A. Maximum Amount**

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

### **B. Payment Procedures**

#### **i. Invoices and Payment**

- a. The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit B, Statement of Work and Exhibit C, Rates.
- b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor 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 Contractor shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or Deliverables provided under this Contract.

#### **ii. 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 45<sup>th</sup> 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. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

## 6. REPORTING - NOTIFICATION

A. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision-making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 Business Days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page of this Contract.

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

i. Performance Outside the State of Colorado

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §15 and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado. Such notice shall specify the type of Services to be performed outside the State of Colorado and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a Breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

ii. Performance Outside of the United States

Contractor shall request written approval from the State, acting through the Office of Information Technology, for Contractor to perform, or subcontract to perform, Services outside the United States. The State may approve or deny such request within the State's sole discretion, whether or not services outside the United States are prohibited or restricted by the Statement of Work or by any Exhibit attached to this Contract. Following written approval from the State, Contractor shall comply with the notice provisions for performance outside the State of Colorado. Any notice provided to the State by Contractor regarding performance outside the United States shall be deemed ineffective if the State has not granted prior written approval for such performance.

C. SOC 1 Type II Annual Report

If Contractor performs Work for any of the State's IT systems that impact the State's Comprehensive Annual Financial Report, as determined by the Colorado Office of the State Controller, Contractor, on an annual basis, shall deliver to the State, at Contractor's sole cost and expense, Contractor's System and Organization Controls 1 Type II Report ("SOC 1 Type II Report") prepared by a qualified independent audit firm with respect to the Statement on Standards for Attestation Engagements, Reporting on Controls at a Service Organization (SSAE) as promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants, as amended, from time to time.

## 7. CONTRACTOR RECORDS

A. Maintenance

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

B. Inspection

Contractor shall permit the State, the federal government, and any other duly authorized agent of the federal government, as long as agent of the State is not a competitor of Contractor, of

a governmental agency to audit, inspect, examine, excerpt, and copy Contractor Records during the Record Retention Period. The State will provide a copy of the report due to any audit, inspection or examination of Contractor Records to the extent that the audit report is not confidential under state or federal laws or regulations. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than ten (10) Business Days' notice from the State. Contractor Records subject to inspection do not include records that are legally privileged, supplier records subject to obligations of confidentiality (excluding, for clarity, records directly related to the performance of the Work), records reflecting Contractor's internal costs (other than pass-through costs reimbursed by the State), or records relating to Contractors other clients. For the avoidance of doubt, nothing herein is intended to preclude the inspection of records required to verify compliance with terms of the Contract, including the accuracy of Contractor's invoices. Audits conducted on Contractor's premises or those of Contractor's affiliates will be carried out without any avoidable disruptions to business operations and auditors will follow all necessary security requirements as required by Contractor while on premise. All information learned or exchanged in connection with the conduct of an inspection, audit, examination, as well as the results of any inspections, audit, examination is Confidential Information to Gainwell and the State, unless disclosure is required under §24-72-204, C.R.S. Although the State may have access to Contractor's trade secrets, confidential commercial and financial information during an inspection, this information shall not be disclosed according to §24-72-204(3)(iv), C.R.S.

C. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, as long as the agent of the State is not a competitor of Contractor, of a governmental agency in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State or that governmental entity. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

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

Written assessments will not be required from Business Associates that do not receive, manipulate, store, or distribute the Department's data.

## 8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of

such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract 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 Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's Principal Representative. Contractor reserves the right to require the State's other contractors or third parties to execute a reasonable non-disclosure agreement to protect specifically identified Confidential Contractor Records before disclosure of those Contractor Records to the third parties. For the avoidance of doubt, the State is not required to create or negotiate the non-disclosure agreement between Contractor and third parties.

At the Effective Date of this Contract, Contractor does not receive, manipulate, or store Federal Tax Information, PCI or CJI Data. If the State decides that Contractor will receive, manipulate, or store Federal Tax Information, PCI or CJI Data, both Parties will negotiate an amendment to this Contract that will govern Contractor receiving, manipulating or storing the data.

**B. Other Entity Access and Nondisclosure Agreements**

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

**C. Use, Security, and Retention**

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

**D. Incident Notice and Remediation**

If Contractor becomes aware of any Incident, Contractor shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be

responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor 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 Contractor shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

**E. Data Protection and Handling**

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

**F. Safeguarding PII**

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

**9. CONFLICTS OF INTEREST**

**A. Actual Conflicts of Interest**

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

**B. Apparent Conflicts of Interest**

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

C. Disclosure to the State

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

D. 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.

## 10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as authorized by the State.

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. 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:

- i. \$1,000,000 each claim; and

ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

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

i. \$1,000,000 each claim; and

ii. \$1,000,000 general aggregate.

F. Crime Insurance

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

i. \$1,000,000 each occurrence

G. Additional Insured

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

H. Primacy of Coverage

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

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or , without at least 30 days' prior notice to Contractor except for cancellation based on non-payment of premiums, without at least 10 days' prior notice to the Contractor and Contractor shall forward such notice to the State in accordance with §15 within seven days of Contractor's receipt of such notice. If any insurance policy required herein and maintained by Contractor does not provide advance notice to third parties then, prior to any cancellation of such insurance, Contractor shall have new insurance policies in place that meet the requirements of this Agreement.

J. Subrogation Waiver

Where not prohibited by law, except for Managed Care E&O crime insurance, all insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

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



obligations under the GIA.

**L. Certificates**

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. Upon the renewal date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence of insurance on an Acord form to the State of compliance with the provisions of this section. Contractor shall provide all certificates electronically to the Department's designated insurance certificate submission site, unless the Department has specifically directed otherwise.

**11. LIMITATION OF CONTRACTOR'S LIABILITY TO STATE**

The liability of Contractor, its Subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to damages, including but not limited to direct losses, not to exceed one (1) times the Maximum Amount payable by the State under this Contract or \$1,000,000.00, whichever is greater.

No limitation on Contractor's liability to the State under this Section shall limit or affect:

- A. Contractor's indemnification obligations to the State under this Contract;
- B. Any claims, losses, or damages for which coverage is available under any insurance required under this Contract;
- C. Claims or damages arising out of bodily injury, including death, or damage to tangible property of the State; or
- D. Contractor's liability relating to the disclosure of confidential information or data loss; or
- E. Claims or damages resulting from the recklessness, bad faith, or intentional misconduct of Contractor or its Subcontractors.

In no event will Contractor be liable for any, special, consequential, incidental, exemplary or punitive damages, loss of income, goodwill, reputation, lost profits or anticipated savings, even if a Party has been advised of the possibility of such damages.

**12. BREACH OF CONTRACT**

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §13 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State,

in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

### **13. REMEDIES**

#### **A. State's Remedies**

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §12, shall have all of the remedies listed in this section, in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

##### **i. Termination for Breach of Contract**

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

##### **a. Obligations and Rights**

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

##### **b. Payments**

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

##### **c. Damages and Withholding**

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

liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §12 and the dispute resolution process in §14 shall have all remedies available at law and equity.

**14. DISPUTE RESOLUTION**

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be

referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

**B. Resolution of Controversies**

If the initial resolution described in §14.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Department's Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-106-109 and 24-109-101.1 through 24-109-505, C.R.S. (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

**15. NOTICES AND REPRESENTATIVES**

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

**16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

**A. Work Product**

**i. Copyrights**

To the extent that the Work Product (or any portion of the Work Product, or any customizations of Contractor's Pre-existing Materials funded by the State or using Federal Funds Participation ("FFP")) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, and create derivative works of the Work Product to Colorado State agencies and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the

future. The State may assign and license its rights under this license.

ii. Patents

In addition, Contractor 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 Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses, and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be works made for hire. Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

- iv. As per 42 CFR § 433.112, states are required to ensure that systems developed with Federal Financial Participation (FFP) are made available for reuse by other states. This regulation outlines the conditions for FFP for the design, development, installation, or enhancement of mechanized claims processing and information retrieval systems, such as Medicaid Management Information Systems (MMIS). To comply with this regulation, the State hereby grants to Contractor a perpetual, irrevocable, non-exclusive, worldwide, fully paid-up and sublicensable right to use, make, modify, use, sell, offer to sell, copy, distribute copies of, publicly perform, publicly display, publish, transfer, and make derivative works of the Work Product for itself and for the benefit of its other customers, provided those customers are subject to the same requirements under 42 CFR § 433.112.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Contractor are the exclusive property of the State (collectively, “State Materials”). Except as permitted under Section 16.A.iv above, Contractor shall not use, willingly allow, cause, or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor and Subcontractors

- (i) Contractor retains the exclusive rights, title, and ownership to any and all Contractor

Pre-existing Materials owned or licensed to Contractor 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 Contractor under the Contract, whether incorporated in a Work Product or a Deliverable or necessary to use Work Product or a Deliverable and any derivatives, modifications or enhancements of Contractor intellectual property (collectively, “Contractor Property”). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

- (ii) Subcontractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subcontractor including but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, third-party materials, delivered by Subcontractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (and any derivatives, modifications or enhancements of Subcontractor intellectual property (collectively “Subcontractor Property”). Neither the Contractor nor the State will sell, license, rent, sublicense, or transfer Subcontractor IP without prior written consent.

- D. The Contractor shall provide obligations for transitioning the system to the State or third-party vendor in the Transition Plan.

## 17. GENERAL PROVISIONS

### A. Assignment

Except to an affiliate or a party that purchases all or substantially all of assets or equity of Contractor, Contractor’s rights and obligations under this Contract may not be transferred or assigned without the prior, written consent of the State, which shall not be unreasonably withheld. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor’s rights and obligations approved by the State shall be subject to the provisions of this Contract

### B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of the components of each such subcontract describing the Work performed for the State and any requirements flowed down to the Subcontractor, upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

### C. Binding Effect

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

### D. Authority

Each Party represents and warrants to the other that the execution and delivery of this

Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

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

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

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

K. External Terms and Conditions

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

L. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and

effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of this Contract.

M. Survival of Certain Contract Terms

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

N. Taxes

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations

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

T. Indemnification



i. General Indemnification

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

ii. Confidential Information Indemnification

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

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all third party 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 Deliverable, Good or Service, software, or Work Product provided by Contractor under this Contract (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor’s obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or Contractor’s subsidiaries or affiliates; **(b)** specified by Contractor to work with the IP Deliverables; **(c)** reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or **(d)** is reasonably expected to be used in combination with the IP Deliverables.

iv. Accessibility Indemnification

Contractor 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 Contractor’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.

U. Accessibility

- i. Contractor shall comply with and the Work Product provided under this Contract 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 §24-85-103 (2.5), C.R.S. Contractor 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.

- ii. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor'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.

V. Additional Provisions

Contractor shall comply with all requirements shown Exhibit A and Exhibit G. Contractor shall also comply with all IT provisions contained in Exhibit H.

W. Force Majeure

Neither Party will be in default to the extent that the performance of an obligation is prevented or delayed by any cause ("Force Majeure Event"), which is beyond that Party's reasonable control. A "Force Majeure Event" includes but is not limited to acts of God; acts of the public enemy; acts of the state or any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather or other acts or events outside the reasonable control of a Party. Because the Department is a governmental agency charged with the protection of the public welfare during such events, Contractor shall use reasonable commercial efforts to perform given the nature of the event.

X. Excused Performance

Any failure or delay by Contractor to perform its obligations under this Contract will be excused if the failure was caused by: (i) any act or omission of the State or its employees, agents or contractors, including any failure or delay by the State to perform its obligations under this Contract including its Exhibits, (ii) the reasonable reliance by Contractor on the State's instructions, authorizations, approvals or other information. The Contractor will use reasonable commercial efforts to perform the work in such circumstances.

## 18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

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

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

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

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

C. **GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and

28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR.**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

**E. COMPLIANCE WITH LAW.**

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

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

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

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109, C.R.S.

**H. SOFTWARE PIRACY PROHIBITION.**

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

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

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

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

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

## **EXHIBIT A, HIPAA BUSINESS ASSOCIATES ADDENDUM**

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

### **1. PURPOSE**

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

### **2. DEFINITIONS**

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

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

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

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

### **3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- a. Permitted Uses and Disclosures.

- i. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.
  - i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
  - ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
    - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
    - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
  - iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
- b. 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).
- c. Impermissible Uses and Disclosures.
  - i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
  - ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.
- d. Business Associate's Subcontractors.
  - i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.

- ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
  - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- e. 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>.
- f. 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.
- g. Amendment of PHI.
  - i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
  - ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
- h. 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.
- i. Restrictions and Confidential Communications.
  - i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
    - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
    - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
  - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
  - iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.

- j. 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.
- k. Audit, Inspection and Enforcement.
  - i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.
  - ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.
- l. Appropriate Safeguards.
  - i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
  - ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
  - iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
  - iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.
- m. Safeguard During Transmission.
  - i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
  - ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.



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

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

o. Business Associate's Insurance and Notification Costs.

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

p. Subcontractors and Breaches.

- i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
  - ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.
- q. Data Ownership.
  - i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
  - ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.
- r. 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.

#### **4. OBLIGATIONS OF COVERED ENTITY**

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

#### **5. TERMINATION**

a. Breach.

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

b. Effect of Termination.

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

## 6. INJUNCTIVE RELIEF

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

## 7. LIMITATION OF LIABILITY

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

## 8. DISCLAIMER

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes.

Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

## 9. CERTIFICATION

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

## 10. AMENDMENT

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

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

## **11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS**

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

## **12. INTERPRETATION AND ORDER OF PRECEDENCE**

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

## **13. SURVIVAL**

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

## APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

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

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

### 1. PURPOSE

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

### 2. ADDITIONAL TERMS

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

## **EXHIBIT B, STATEMENT OF WORK**

### **1. PROJECT SPECIFIC STATEMENT OF WORK**

- 1.1. Contractor shall implement and operate an Electronic Data Interchange (EDI) solution that meets EDI and HIPAA transaction standards, including generating, sending and receiving required transactions, and support testing with Submitters. Required transactions include:
  - 1.1.1. Batch 837 - Claims Transaction (Institutional, Dental and Professional)
  - 1.1.2. Batch 835 – Batch Outbound Claims Remittance
  - 1.1.3. Batch 834 – Outbound Enrollment
  - 1.1.4. Batch 820 – Outbound Premium to Payers
  - 1.1.5. 270-271 Core OR Processing
  - 1.1.6. 276-277 Core OR Processing
  - 1.1.7. 278 – Prior Authorization
  - 1.1.8. HL7 - Hospital Admission (ADT A01), – Processing only, no loading to TM
  - 1.1.9. NCPDP Pharmacy encounters (NCPDP D.0 B1 format)
  - 1.1.10. Non-standard transactions as requested by the Department.
  - 1.1.11. Encounter Response File
  - 1.1.12. Standard 277CA, 999 and TA1 acknowledgements
- 1.2. Contractor shall continue to receive, process, generate and exchange all existing proprietary files, including continuing to process the proprietary delimited remittance advice file. More file types may be added to the list by the Department by submitting an SCR.
- 1.3. Contractor shall continue to store and archive EDI files, EDI transactions (including X12, XML or other formats) and interChange EDI processing data records, using the same existing methodologies and policies, until the data is no longer received or generated by the Contractor.
- 1.4. Contractor shall maintain and operate the following custom SNIPs (SNIP-7) for the following transactions:
  - 1.4.1. Batch 837 I/P/D - 9 unique SNIP-7 edits each
  - 1.4.2. Batch 834 - 0 SNIP-7 edits
  - 1.4.3. Batch 820 - 0 SNIP-7 edits
  - 1.4.4. 270 - 0 SNIP-7 edits
  - 1.4.5. 271 - 1 SNIP-7 edits
  - 1.4.6. 276 - 1 SNIP-7 edits
  - 1.4.7. 277 - 0 SNIP-7 edits
  - 1.4.8. NCPDP - 0 SNIP-7 edits
- 1.5. Contractor shall maintain and operate the current EDI functionality to include, but not be limited to, the following:

- 1.5.1. The Electronic Data Interchange as a Service (EDIaaS) Solution shall improve and enhance file process for Medicare Crossover coordination of benefits through EDI.
- 1.5.2. The EDIaaS shall provide a robust user-friendly, query-based solution that allows the Department and Authorized Users to research claims data more effectively and efficiently.
- 1.5.3. The EDIaaS shall allow authorized Department Staff, and Authorized Users the ability to search for transactions with the following, but not limited to such search criteria, as follows: Internal Control Number (ICN), Provider identification number, batch identification number, and Member identification number.
- 1.5.4. Contractor shall maintain a system that can support online users and batch processing concurrently.
- 1.5.5. Contractor shall continue to support all EDI processes related to producing and distributing ANSI X12N transactions and non X12N transactions, supporting Submitters use of the EDI.

## **2. CONTRACT STAGES AND PROJECT PHASES**

### **2.1. Contract Stages**

#### **2.1.1. The following stages shall be part of this Contract:**

##### **2.1.1.1. Operations and Maintenance (O&M) Phase.**

- 2.1.1.1.1. Contractor shall support ongoing O&M of the EDIaaS, as set forth in Section 7 of this Exhibit B, and implement enhancements that are mutually agreed upon, as defined in Exhibit C.

## **3. REQUIREMENT COMPLIANCE**

### **3.1. Contractor shall adhere to all requirements as stated here in Exhibit B.**

### **3.2. General Administrative Requirements**

#### **3.2.1. Unless otherwise specified, references to “Section” in this Exhibit B refer to sections within Exhibit B.**

#### **3.2.2. The Contractor shall manage all aspects of the Contract that affect:**

##### **3.2.2.1. Costs.**

##### **3.2.2.2. Schedule.**

##### **3.2.2.3. Performance.**

##### **3.2.2.4. Scope.**

##### **3.2.2.5. Quality.**

##### **3.2.2.6. Risk.**

##### **3.2.2.7. Issues.**

##### **3.2.2.8. Change control.**

##### **3.2.2.9. Applicable Resources.**

- 3.2.3. Contractor shall work with the Department’s Contract Manager or designee on Contract monitoring of Contract responsibilities and performance standards throughout the Term of this Contract so that Contract requirements are met.



- 3.2.4. Contractor shall utilize approved Master Project Management Plan (PMP) processes to notify the Department's Contract Manager or designee when an issue arises that affects or impacts the terms and conditions set forth in this Contract (Contract Term or Condition Notification).
- 3.2.5. Each Plan, Document, or other Deliverable or Work Component shall contain: the Contractor's tasks, State's tasks, obligations, responsibilities, and an Approved Project Schedule. The Deliverable or Work Component shall be approved by the Department; and those Deliverables' or Work Components' identified tasks, obligations, and responsibilities shall be incorporated into this Contract and due to the Department as documented in the Approved Project Schedule.
- 3.2.6. Contractor shall communicate directly and in a transparent manner with the Department during the Term of this Contract.
- 3.2.7. Contractor shall apply a continuous security-focused and adaptive development approach to operations and enhancements, providing a solution focused on State and federal rules and regulations.
- 3.3. General Requirements for Meetings
  - 3.3.1. Contractor shall create and submit to the Department for review and approval:
    - 3.3.1.1. The processes the Contractor will use to maintain Meeting Minutes.
    - 3.3.1.2. The processes the Contractor will use to maintain Meeting Records.
    - 3.3.1.3. Any other documents related to the scheduled meetings.
  - 3.3.2. Contractor shall create and deliver all Meeting Agendas to the Department and all other meeting attendees at least 24 hours before each meeting is scheduled to begin.
    - 3.3.2.1. DELIVERABLE: Meeting Agendas
    - 3.3.2.2. DUE: At least 24 hours before each meeting is scheduled to begin
  - 3.3.3. Contractor shall take Meeting Minutes and retain Meeting Records for all meetings that are hosted by the Contractor with the Department or the Department's Medicaid Enterprise Solution (MES) Vendors. Contractor shall create and maintain a Project Repository (see Section 5.4) in which all Meeting Minutes and Meeting Records are stored.
  - 3.3.4. Contractor shall post all Meeting Minutes to the Project Repository no later than 5:00 p.m. Mountain Standard Time or Mountain Daylight Time, as applicable, on the Business Day after the meeting occurs.
- 3.4. Meeting Management
  - 3.4.1. As-Needed Meetings
    - 3.4.1.1. As requested by the Department, Contractor and the Department shall meet as needed to satisfy Work requirements.
    - 3.4.1.2. Meetings shall be conducted either in person or virtually, as approved in advance by the Department.
    - 3.4.1.3. The Parties shall hold meetings, including in person or virtual meetings, at times and locations agreed upon by the Parties.

3.4.1.4. Contractor shall ensure that the staff who attend the As-Needed Meetings have the authority to represent and make decisions on behalf of the Contractor with respect to Project Issues such as work planning, problem resolution, and program development.

#### 3.4.2. Project Status Meetings

3.4.2.1. Contractor shall attend, facilitate, and participate, as mutually agreed upon by the Parties, in Project Status Meetings with the Department, MES Vendors, or any combination thereof.

### 4. CONTRACT MANAGEMENT

4.1. The requirements in this section apply to all Contract phases.

#### 4.2. Monthly Contract Management Report

4.2.1. Contractor shall develop and submit to the Department a monthly Contract Management Report that includes the following:

4.2.1.1. Overall project assessment, including a summation of the status of Contractor activities by function or unit of the Contractor organization, scope changes, staff turnover and resource planning, and formal communication of Transmittals and Decision Log entries.

4.2.1.2. Assessment of performance standards for the previous month and identification and description of all performance standards that were not met.

4.2.1.3. A summary of Contractor activities and key performance indicators, for the month and cumulative to the fiscal year end.

4.2.1.4. The Dispute Process trigger mechanism (to submit an item for resolution via the dispute process via letter, email, phone).

4.2.1.5. Any outstanding accessibility issues and the timeline for their resolution, and any accessibility issues resolved during the month.

4.2.1.6. Other activities necessary for the Department to monitor Contractor activities.

4.2.2. Contractor shall manage all aspects of the Contract that affect price, schedule, performance (scope and quality), risk/issues/opportunities, and applicable resources with transparency and direct communication and as defined in the Master Project Management Plan.

#### 4.3. EDI Tier II Support

4.3.1. Contractor shall support and respond to Tier II inquiries forwarded via the Provider Call Center (PCC) vendor's CRM (Customer Relationship Management) system, any other MES vendor or the Department staff, via the process agreed to by the Department and the Contractor. Contractor shall adhere to the Escalation Process that is defined and documented by the Department. Contractor shall provide end-to-end ownership for resolving Tier II tickets for which the Contractor is responsible for.

#### 4.3.2. Trading Partner Management

4.3.3. Contractor shall provide all services including staffing to support Enrollment, Onboarding, Testing of the Trading Partners (including but not limited to clearinghouses, billing agents, switch vendors, etc.) through a portal. Contractor shall allow Trading Partners to submit EDI Transactions on behalf of a single provider or multiple providers in batch, upload files through a portal, or real time through Safe Harbor. Trading Partners shall be required to create their trading partner profile and obtain their unique trading partner ID through a portal for

access to EDI Services. Contractor shall test and approve all new trading partners and update the interchange for all approved transactions.

## **5. PROJECT MANAGEMENT REQUIREMENTS**

- 5.1. Contractor shall adhere to Department standards and protocols on all project management activities throughout the life of the Contract. This includes the use of tools and applications, as well as processes. Contractor shall provide written project management recommendations, as identified, to improve processes and efficiencies. Contractor shall work cooperatively with the Department and provide written weekly status updates during all phases of the Contract.
- 5.2. Contractor shall work with the Department to provision access to the Department's existing and necessary Enterprise-level Project Management plans, processes, standards, and templates.
- 5.3. Contractor shall adhere to Project Management requirements and provide deliverables for EDI Services in accordance with its Project Management obligations and requirements under the Core MMIS Contract (Contract 25-185383 Section 3.1 through Section 3.3.18.5) once fully executed.
- 5.4. Project Repository
  - 5.4.1. Contractor shall work with the Department to establish a Project Repository.
    - 5.4.1.1. Contractor shall define the file structure within the Project Repository to use for all Project documents and Project Artifacts.
    - 5.4.1.2. All Project documents, including draft documents and Work Products, and Project Artifacts shall be saved in the Project Repository.
    - 5.4.1.3. The Department will provide access to approved Contractor Users, as defined by the Department and communicated to the Contractor, to the Project Repository on demand.
    - 5.4.1.4. Contractor shall be responsible for the maintenance of all documentation and work products associated with the Work of this Contract.
      - 5.4.1.4.1. DELIVERABLE: Project Repository
      - 5.4.1.4.2. DUE: As defined in the approved Project Schedule

## **6. TRANSITION PHASE**

- 6.1. The transition phase shall be conducted in parallel with the incoming vendor's Design and Development phase.
- 6.2. Transition Plan
  - 6.2.1. Contractor shall develop and submit for Department approval a Transition Plan including, at minimum:
    - 6.2.1.1. Proposed approach to transition the EDI to the incoming vendor.
    - 6.2.1.2. Proposed approach for consolidating applicable sections from the Contractor's Turnover Plan into the transition planning activity.
    - 6.2.1.3. Tasks and activities for transition.
    - 6.2.1.4. Transition Milestones and completion dates.
    - 6.2.1.5. Schedule for transition.
    - 6.2.1.6. Entrance and exit criteria.

- 6.2.1.7. Production program and documentation update procedures during transition.
- 6.2.1.8. Process to import existing, published knowledge management and database documentation.
- 6.2.1.9. Process for initial set up of complaint tracking.
- 6.2.1.10. Operational Readiness Review (ORR).
- 6.2.1.11. Training plan and organizational readiness approach.
- 6.2.1.12. Parallel test support.
- 6.2.1.13. Interface testing.
- 6.2.2. Contractor shall execute the approved Transition Plan and activities at no additional cost over and above those listed in Exhibit C.
- 6.2.2.1. DELIVERABLE: Transition Plan
- 6.2.2.2. DUE: As defined in the approved Project Schedule
- 6.2.3. Any disputes related to the Transition Plan between the Department, Contractor, and the incoming vendor shall be resolved in accordance with Section 14 (Dispute Resolution) of the Contract terms and conditions.

## **7. OPERATION AND MAINTENANCE PHASE**

- 7.1. Contractor shall provide staff to perform operations and maintenance as described in this Exhibit without utilizing billable enhancement hours.
- 7.2. Contractor shall adhere to Operations & Maintenance requirements and provide deliverables for EDI Services in accordance with its obligations and requirements for Operations & Maintenance of the System under the Core MMIS Contract (Contract 25-185383, Section 7.1 through 7.3.1.10, 7.5 through 7.9.12) once fully executed.
- 7.3. Operations and Maintenance Plan
  - 7.3.1. Contractor shall develop and submit to the Department for approval, an electronically available Operations and Maintenance Plan to address the following:
    - 7.3.1.1. An updated Contractor staffing model for the Operations Phase.
    - 7.3.1.2. Standard operating and monitoring procedures of daily System and Contractor performance.
    - 7.3.1.3. Contractor shall develop a process for Standard Operating support which addresses, at minimum:
      - 7.3.1.3.1. Approach for managing support based on request response time requirements relative to issue complexity and severity.
      - 7.3.1.3.2. Approach for leveraging incident and problem management to continuously improve system availability, reliability and user experience.
    - 7.3.1.4. Required updates, patches, licenses, and repairs to components of all applicable environments, including but not limited to:
      - 7.3.1.4.1. Hardware.
      - 7.3.1.4.2. Operating systems.

- 7.3.1.4.3. Database systems.
- 7.3.1.4.4. Application and other EDIaaS.
- 7.3.1.4.5. Complaint tracking module.
- 7.3.1.4.6. Voice, video, data communication lines.
- 7.3.1.4.7. Communications software for the EDIaaS.
- 7.3.1.4.8. Drivers.
- 7.3.1.4.9. Configurations.
- 7.3.1.4.10. Plan for maintaining security on a database, network, and individual authorized System user level including maintenance of authorized System user accounts.
- 7.3.1.4.11. Upgrades of Standards including HIPAA 5010 X12 and External Code-Lists that are required to validate the EDI transactions in scope shall be performed on all applications, server and for the EDIaaS to assure they remain in support and/ or are a minimum of one release behind current (N-1). Any feature enhancements/ changes to the applicable EDIaaS software that do not impact the validation of HIPAA transactions in scope will be maintained at a minimum of two releases behind the current (N-2).
- 7.3.2. Contractor shall apply EDIaaS emergency patches within the timeframe identified and approved in the Communications Plan, where such Communications Plan shall reflect timeframes consistent with the Contractor's EDIaaS based nature of its Solution.
- 7.3.3. Contractor shall provide System documentation, including end-user and system administrator documentation.
- 7.3.4. Contractor shall provide Updated Procedures and System Documentation, as part of the system change request project close-out process, and no less than annually for regular maintenance and operations.
- 7.3.5. Contractor shall define a process to provide quality training and dispersal of knowledge management information for agents to be effective when answering Provider inquiries and avoid disruption to Provider services.
- 7.3.6. Contractor shall define a process for submitting operations problem reports to the Department when operational problems occur, describing the nature of the problem, the expected impact on ongoing functions, a Corrective Action Plan (CAP), and the expected time of problem resolution.
- 7.3.7. Contractor shall publish an EDIaaS Version Release Schedule and provide updates to the Department as requested.
- 7.3.8. Contractor shall establish, maintain and publish a production maintenance calendar, including a schedule of planned maintenance windows, planned upgrades and release windows.
- 7.3.9. Contractor shall provide secure means for the Department to report problems, questions, or System problems while safely exchanging PHI/PII, as required.
- 7.3.10. Contractor shall support and respond to Tier II inquiries forwarded via the Call Center ticketing system, any other MES vendor, or the Department staff, via the process agreed to by the Department and the Contractor. Contractor shall adhere to the escalation process that

is defined and documented by the Department. Contractor shall provide end to end ownership for resolving Tier II tickets for which the Contractor is responsible. Contractor shall respond to all Tier II inquiries within one business day of receipt of the ticket. Contractor shall resolve the Tier II inquiry for services delivered by Contractor within three business days 90% of the time, measured monthly as defined in the Provider Inquiry Escalation Plan. (Ref. Core MMIS Contract QMP J5.40).

- 7.3.11. Contractor shall comply with the MES Provider Inquiry Escalation plan.
- 7.3.12. Contractor shall provide and operate a Help Desk for EDI related inquiries by the Department and Authorized Users.
- 7.3.13. Contractor shall provide access to its Help Desk web portal/telephone/email to the designated Department and other Authorized Users.
- 7.3.13.1. DELIVERABLE: Operations and Maintenance Plan
- 7.3.13.2. DUE: As defined in the approved Project Schedule
- 7.3.14. There shall be a Warranty Period, effective upon implementation of any mutually agreed upon new enhancement to be provided by Contractor, which shall begin on the day on which the enhancement becomes operational for a period of ninety (90) days thereafter. The Warranty Period covers the agreed upon functionality, and Contractor shall be responsible for correcting all Defects that prevent the System from operating according to Contractor's specifications, where Contractor shall provide the Department with applicable specifications once the new enhancement has been agreed upon with the Department. Contractor does not necessarily need to correct all Defects during the Warranty Period, but all Defects identified by the Department or Contractor during the Warranty Period shall be corrected by the Contractor, as agreed upon through the Change Management Process, at its expense with no additional cost to the Department. Contractor shall maintain routine System performance and Operations while correcting the Defects except where it is not reasonable to do so.
- 7.3.15. Contractor shall perform ongoing risk mitigation according to risk management plan throughout the operations and maintenance phase.
- 7.4. O&M Enhancements
  - 7.4.1. Contractor shall manage Enhancements as projects, utilizing a Department approved change management process and SDLC methodology.
  - 7.4.2. Contractor shall document and maintain a list of all proposed Enhancement project ideas for comprehensive tracking, prioritization, and backlog reporting.
  - 7.4.3. Contractor shall provide a monthly report of all open Enhancement projects, which shall include aging reports.
- 7.5. Contractor shall adhere to Turnover requirements and provide a Contract Turnover Plan for EDI Services in accordance with its obligations and requirements for a Turnover Plan and services under the Core MMIS Contract (Contract 25-185383, Section 7.8 through 7.8.1.7)) once fully executed.
- 7.6. Contract Turnover Plan and activities shall be completed prior to Contract termination. If the Contract Turnover Plan and activities are not completed prior to Contract termination due to the Contractor's failure to complete the Contract Turnover Plan and activities, the Department may extend the Term of the Contract via an Option Letter for purposes of completing the Contractor Turnover Plan and activities.

## 8. ENTERPRISE SOLUTION INTEGRATION REQUIREMENTS

### 8.1. Data Integration Requirements

- 8.1.1. Contractor shall participate and engage with the ESI Contractor and the Department in capturing technical and business requirements to support the module integration. The Department will ensure that its agreements with the ESI Contractor contain non-disclosure and confidentiality obligations restricting the disclosure of Confidential Information that is can similar, if not stronger, than the confidentiality requirements in this Contract.
- 8.1.2. Contractor shall be responsible for providing, developing, managing, and supporting full interoperability APIs and batch processes including search, business operations, reporting, exchange, backups, views, create, read, updates and delete (CRUD) for all integrations and data the Module is responsible for.
- 8.1.3. APIs, Interfaces, Batch processes that do not currently exist in the MES architecture shall be prioritized through the Department's ESI Priority Change Control Board.
- 8.1.4. Contractor's Solution shall provide, at minimum, all the following data integration functionality:
  - 8.1.4.1. The ability to, create, accept, receive, and process different types of healthcare data files that contain the required data (e.g., batch, HL7, FHIR, APIs, interfaces). The Department may, at its option, submit a System Change Request (SCR) directing Contractor to create the ability to receive and process HL7, FHIR or other file types not received directly today.
  - 8.1.4.2. The ability to integrate with the Enterprise Solution Integration (ESI) Platform to transmit data between the Medicaid Enterprise Solutions (MES) Modules.
  - 8.1.4.3. The ability to exchange data with the ESI Platform and between the MES Modules via the ESI Platform to improve stability and performance of data and integration exchanges.
    - 8.1.4.3.1. Any changes to existing file exchange types in the MES architecture different from the current solution or new interfaces shall be implemented through a new System Change Request.
- 8.1.5. Contractor shall establish and maintain a batch process, Interface(s) or in collaboration with the ESI Contractor through the ESI Platform to the designated MES modules to transmit data, as defined by the Department's business needs.
- 8.1.6. Contractor shall provide and batch files for each environment including non-production environments and production environments. This would be for/batch and healthcare format capabilities for all environments.

### 8.2. Integration Design and Development

- 8.2.1. Contractor shall follow the approved Department's SDLC process in collaboration with the ESI & MES Contractors.
- 8.2.2. Contractor shall participate and engage in all data, integration, and governance meetings to support the completion of the Vendor Solutions Integration Planning (VSIP) document.
  - 8.2.2.1. The VSIP is a planning document to be used by the ESI Contractor to collect requirements, design and development specifications, test cases, scenarios and results, from MES module Contractors related to their data interface requirements, data

dictionary, data conversion data model, data mapping, and security plan. Requirements for the VSIP will not include Contractor's proprietary or Confidential Information.

- 8.2.3. Contractor shall participate in the development, management, and support of the VSIP document to integrate with the ESI Platform, in compliance with the ESI Modernization Roadmap and the ESI Integration and Data Governance Plan maintained by the ESI Contractor.
- 8.2.4. Contractor shall follow all processes for the integration aspects of the SDLC including actively working with the ESI Contractor in the SDLC collaboration tool to track all requirements, design and development, testing (including end to end testing) and executions of scenarios and regression testing activities and trace all activities to the ESI RTM for completeness.
- 8.2.5. Contractor shall provide the following documentation, at a minimum but not limited to:
  - 8.2.5.1. Data Mapping and Approach.
  - 8.2.5.2. Integration Data Dictionaries.
  - 8.2.5.3. Data Integration Testing and Approach.
  - 8.2.5.4. Integration Approach.
  - 8.2.5.5. Integration Testing Approach.
- 8.2.6. Contractor shall update the information identified in the VSIP document to reflect any changes made that impact the interface batch process or API(s) for the Department and ESI Contractor to review and approve.

### 8.3. Data Integration Testing

- 8.3.1. Contractor shall develop Data Integration Test Cases and data sets and submit to the Department and the ESI Contractor for prior approval before the testing phase begins. Approval shall be provided before the Contractor begins work. Contractor may re-use Test Cases and data sets with the approval of the Department and ESI Contractor.
- 8.3.2. Contractor shall perform Data Integration Testing of the Contractor's Solution, as required by the Department and the ESI Contractor. The ESI Contractor and the Department will provide their testing requirements prior to the commencement of the testing phase of a project., The Contractor shall provide documentation and test results for all testing phases, in accordance with the CMS Testing Framework.
- 8.3.3. Contractor shall be responsible for establishing, curating, and resetting any test data in the non-Production environments, subject to the terms of this Contract.
- 8.3.4. Contractor shall be responsible to refresh test data to meet the technical and business needs of the project. The test environment shall be refreshed no less often than annually.
- 8.3.5. To ensure module data passes all testing processes performed before, during, and after implementation, Contractor shall provide Data Integration Testing Support for Defect Resolution of the Contractor's Solution, which includes but is not limited to:
  - 8.3.5.1. Pre-production data submissions.
  - 8.3.5.2. Implementing defect fixes.
  - 8.3.5.3. Data model updates.



#### 8.3.5.4. Data corrections.

### 8.4. Integration Implementation and Monitoring

8.4.1. Contractor shall maintain an inventory of all consumers of their APIs and batch files, and implement a notification and communications process for any updates, changes, new versions, errors, and outages.

8.4.2. After implementation of an integration, Contractor shall work with the ESI Contractor and the Department to identify and resolve data quality and integration quality issues. The Department will monitor the consistency, quality, and overall health of the data that Contractor exchanges with the ESI Platform. Contractor shall provide written, monthly reporting of data monitoring and analysis to monitor the consistency, quality, and overall health of the data for the purpose of maintaining accuracy and completeness of the data.

### 8.5. Data Integration Resources

8.5.1. Contractor shall provide dedicated and qualified resources to discuss Data Integration of the Contractor's Solution with the Department and ESI Contractor throughout the life of the Contract.

8.5.2. Contractor shall provide dedicated and qualified resources to support the VSIP document throughout the life of the Contract to ensure the SDLC methodology is implemented and follows the project schedule.

8.5.3. Contractor shall participate in all required ESI Organizational Change Management (OCM) activities including stakeholder analysis, risk assessments, training, resistance management strategies, and support or assist in the development of OCM related activities and related communications.

### 8.6. Data Management

8.6.1. Contractor shall be responsible for managing data created by the Contractor for the Contractor's Solution, as defined by the ESI Data Governance Council.

8.6.2. The Contractor shall be responsible for submitting ESI-Compliant Data that is stored or generated within the Contractor's Solution as specified by the Department.

8.6.3. Contractor shall be responsible for performing defect identification and data cleansing activities for all data the Contractor has created prior to submission to the ESI Platform. Such defect identification and data cleansing shall be performed in accordance with guidance documents/processes provided by the Data Governance Board.

8.6.4. Contractor shall use Mapping Document tools that align with the ESI Contractor's VSIP planning efforts to ensure the mapping documents are accurate and complete.

8.6.5. Contractor shall provide mapping and transformation processes for inbound and outbound Integration, APIs and Interface transmissions.

8.6.6. Contractor shall work with the ESI Contractor to create and update the Mapping Documents, along with source and target information based on the project schedule.

8.6.7. Contractor shall deliver Mapping Documents to the Department and ESI Contractor for review and approval.

8.6.8. The Contractor shall work with other MES Module Contractors, the Department, and the ESI Contractor to transmit and covert data from the Legacy System to the new Module System.

8.6.9. The Contractor shall perform the data cleansing, data mapping and transformation requirements outlined above to generate clean, ESI-compliant data for submission to the ESI Contractor. After the execution of this contract, the Department and ESI Contractor shall submit the Data Quality Management Plan to the Contractor through the current SCR for ESI VSIP process for data cleansing, data conversion, data mapping, transformations, requirements, design and development and testing.

8.6.9.1. DELIVERABLE: Mapping Documents

8.6.9.2. DUE: As defined in the approved Project Schedule

8.7. Data Integration Incidents

8.7.1. Contractor shall work with the ESI Contractor to resolve Data Integration production incidents according to SLA performance standards and requirements of the ESI Platform.

8.7.2. Contractor shall work with the ESI Contractor to document the Root Cause Analysis (RCA) and Corrective Action Plans (CAP).

## 9. SYSTEM SECURITY PLAN

Contractor shall adhere to Security Plan requirements and provide deliverables for EDI Services in accordance with its security obligations and requirements for the System under the Core MMIS Contract (Contract 25-185383, Section 10.1 through 10.1.1.23.3) once fully executed.

## 10. THIRD-PARTY PRIVACY/SECURITY AUDITS/ASSESSMENTS.

Contractor shall adhere to Third-Party Privacy/Security Audits/Assessments and provide deliverables for EDI Services in accordance with its obligations and requirements for Third-Party Privacy/Security Audits/Assessments under the Core MMIS Contract (Contract 25-185383, Section 11.2 through 11.2.7) once fully executed.

## 11. DELIVERABLE LIST

Unless otherwise provided in this Contract, the due dates for Contractor to deliver the following Deliverables to the Department shall be as follows:

DELIVERABLES	DATE DUE TO THE DEPARTMENT
Meeting Agendas	At least 24 hours before each meeting is scheduled to begin
Weekly Project Status Report	Weekly, in accordance with and as part of the Contractor's Weekly Project Status requirements and reporting under the Core MMIS Contract
Monthly Contract Management Report	Monthly, in accordance with and as part of the Contractor's Monthly Contract Management Report requirements and reporting under the Core MMIS Contract
Contract Turnover Plan	As defined in the approved Project Schedule
Mapping Documents	As defined in the approved Project Schedule

<b>DELIVERABLES</b>	<b>DATE DUE TO THE DEPARTMENT</b>
Corrective Action Plan (CAP)	As defined in the approved Project Schedule
CISP Initial CISP Attestation	Within 30 Business Days after the Effective Date of the Contract
CISP Annual CISP Attestation	Annually, by June 30 <sup>th</sup> of each year
CMS Initial HHS Attestations	Within 30 Business Days after the Effective Date of the Contract
CMS Annual HHS Attestation	Annually, by June 30 <sup>th</sup> of each year
BCA Background Check Attestation	Within 30 Business Days of the Contract Effective Date

## **12. COMPENSATION AND INVOICING**

### **12.1. Detailed Invoicing and Payment Procedures**

- 12.1.1. The Department will pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit B, Statement of Work and Exhibit C, Rates.
- 12.1.2. Contractor shall provide an invoice to facilitate proper payment of the invoice and the Department's receipt of proper Federal Financial Participation for any component of the payment.
- 12.1.3. Contractor shall submit to the Department all invoices in a format approved by the Department.
- 12.1.4. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the Department.
- 12.1.5. The invoice shall include all necessary information for the Department to determine the accuracy of the invoice and properly pay the invoice to the Contractor.
  - 12.1.5.1. The Contract Number shown on the cover page for this Contract to facilitate invoice processing.
  - 12.1.5.2. A clear description of the time the invoice covers.
  - 12.1.5.3. An itemized list of Deliverables approved by the Department for payment for the period the invoice covers.
  - 12.1.5.4. An itemized list of Service Level Agreements including whether they were Met or Not Met.
  - 12.1.5.5. Any other information necessary for the Department to determine the accuracy of the invoice and properly pay the invoice to the Contractor.
- 12.2. Contractor shall submit invoices to the Department upon completion of a Payment Milestone with a list of each Deliverable that was accepted by the Department for a given Payment Milestone.
- 12.3. Contractor shall include the QMP status along with the invoice as documentation to support the amount of QMP claimed.
- 12.4. In case of an annual payment due, the Contractor shall invoice the Department at the beginning of the Fiscal Year.

- 12.5. **Closeout Payments.** Notwithstanding anything to the contrary in this Contract, all payments for the final month of this Contract shall be paid to Contractor no sooner than 10 days after the Department has determined that Contractor has completed all the requirements of the Closeout Period, which determination shall not be unreasonably withheld or delayed.

EXHIBIT C, RATES

1. FIXED MONTHLY SERVICE PAYMENTS

1.1. The Department will pay Contractor the following monthly payments upon acceptance of each monthly invoice.

SFY	Payment Period	No. of Months	EDI Sole Source Monthly Payment	Total for Payment Period	SFY Not To Exceed Amount
2025	May 1, 2025 – June 30, 2025	2	\$132,799.00	\$265,598.00	\$265,598.00
2026	July 1, 2025 – October 31, 2025	4	\$132,799.00	\$531,196.00	\$1,619,028.00
	November 1, 2025 – June 30, 2026	8	\$135,979.00	\$1,087,832.00	
2027	July 1, 2026 – July 31, 2026	1	\$135,979.00	\$135,979.00	\$135,979.00
TOTAL					\$2,020,605.00

## **EXHIBIT D, TERMINOLOGY**

### **1. TERMINOLOGY**

- 1.1. In addition to the terms defined in §3 of this Contract, the following list of terms shall be construed and interpreted as follows:
  - 1.1.1. Action Items – A discrete task that must be accomplished, usually by a single individual or a small team or group.
  - 1.1.2. ANSI (ASC) X12N Transactions – ASC X12 develops and maintains standards for electronic data interchange relating to business transactions. ASC X12N, the Insurance Subcommittee of ASC X12, develops and maintains standards for healthcare administrative transactions.
  - 1.1.3. Application Program Interface (API) – A set of routines, protocols, and tools for building software applications.
  - 1.1.4. Authorized User – Means any person or entity designated by business requirement, contract, assignment of User identification, or otherwise authorized, to access confidential or secure information, data, or Systems.
  - 1.1.5. Business Hour – The hours of the day during which business is transacted. The open and close schedule that a business determines for its operations. Office working hours are weekdays from 8:00 a.m. to 5:00 p.m. Mountain Time.
  - 1.1.6. Business Interruption – Any event that disrupts Contractor’s ability to complete the Work for a period of time, and may include, but is not limited to a Disaster, power outage, strike, loss of necessary personnel or computer virus.
  - 1.1.7. Change Management (Process) – A collective term for all approaches to prepare, support, and help individuals, teams, and organizations in making organizational change. It includes methods that redirect or redefine the use of resources, business process, budget allocations, or other modes of operation that significantly change a company or organization.
  - 1.1.8. Change Request – A formal proposal to modify a document, Deliverable, or baseline; a formal proposal to make a System change; or a formal proposal to make any other System modification.
  - 1.1.9. Change Request Board – An established committee that reviews proposed changes from the original baseline requirements that were agreed upon by the Department. If any change is approved by the committee, the change is communicated to the project team and the client, and the requirement is baselined with the change.
  - 1.1.10. Closeout Period – The period beginning on the earlier of 90 days prior to the end of the last Extension Term or notice by the Department of its decision to not exercise its option for an Extension Term, and ending on the day that the Department has accepted the final deliverable for the Closeout Period, as determined in the Department-approved and updated Closeout Plan, and has determined that the closeout is complete.
  - 1.1.11. Colorado Revised Statutes (C.R.S.) – The legal code of Colorado; the legal codified general and permanent statutes of the Colorado General Assembly.
  - 1.1.12.

- 1.1.13. Consumer Price Index- Urban (CPI-U) – The Consumer Price Index for All Urban Consumers published by the US Department of Labor, Bureau of Labor Statistics.
- 1.1.14. Contract Year – Each period of 12 consecutive months during the Initial Term of this Agreement, with the first Contract Year commencing on the Effective Date, and with each subsequent Contract Year commencing on the anniversary of the Effective Date.
- 1.1.15. Contractor – A party that undertakes a contract to provide materials and/or labor to perform a service or do a job.
- 1.1.16. Data – State Confidential Information and other State information resources transferred to Contractor for the purpose of completing a task or project assigned in the Statement of Work.
- 1.1.17. Data Integration – The process of combining data from different sources into a single, unified view. It involves discovering, moving, and transforming data from multiple source systems.
- 1.1.18. Data Integration Testing – The process of verifying that the data from various sources is integrated and transformed according to the business rules and requirements. Data integration testing can be done at different levels, such as unit testing, system testing, and end-to-end testing.
- 1.1.19. Defect – A genuine error, malfunction, fault, or failure which prevents the System from operating as intended.
- 1.1.20. Deliverable Expectations Document (DED) – Document that provides a basis for the development and submission of a resulting deliverable. A DED is a tool used to avoid miscommunication and ensure that the Department and contractor (or other participating parties) possess a mutual understanding of content and scope of the deliverable.
- 1.1.21. Department – Colorado Department of Health Care Policy & Financing (HCPF).
- 1.1.22. Department Staff – Colorado Department of Health Care Policy & Financing (HCPF) State employees or contracted personnel, as determined by the Department.
- 1.1.23. Department Stakeholders – A person, Project team member, or participant within the Department’s organization or system, with an interest or concern in its business or success.
- 1.1.24. Design, Develop and Implementation (DDI) Phase – Component of the contract that describes the design, development, and implementation of a technology solution.
- 1.1.25. Development Environment – An environment used for developing, testing, and debugging an application or program.
- 1.1.26. Disaster – An event that makes it impossible for Contractor to perform the Work out of its regular facility or facilities, and may include, but is not limited to, natural disasters, fire, or terrorist attacks.
- 1.1.27. Dispute Process – The process described in the Contract for the Contractor and the Department to follow to resolve all debates or disagreements between the Department and Contractor.
- 1.1.28. Division Director – A Director in the Colorado Department of Health Care Policy & Financing (HCPF).
- 1.1.29. Downtime Exception – Unavailability arising from or during (a) any scheduled downtime, (b) any failure of the SaaS solution that arises from connection failures or similar problems attributed to a User, (c) scheduled downtime by Edifecs’ data center hosting subcontractor;

(d) downtime because of general problems with the Internet; (e) downtime due to any factors beyond Edifecs' reasonable control; or (f) Customer-requested SaaS solution's re-starts.

- 1.1.30. EDI-Specific Personnel – The position or positions that are specifically designated as such in this Contract.
- 1.1.31. Electronic Data Interchange – The automated transfer of data in a specific format following specific data content rules between a health care provider and Medicare, or between Medicare and another health care plan.
- 1.1.32. Enhancement – Incremental improvements to existing processes and/or system components that are completed as part of the Operations and Enhancement (O&M) phase of the contract.
- 1.1.33. Enterprise – The Department's MES business, technical, and Information Architectures. Healthcare Enterprise architecture views people, process, and technologies as a "system of systems." Colorado's MES currently consists of four (4) primary services: Medicaid Management Information System (MMIS) and Fiscal Agent, Business Intelligence and Data Management (BIDM), Pharmacy Benefit Management System (PBMS), and Colorado Benefits Management System (CBMS).
- 1.1.34. Enterprise Solution Integration (ESI) Platform – Common integration platform, managed by the ESI Contractor, that assures data and integration between MES modules is consistent, secure, and available.
- 1.1.35. Enterprise Solution Integration (ESI) Contractor – Contractor whose responsibility is to establish and manage standards, processes and technology that assure all MES modules and related vendors seamlessly support Department goals.
- 1.1.36. Enterprise Solution Integration (ESI) Data Governance Council – The governing body that has the authority, control, and shared decision making (e.g. planning, monitoring, and enforcement) over the management of data assets.
- 1.1.37. Existing System – All of the MES systems in existing as of the Effective Date.
- 1.1.38. Existing Vendors – The MES Vendors associated with each MES-related contract at the time of the Effective Date.
- 1.1.39. Fiscal Year – The State's Fiscal Year, defined as running from July 1 in a defined calendar year through June 30 in the following calendar year.
- 1.1.40. Fit-Gap Analysis – The act of finalizing and validating scope; identification and evaluation of existing data sources and or availability of additional data sources; and evaluation of existing practices/processes, current practices performance and impact, and identification potential areas of improvement.
- 1.1.41. Flat File – A data file that is not related to another file and the records in the file are stored in a plain text format.
- 1.1.42. Fraud – An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person and includes any act that constitutes fraud under any federal or state law.
- 1.1.43. Go-Live – The time during a Project at which a Contractor's solution or product is officially released into production.
- 1.1.44. Health First Colorado – Colorado's Medicaid Program.



- 1.1.45. Health Insurance Portability and Accountability Act (HIPAA) – The Health Insurance Portability and Accountability Act of 1996, as amended.
- 1.1.46. Health Information Trust Alliance (HITRUST) – A non-profit company that delivers data protection standards and certification programs to help organizations safeguard sensitive information, manage information risk, and reach their compliance goals.
- 1.1.47. HIPAA 275 – Electronic Attachments (275 transactions) are supplemental documents providing additional patient medical information to the payer that cannot be accommodated within the ANSI ASC X12, 837 claim format.
- 1.1.48. Improvements – Planned enhancements to processes and/or system components that are tied to Department-defined strategic goals and objectives, documented in the Business Process Improvement Plan deliverable.
- 1.1.49. Integration – Integration begins with the ingestion process, and includes steps such as cleansing, extract, transform, and load (ETL) mapping, and transformation. Data Integration is the process of combining data from different Sources into a single, unified view, and ultimately enables analytics tools to produce effective, actionable business intelligence.
- 1.1.50. Integration Testing – A phase in software testing in which individual software modules are combined and tested as a group. Integration testing is conducted to evaluate the compliance of a system or component with specified functional requirements and follows unit and system testing in the testing lifecycle.
- 1.1.51. Interfaces – Any or all of the interfaces needed to complete full functionality of the Solution.
- 1.1.52. Issues – A negative result, outcome, or action that has already occurred.
- 1.1.53. Key Personnel – The position or positions that are specifically designated as such in this Contract.
- 1.1.54. Knowledge Management (KM) – A collection of methods relating to creating, sharing, using, and managing the knowledge and information of an organization.
- 1.1.55. Master Schedule – A consolidated plan that is maintained by the Department that contains tasks, dependencies, resources, milestones, and planned hours for the overall MES program.
- 1.1.56. Medical Code Set – Specific code sets for health care diagnosis and procedures used in transactions to classify medical diagnosis, procedures, diagnostic tests, treatments, and equipment and supplies.
- 1.1.57. Medicaid/MES Ecosystem – The complex network or interconnected systems under the Department’s Medicaid umbrella.
- 1.1.58. Medicaid Enterprise Solutions (MES) – The MMIS, PBMS, CBMS, and BIDM systems.
- 1.1.59. Medicare Crossover – A claim that is directly from Medicare and has crossed over to Colorado’s Medicaid Program for processing.
- 1.1.60. Meeting Agenda – Denotes the date, time, and location of the meeting, the invitees, and the topics to be covered during the meeting with the presenter’s name and discussion duration.
- 1.1.61. Meeting Minutes – Captures the attendees, the discussion topics, Action Items and next steps, and decisions made during the meeting.
- 1.1.62. Meeting Records – Are the recorded or written Meeting Agenda, Meeting Minutes, and any related documentation, videos, or attachments.

- 1.1.63. Member – Any individual enrolled in the Colorado Medicaid program, Colorado’s CHP+ program or the Colorado Indigent Care Program, as determined by the Department.
- 1.1.64. MES Department Contacts – Designated Department points of contact for MES procurements, contracts, and Project Management communications.
- 1.1.65. MES Ecosystem – The Medicaid Enterprise Solutions along with the ESI Integration Platform.
- 1.1.66. MES Governance Plan – Policies and procedures that govern the ESI Platform and integrations.
- 1.1.67. MES Module(s) – All MES components residing within the BIDM, CBMS, MMIS, or PBMS systems, or that once resided in the BIDM, CBMS, MMIS, or PBMS systems that the Department reconfigures into its own module with the ESI Integration Platform.
- 1.1.68. MES Standards – Aligned with CMS MITA conditions and standards, Colorado OIT, and Enterprise Project Management Office (EPMO) standards, tools, templates, and processes, and encompassing the Department’s standards and best practices for MES data governance, data quality controls, Integration file exchange, data model maintenance, and technical and Consultative Support Services,
- 1.1.69. MES Vendor(s) or Medicaid Enterprise Solution Vendor(s) – The contractors selected by the Department with which the Department has entered into MES Modules-related contracts after the Effective Date. Also referred to as the Department’s MES Vendor(s).
- 1.1.70. Milestones – A goal to be achieved via a list of tasks. A Milestone is a tool for tracking the progress of a Project and to measure the performance of teams based on specific requirements. A Milestone is used to reference a specific progress point in a Project and describes when the Parties plan to achieve an event, such as on a quarterly timeline.
- 1.1.71. Operations and Maintenance (O&M) – Includes the day-to-day activities necessary for the building or built structure, its systems and equipment, and an occupant or User to perform the occupant’s or User’s intended function.
- 1.1.72. Other Personnel – Individuals and Subcontractors, in addition to Key Personnel, assigned to positions to complete tasks associated with the Work.
- 1.1.73. Performance/Stress Testing – Performance testing is a non-functional software testing technique that determines how the stability, speed, scalability, and responsiveness of an application holds up under a given workload. It includes smoke (technical validation), load (target production load) and stress (overloaded volume) testing of the end-to-end system including batch/ETL jobs.
- 1.1.74. Personal Data – Data that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.
- 1.1.75. Priority 1 – Critical Issues, defined as Production Incidents in which User(s) cannot operate a core piece of business due to a deficiency or Defect with no reasonable workaround.
- 1.1.76. Priority 2 – High Issue, defined as or Major Issues, which are defined as (i) for High Issues, vital business operations are impacted, slowed, or hampered by a deficiency or Defect for which there is a viable workaround that permits the continued use of the MES Ecosystem and (ii) for Major Issues, vital business operations are impacted, slowed or hampered by a deficiency or Defect affecting a single user.

- 1.1.77. Priority 3 – The overall production is operational with no major impact on the Department’s business operation including user interface and navigation issues, configuration and usability issues, and a reasonable workaround is available.
- 1.1.78. Production Environment – The setting where software and other products are put into operation for their intended uses, where programs are run, and where hardware setups are installed and relied on for daily operations.
- 1.1.79. Production Incident – A service disruption that requires a corrective action.
- 1.1.80. Production Ready – After System testing, a System that is free of Defects and is ready for Go-Live into the production environment.
- 1.1.81. Project – A Project defines the Work to be completed, as identified in Exhibit B.
- 1.1.82. Project Artifact – Anything the Contractor produces during the performance of the Work.
- 1.1.83. Project Management – The use of specific knowledge, skills, tools, and techniques to deliver something of value to people and the process of leading the work of a team to achieve all Project goals within the given constraints.
- 1.1.84. Project Management Plan (PMP) – A series of formal documents that define the execution and control stages of a project.
- 1.1.85. Project Repository – An archive of all project related documentation, including plans, risk/issue logs, decision logs, meeting minutes, etc., that is accessible by all related project staff.
- 1.1.86. Prosci® – A change management methodology that is a systematic and holistic approach which guides organizations to realize the benefits of their change initiatives and aims at building internal, organizational capabilities to deal swiftly and efficiently with the ever-increasing number of changes.
- 1.1.87. Protected health Information (PHI) – 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.
- 1.1.88. Provider – Any organization, institution, or individual that provides health care services to Medicare beneficiaries.
- 1.1.89. Quality Assurance (QA) – The process or actions taken to ensure a product meets all of its requirements. Quality assurance is often used to track compliance and maintain consistent product management output over time.
- 1.1.90. Real Time – The actual time it takes a process to occur; of or relating to computer systems that update information at the same rate they receive information.
- 1.1.91. Requirements Specification – A collection of all requirements that are to be imposed on the design and verification of the product and that also contains other related information necessary for the design, verification, and maintenance of the product.

- 1.1.92. Risk – An uncertain event or condition that, if it occurs, has a positive or negative effect on a Project’s objectives.
- 1.1.93. Root Cause Analysis – A systematic process for identifying “root causes” (the factor that causes a particular situation) of Production Incidents or events as well as an approach for responding to each Production Incident or event.
- 1.1.94. Scheduled Testing Activities – Testing tasks and testing sub-tasks that are included in the MES Master Testing Strategy and Management Plan (including Defect Management), including scheduled testing dates and scheduled testing times for each testing task or testing sub-task.
- 1.1.95. Service Organization Control 1 (SOC 1) Type II – A service organization compliance framework developed by the American Institute of Certified Public Accountants (AICPA). The primary purpose is to review internal controls and ensure that that are effective over a period of time.
- 1.1.96. Service Organization Control 2 (SOC 2) Type II – A cybersecurity compliance framework developed by the American Institute of Certified Public Accountants (AICPA). The primary purpose of SOC 2 is to ensure that third-party service providers store and process client data in a secure manner.
- 1.1.97. System Development Lifecycle (SDLC) – A set of Department approved processes that governs planning, creating, testing, and deploying new technologies.
- 1.1.98. Service Organization Controls (SOC) Report – Verification that an organization is following specific best practices related to protecting their clients' data.
- 1.1.99. Source – A place, person, or thing from which something comes or can be obtained, such as an external system which provides the data to be loaded into the Target system.
- 1.1.100. Sprint – A set period of time during which a set of specific tasks must be completed.
- 1.1.101. Stakeholders – A Stakeholder is any person or entity that has an interest or concern in a business or Project, in which all the members or participants are seen as having an interest in its success.
- 1.1.102. Submitter – An entity with whom an organization exchanges data electronically. Also referred to as a Trading Partner.
- 1.1.103. System(s) – The ESI Integration Platform and the MES Ecosystem.
- 1.1.104. System Testing – Testing technique whose purpose is to confirm that functions within a system are interacting appropriately.
- 1.1.105. Target – An object or goal that is being aimed at, such as a target system or destination place where something is being sent, taken, going, or directed.
- 1.1.106. Technical Architecture – The design and documentation of a software application. Technical Architecture is a form of Information Technology architecture that is used to design computer systems and that provides a blueprint schematic for developers to use when they are building or modifying a computer system.
- 1.1.107. Technology Vendors – A person or entity who provides or proposes to provide to a customer proprietary information technology goods or services, including software, hardware, products, processes, algorithms, User Interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information.

- 1.1.108. Test Case – The actions required to verify a specific requirement or set of requirements in software testing. The test case details the steps, data, prerequisites, and postconditions necessary to verify requirements.
- 1.1.109. Testing Environment – The environment where hardware and software components include configuration settings that are necessary to test and validate the application meets design specifications.
- 1.1.110. Testing Phase – The period of time during which the Contractor ensure the Project meets design specifications.
- 1.1.111. Tier I – Tier I is defined as the primary provider call center vendor that receives all initial calls and inquiries as they relate to Provider issues. The primary provider call center will receive and resolve all Tier I inquiries when resolution only requires providing information from the interchange system. Provider inquiries that require updating the system with new information or that require any type of reprocessing will constitute Tier II inquiries and will be forwarded to the Department's Fiscal Agent for resolution.
- 1.1.112. Tier II – Tier II support team members handle technical escalations and more advanced inquiries that are beyond the skills or knowledge of the first level customer service representatives. Tier II inquiries are issues or challenges that could not be solved by the first level because of either the complexity, the need for specific system or subject matter knowledge, or the issue has not previously been added to the Provider Call Center knowledge base. Tier II shall use the Department provided ticketing tool to manage the lifecycle of the inquiry/ticket.
- 1.1.113. Trading Partner – An entity with whom an organization exchanges data electronically. Also referred to as a Submitter.
- 1.1.114. Transition Phase – The process of migrating operations of the system, staff and related processes from the incumbent vendor, with minimum disruption of service.
- 1.1.115. Transmittal – An official document from the Department authorizing the Contractor to perform a specific function that is considered within the Contractor's Scope-of-Work during the Contract, but a Transmittal may not be used for any changes that require an SDLC or follow the Change Management Process.
- 1.1.116. Unit Testing – Testing technique whose purpose is to confirm that a component is validated and functions as expected within the confines of the specification that it was developed.
- 1.1.117. User(s) – A person who utilizes a computer, network service, or other equipment. A User often has a user account and is identified to the system by a username. Also called End User for the Target User (employee or customer)
- 1.1.118. User Acceptance Testing (UAT) – Testing technique whose purpose is for Department staff and other business testers to validate the solution meets pre-established requirements.
- 1.1.119. User Documentation – Explanatory and informational materials concerning the Department's documentation or Vendor's products, company products, in printed or electronic format, which the Department or Vendor/Contractor has released for distribution to End Users which may include manuals, descriptions, User and/or installation instructions, diagrams, printouts, listings, flowcharts, and training materials.
- 1.1.120. Warranty Period – Covers the period before project closure where the development team is responsible for resolving any defects or incidents discovered after release.

- 1.1.121. Work Products – The output of a project. They are the lowest level of project work that are individually estimated, budgeted, assigned, executed, measured, and controlled. Work products include both tangible things such as infrastructure installations and intangible things such as presentations.
- 1.1.122. Workflow – A Workflow is a sequence of any business or industry tasks that processes a set of data. Workflows are the paths that describe how something goes from being undone to done, or raw to processed.
- 1.1.123. Workforce Management (WFM) – The way in which the Contractor will strategically allocate people and resources to meet Producer Call Center Service Level Agreements.
- 1.1.124. 508/ADA – Section 508 of the Rehabilitation Act of 1973. In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities.

## **2. ACRONYMS AND ABBREVIATIONS**

- 2.1. The following list is provided to assist the reader in understanding certain acronyms and abbreviations used in this Contract:
  - 2.1.1. ADKAR – Awareness, Desire, Knowledge, Ability, Reinforcement
  - 2.1.2. ANSI – American National Standards Institute
  - 2.1.3. APD – Advanced Planning Document
  - 2.1.4. API – Application Programming Interface
  - 2.1.5. AWS – Amazon Web Services
  - 2.1.6. BIDM – Business Intelligence Data Management System
  - 2.1.7. BRD – Business Requirement Document
  - 2.1.8. CAP – Corrective Action Plan
  - 2.1.9. CEF – CMS Conditions for Enhanced Funding
  - 2.1.10. CFR – Code of Federal Regulations
  - 2.1.11. CHP+ – Child Health Plan Plus
  - 2.1.12. CMS – Centers for Medicare and Medicaid Services
  - 2.1.13. COE – Center of Excellence
  - 2.1.14. COTS – Commercial off the Shelf
  - 2.1.15. CR – Certification Review
  - 2.1.16. C.R.S. – Colorado Revised Statutes
  - 2.1.17. CRUD – Create, Read, Update and Delete
  - 2.1.18. EDI – Electronic Data Interchange
  - 2.1.19. EPMO – The Department’s Enterprise Project Management Office
  - 2.1.20. ESI – Enterprise Solution Integration Platform
  - 2.1.21. FFP – Federal Financial Participation

- 2.1.22. FGA – Fit Gap Analysis
- 2.1.23. FHIR – Fast Healthcare Interoperability Resources
- 2.1.24. HIPAA – Health Insurance Portability and Accountability Act of 1996, as amended.
- 2.1.25. HIT – State Medicaid Health Information Technology
- 2.1.26. HL7 – Health Level Seven International
- 2.1.27. iC – Colorado interChange MMIS
- 2.1.28. ICD – MES Interface Control Document
- 2.1.29. ICN – Internal Control Number
- 2.1.30. IMS – Integrated Master Schedule
- 2.1.31. KPI – Key Performance Indicators
- 2.1.32. MES – Medicaid Enterprise Solutions
- 2.1.33. MFCU – The Colorado Medicaid Fraud Control Unit in the Colorado Department of Law
- 2.1.34. MMIS – Medicaid Management Information System
- 2.1.35. OCM – Organizational Change Management
- 2.1.36. OIT – Governor’s Office of Information Technology
- 2.1.37. ORR – Operational Readiness Review
- 2.1.38. O&M – Operations and Maintenance / Enhancement
- 2.1.39. PHI – Protected Health Information
- 2.1.40. PII – Personally Identifiable Information
- 2.1.41. PMBOK – Project Management Body of Knowledge
- 2.1.42. PMP – Project Management Plan
- 2.1.43. POA&M – Plan of Action & Milestones
- 2.1.44. QMP – Quality Maintenance Payment
- 2.1.45. RCA – Root Cause Analysis
- 2.1.46. RTM – Requirements Traceability Matrix
- 2.1.47. SaaS – Software as a Service
- 2.1.48. SCR – System Change Request
- 2.1.49. SDLC – System Development Lifecycle
- 2.1.50. SFY – State Fiscal Year
- 2.1.51. SIT – System Integration Testing
- 2.1.52. SLA – Service Level Agreement
- 2.1.53. SMC – Streamlined Modular Certification
- 2.1.54. SME – Subject Matter Expert
- 2.1.55. SSO – Single Sign On

- 2.1.56. U.S.C. – United States Code
- 2.1.57. UAT – User Acceptance Testing
- 2.1.58. VARA – Visual Rights Act of 1990
- 2.1.59. VSIP – Vender Solution Integration Plan



## **EXHIBIT E, CONTRACTOR'S ADMINISTRATIVE REQUIREMENTS**

### **1. CONTRACTOR'S GENERAL REQUIREMENTS**

- 1.1. The Department will contract with only one organization, the Contractor, and will work solely with that organization with respect to all tasks and Deliverables to be completed, services to be rendered, and performance standards to be met under this Contract.
- 1.2. Contractor may be privy to internal policy discussions, contractual issues, price negotiations, confidential medical information, Department financial information, advance knowledge of legislation and other Confidential Information. In addition to all other confidentiality requirements of the Contract, the Contractor shall also consider and treat any such information as Confidential Information and shall only disclose it in accordance with the terms of the Contract.
- 1.3. Contractor shall work cooperatively with Department Staff and, if applicable, the staff of other State contractors toward the completion of the Work. The Department may, in its sole discretion, use other contractors to perform activities related to the Work that are not contained in the Contract or to perform any of the Department's responsibilities. In the event of a conflict between Contractor and any other State contractor regarding the Work, Contractor shall promptly provide a written action plan to the Department outlining proposed steps to resolve the conflict. The Department will share this plan with the other contractor and obtain that contractor's feedback. The Department shall then provide this feedback to the Contractor for consideration. If Contractor and the other contractor are unable to agree on a final resolution plan, the Department shall make the final determination on how to resolve the conflict, and Contractor shall abide by the Department's decision unless Contractor chooses to avail itself of the dispute resolution process outlined in Section 14 of this Contract.
- 1.4. Contractor shall inform the Department on current trends and issues in the healthcare marketplace and provide information on new technologies in use that may impact the Contractor's responsibilities under this Contract.
- 1.5. Contractor shall maintain complete and detailed records of all meetings, system development life cycle documents, presentations, Project Artifacts, and any other interactions or Deliverables or Work Components related to the Work described in the Contract. The Contractor shall make such records available to the Department within two (2) Business Days of written request , or such other time period as the Parties may agree throughout the term of the Contract.
- 1.6. Deliverables and Work Components
  - 1.6.1. All Deliverables and Work Components shall meet Department-approved format and content requirements. The Department will specify the number of copies and media for each Deliverable.
    - 1.6.1.1. Contractor shall submit each Deliverable and Work Component to the Department for review and approval and shall adhere to the following Deliverable and Work Component process such for any documentation creation, review, and acceptable cycle, the Contractor shall:
      - 1.6.1.1.1. Gather and document requirements for the Deliverable and Work Component.

- 1.6.1.1.2. Create a draft in the Department-approved format for the individual Deliverable and Work Component.
- 1.6.1.1.3. Perform internal quality control review(s) of the Deliverable and Work Component, including, but not limited to:
  - 1.6.1.1.3.1. Readability.
  - 1.6.1.1.3.2. Spelling.
  - 1.6.1.1.3.3. Grammar.
  - 1.6.1.1.3.4. Completion.
- 1.6.1.1.4. Adhere to all required templates or development of templates.
- 1.6.1.1.5. Perform modifications that include version control and tracked changes.
- 1.6.1.2. The Department will review the Deliverable within 10 Business days following receipt from Contractor, unless the Department and Contractor agree otherwise in writing. The Department may direct Contractor to make changes to the Deliverable but only if and to the extent the Deliverable fails to meet the mutually agreed upon acceptance criteria for that Deliverable contained in the Project Management Plan. Contractor shall make all changes within 5 Business Days following the Department's direction to make the change unless the Department provides a longer period in writing. If further changes are required, the times for parties to respond shall follow these timelines. A project shall not go into production or production ready status until all Deliverables have been approved and all other Department approvals, such as authorization to operate, have been provided.
- 1.6.1.2.1. Changes the Department direct include, but are not limited to, modifying portions of the Deliverable or Work Component, requiring new pages or portions of the Deliverable or Work Component, requiring resubmission of the Deliverable or Work Component, or requiring inclusion of information or components that were left out of the Deliverable, all to the extent such modifications are required to conform the Deliverable or Work Component to the applicable obligations, requirements, or specifications in the original scope.
- 1.6.1.2.2. The Department may also direct Contractor to provide clarification or provide a walkthrough of any Deliverable or Work Component to assist the Department in its review. Contractor shall provide the clarification or walkthrough as directed by the Department.
- 1.6.1.2.3. Once the Department has received an acceptable version of the Deliverable based on the mutually agreed upon acceptance criteria contained in the Project Management Plan, including all changes directed by the Department to the extent the Deliverable fails to meet such acceptance criteria, the Department will notify Contractor of its acceptance of the Deliverable in writing where such notification shall occur within five days after receipt of the corrected Deliverable. A Deliverable shall not be deemed accepted prior to the Department's notice to Contractor of its acceptance of that Deliverable.
- 1.6.2. Contractor shall employ an internal quality control process to confirm that all Deliverables and Work Components are complete, accurate, easy to understand and of high quality, as described herein. Contractor shall provide Deliverables and Work Components that, at a minimum, are responsive to the specific requirements for that Deliverable or Work

Component, organized into a logical order, contain accurate spelling and grammar, are formatted uniformly, and contain accurate information and correct calculations. Contractor shall retain all draft and marked-up documents and checklists utilized in reviewing Deliverables and Work Components for reference as directed by the Department.

- 1.6.3. In the event any due date for a Deliverable or Work Component falls on a day that is not a Business Day, the due date shall be automatically extended to the next Business Day, unless otherwise directed by the Department.
- 1.6.4. All due dates or timelines that reference a period of days, months, or quarters shall be measured in calendar days, months, and quarters unless specifically stated as being measured in Business Days or otherwise. All times stated in the Contract shall be considered to be in Mountain Time, adjusted for Daylight Saving Time as appropriate, unless specifically stated otherwise.
- 1.6.5. No Deliverable, Work Component, report, data, procedure, or system created by Contractor for the Department that is necessary to fulfill Contractor's responsibilities under the Contract, as determined by the Department, shall be considered proprietary, except as otherwise provided in this Contract. Terms and conditions for licenses will be defined in the respective contracts.
- 1.6.6. If any Deliverable or Work Component contains ongoing responsibilities or requirements for the Contractor, such as Deliverables or Work Components that are plans, policies, or procedures, then Contractor shall comply with all requirements of the most recently approved version of that Deliverable or Work Component. Contractor shall not implement any version of any such Deliverable or Work Component prior to receipt of the Department's written approval of that version of that Deliverable or Work Component. Once a version of any Deliverable or Work Component described in this subsection is approved by the Department, all requirements, Milestones and other Deliverables or Work Components contained within that Deliverable or Work Component shall be considered to be requirements, Milestones, Deliverables, and Work Components of this Contract.
  - 1.6.6.1. Any Deliverable or Work Component described as an update of another Deliverable or Work Component shall be considered a version of the original Deliverable or Work Component for the purposes of this subsection.
- 1.7. Stated Deliverables, Work Components, and Performance Standards
  - 1.7.1. Any section within Exhibit B, the Statement of Work, headed with or including the term "DELIVERABLE," "WORK COMPONENT," or "PERFORMANCE STANDARD" is intended to highlight a Deliverable, Work Component, or performance standard contained with Exhibit B, the Statement of Work, and identify a clear due date or location where the due date is retained for the Deliverables and Work Components. The sections with these headings are for ease of reference not intended to expand or limit the requirements or responsibilities related to any Deliverable, Work Component, or performance standard, except to identify the due date or location where the due date is retained for the Deliverables and Work Components.
- 1.8. Communication with the Department
  - 1.8.1. The Contractor shall enable all Contractor staff to exchange documents and electronic files with the Department Staff in formats compatible with the Department's systems. The Department currently uses Microsoft Office 2016 and/or Microsoft Office 365 for PC. If the

Contractor uses a compatible program, then the Contractor shall make all documents or files delivered to the Department completely transferrable and reviewable, without error, on the Department's systems.

- 1.8.2. The Department will use a transmittal process to provide the Contractor with official direction within the scope of the Contract. The Contractor shall comply with all direction contained within a completed transmittal. For a transmittal to be considered complete, it must include, at a minimum, all of the following:
  - 1.8.2.1. The date the transmittal will be effective.
  - 1.8.2.2. Direction to the Contractor regarding performance under the Contract.
  - 1.8.2.3. A due date or timeline by which the Contractor shall comply with the direction contained in the transmittal.
  - 1.8.2.4. The signature of the Department employee who has been designated to sign transmittals.
    - 1.8.2.4.1. The Department will provide the Contractor with the name of the person it has designated to sign transmittals on behalf of the Department, who will be the Department's primary designee. The Department will also provide the Contractor with a list of backups who may sign a transmittal on behalf of the Department if the primary designee is unavailable. The Department may change any of its designees from time to time by providing notice to the Contractor through a transmittal.
- 1.8.3. The Department may deliver a completed transmittal to the Contractor in hard copy, as a scanned attachment to an email or through a dedicated communication system, if such a system is available.
  - 1.8.3.1. If a transmittal is delivered through a dedicated communication system or other electronic system, then the Department may use an electronic signature to sign that transmittal.
- 1.8.4. If the Contractor receives conflicting transmittals, the Contractor shall contact the Department's primary designee, or backup designees if the primary designee is unavailable, to obtain direction. If the Department does not provide direction otherwise, then the transmittal with the latest effective date shall control.
- 1.8.5. In the event that the Contractor receives direction from the Department outside of the transmittal process, it shall contact the Department's primary designee, or backup designees if the primary designee is unavailable, and have the Department confirm that direction through a transmittal prior to complying with that direction.
- 1.8.6. Transmittals may not be used in place of an amendment, and may not, under any circumstances be used to modify the term of the Contract or any compensation under the Contract. Transmittals are not intended to be the sole means of communication between the Department and the Contractor, and the Department may provide day-to-day communication to the Contractor without using a transmittal.
- 1.8.7. The Contractor shall retain all transmittals for reference in a searchable format and shall provide copies of any received transmittals upon request by the Department.
- 1.9. Operations Guide
  - 1.9.1. Contractor shall provide an Operations Guide. Contractor shall adhere to Operations & Maintenance requirements for EDI Services in accordance with its obligations and requirements set forth in the Operations Guide for the Core MMIS Contract, including the

following sub-plans which are included in the Operations Guide under the Core MMIS Contract.

1.9.1.1. Communication Plan.

1.9.1.2. Business Continuity Plan.

#### 1.10. Closeout Plan

1.10.1. Contractor shall create a Closeout Plan that describes all requirements, steps, timelines, milestones, and Deliverables necessary to fully transition the services described in the Contract from Contractor to the Department or to another contractor selected by the Department to be the contractor after the termination of the Contract.

1.10.2. The Closeout Plan shall also designate an individual to act as a closeout coordinator who will ensure that all requirements, steps, timelines, milestones, and deliverables contained in the Closeout Plan are completed and work with the Department and any other contractor to minimize the impact of the transition on Members and the Department.

1.10.3. Contractor shall deliver the Closeout Plan to the Department for review and approval.

1.10.4. Contractor shall provide weekly updates to the Department throughout the creation of and the performances within the Operations Guide, that show Contractor's status toward meeting the milestones described herein.

1.10.5. Contractor shall be ready to perform all Work by the Operational Start Date.

#### 1.11. Closeout Period

1.11.1. During the Closeout Period, Contractor shall complete all of the following:

1.11.1.1. Implement the most recent Closeout Plan or Closeout Plan Update as approved by the Department in the Operations Guide, as described herein and complete all steps, Deliverables and milestones contained in the most recent Closeout Plan or Closeout Plan Update that has been approved by the Department.

1.11.1.2. Provide to the Department, or any other contractor at the Department's direction, all reports, data, systems, Deliverables and other information reasonably necessary for a transition as determined by the Department or included in the most recent Closeout Plan or Closeout Plan Update that has been approved by the Department.

1.11.1.3. Ensure that all responsibilities under the Contract have been transferred to the Department, or to another contractor at the Department's direction, without significant interruption.

1.11.1.4. Notify any Subcontractors of the termination of the Contract, as directed by the Department.

1.11.1.5. Notify all Providers and Trading Partners that Contractor will no longer be the EDI vendor as directed by the Department. Contractor shall create these notifications and deliver them to the Department for approval. Once the Department has approved the notifications, Contractor shall deliver these notifications to all Providers, Trading Partners, but in no event shall Contractor deliver any such notification prior to approval of that notification by the Department.

1.11.1.5.1. **DELIVERABLE:** Provider/Trading Partner Notifications

1.11.1.5.2. **DUE:** 30 days prior to termination of the Contract

- 1.11.1.6. Continue meeting each requirement of the Contract as described in the Department-approved and updated Closeout Plan, or until the Department determines that specific requirement is being performed by the Department or another contractor, whichever is sooner. The Department will determine when any specific requirement is being performed by the Department or another contractor, and will notify Contractor of this determination for that requirement.
- 1.11.1.7. The Closeout Period may extend past the termination of the Contract. The Department will perform a closeout review to ensure that Contractor has completed all requirements of the Closeout Period. If Contractor has not completed all of the requirements of the Closeout Period by the date of the termination of the Contract, then any incomplete requirements shall survive termination of the Contract.

#### 1.12. Performance Reviews

- 1.12.1. Contractor shall provide all information necessary for the Department to complete any performance reviews or evaluations, as determined by the Department, upon the Department's request pursuant to the Performance Review set forth in Exhibit E, Section 1.10. of the Core MMIS Contract. Contractor shall provide this information regardless of whether the Department decides to work with Contractor on any aspect of the performance review or evaluation.

#### 1.13. Renewal Options and Extensions

- 1.13.1. The Department may, within its sole discretion, choose to not exercise any renewal option in the Contract for any reason. If the Department chooses to not exercise an option, it will reprocur the performance of the Work in its sole discretion.
- 1.13.2. The Parties may amend the Contract to extend beyond five years, in accordance with the Colorado Procurement Code and its implementing rules, in the event that the Department determines the extension is necessary to align the Contract with other Department contracts, to address state or federal programmatic or policy changes related to the Contract, or to provide sufficient time to transition the Work.
- 1.13.3. In the event that the Contract is extended beyond five years, the Contractor and the Department shall agree to an annual maximum compensation for the Contract in any of those additional years, making sure any annual maximum compensation for the Contract is in compliance with any applicable statute, rule, regulation, or Department requirement.
- 1.13.4. The limitation on the annual maximum compensation in this Contract shall not include increases made specifically as compensation for additional Work added to the Contract.

#### 1.14. Department System Access

- 1.14.1. In the event that the Contractor requires access to any Department computer system to complete the Work, the Contractor shall have and maintain all hardware, software, and interfaces necessary to access the system without requiring any modification to the Department's system. Contractor shall follow its requirements and obligations for security and systems access set forth under the Core MMIS Contract.

#### 1.15. Provider or Member Fraud

- 1.15.1. Contractor shall notify the Department and the Colorado Medicaid Fraud Control Unit of the Colorado Department of Law (MFCU) in accordance with its reporting requirements under the Core MMIS Contract if it identifies or suspects possible Provider Fraud or Member fraud

as a result of any activities in its performance of this Contract, including submittal of any required notices of suspected fraud.

## **2. CONTRACTOR PERSONNEL**

### **2.1. Personnel Availability**

- 2.1.1. Contractor shall ensure EDI-Specific Personnel and Other Personnel assigned to the Contract are available for meetings with the Department during the Department's normal business hours. Contractor shall also make these personnel available outside of the Department's normal business hours and on weekends with prior reasonable written notice from the Department, throughout the duration of this Contract unless the Parties otherwise agree in writing.
- 2.1.2. Contractor's EDI-Specific Personnel and Other Personnel shall be available for all regularly scheduled meetings between Contractor and the Department, unless the Department has granted prior written approval otherwise.
- 2.1.3. Contractor shall ensure that the EDI-Specific Personnel and Other Personnel attending all meetings between the Department and Contractor have the authority to represent and commit Contractor regarding work planning, problem resolution and program development. Notwithstanding the above, Key Personnel or Management positions do not have authority to change the scope or fees/invoicing specified in the Contract without approval from Contractor leadership.
- 2.1.4. At the Department's direction, Contractor shall make its EDI-Specific Personnel and Other Personnel available to attend meetings as subject matter experts with stakeholders both within the State government and external private stakeholders.
- 2.1.5. All of Contractor's EDI-Specific Personnel and Other Personnel that attend any meeting with the Department or other Department stakeholders shall attend by video conference, unless the Department gives prior, written permission to be physically present at the location of a meeting or to attend by telephone Contractor shall provide all additional equipment necessary for attendance by virtual conferencing, including any virtual meeting space required to enable participants to join via computer, laptop or telephone.
- 2.1.6. Contractor shall respond to all telephone calls, voicemails, and emails from the Department within two Business Days of receipt by Contractor.

### **2.2. Personnel General Requirements**

Contractor shall identify and provide qualified EDI-Specific Personnel who will be available to Work under the Contract. The EDI-Specific Personnel required under this Contract are in addition to any Key Personnel required under the Core MMIS Contract (Contract 25-185383, Section 2.2.1).

- 2.2.1. Contractor shall provide the Department with a final list of individuals assigned to the Contract and appropriate contact information for those individuals.
  - 2.2.1.1. DELIVERABLE: Final list of individuals assigned to the Contract
  - 2.2.1.2. DUE: Within five Business Days after the Effective Date
- 2.2.2. Contractor shall update this list upon the Department's request to account for changes in the individuals assigned to the Contract.
  - 2.2.2.1. DELIVERABLE: Updated list of individuals assigned to the Contract

- 2.2.2.2. DUE: Within five Business Days after the Department's request for an update
- 2.2.3. Contractor shall not permit any individual proposed for assignment to EDI-Specific Personnel positions to perform any Work prior to the Department's approval of that individual to be assigned as EDI-Specific Personnel.
- 2.2.4. Contractor shall not voluntarily change individuals in EDI-Specific Personnel positions without the prior written approval of the Department. Contractor shall supply the Department with the name, resume and references for any proposed replacement whenever there is a change to EDI-Specific Personnel. Any individual replacing EDI-Specific Personnel shall have qualifications that are equivalent to or exceed the qualifications of the individual that previously held the position, unless otherwise approved in writing by the Department.
  - 2.2.4.1. DELIVERABLE: Name(s), resume(s) and references for the person(s) replacing anyone in an EDI-Specific Personnel position during a voluntary change
  - 2.2.4.2. DUE: At least five Business Days prior to the voluntary change in EDI-Specific Personnel
- 2.2.5. If any individual filling an EDI-Specific Personnel position leaves employment with Contractor, Contractor shall propose a replacement person to the Department. The replacement person shall have qualifications that are equivalent to or exceed the qualifications of the individual that previously held the position, unless otherwise approved, in writing, by the Department.
  - 2.2.5.1. DELIVERABLE: Name(s), resume(s) and references for the person(s) replacing anyone in a EDI-Specific Personnel position who leaves employment with Contractor
  - 2.2.5.2. DUE: Within 10 Business Days after Contractor's receipt of notice that the person is leaving employment, unless the Department allows for a longer time in writing for Contractor to recruit a replacement.
- 2.2.6. Contractor's EDI-Specific Personnel shall perform the majority of their work and responsibilities on this project in the Denver metropolitan area, unless the Department grants permission otherwise in writing.
- 2.2.7. If any of Contractor's EDI-Specific Personnel or Other Personnel are required to have and maintain any professional licensure or certification issued by any federal, state or local government agency, then Contractor shall submit copies of such current licenses and certifications to the Department.
  - 2.2.7.1. DELIVERABLE: All current professional licensure and certification documentation as specified for EDI-Specific Personnel or Other Personnel
  - 2.2.7.2. DUE: Within five Business Days of receipt of updated licensure or upon request by the Department
- 2.3. EDI-Specific Personnel
  - 2.3.1. Contractor shall designate people to hold the following EDI-Specific Personnel positions to provide dedicated support for the EDI services provided hereunder in addition to those provided under the Core MMIS Contract. EDI-Specific Personnel positions are in addition to any Key Personnel required under the Core MMIS Contract:
    - 2.3.1.1. Project Lead
      - 2.3.1.1.1. The Project Lead shall be responsible for all of the following:



- 2.3.1.1.1.1. Serving as Contractor's primary point of contact for the Department.
- 2.3.1.1.1.2. Ensuring the completion of all Work in accordance with the Contract's requirements. This includes, but is not limited to, ensuring the accuracy, timeliness and completeness of all work.
- 2.3.1.1.1.3. Overseeing all other EDI-Specific Personnel and Other Personnel and ensuring proper staffing levels throughout the term of the Contract.
- 2.3.2. Contractor shall not allow for any individual to fill more than one of the roles defined as EDI-Specific Personnel.
- 2.4. Other Personnel Responsibilities
  - 2.4.1. Contractor shall use its discretion to determine the number of Other Personnel necessary to perform the Work in accordance with the requirements of this Contract. If the Contractor determines that as a result of corrective action plan it needs additional staff to meet the requirements of this Contract, then Contractor shall provide those staff at no additional cost to the Department.
  - 2.4.2. Contractor shall ensure that all Other Personnel have sufficient training and experience to complete all portions of the Work assigned to them. Contractor shall provide all necessary training to its Other Personnel, except for State-provided training specifically described in this Contract.
  - 2.4.3. Contractor may subcontract to complete a portion of the Work required by the Contract. The conditions for using a Subcontractor or Subcontractors are as follows:
    - 2.4.3.1. Contractor shall not subcontract more than 40% of the Work.
    - 2.4.3.2. Contractor shall provide the organizational name of each Subcontractor and all items to be worked on by each Subcontractor to the Department.
      - 2.4.3.2.1. DELIVERABLE: Name of each Subcontractor and items on which each Subcontractor will work
      - 2.4.3.2.2. DUE: The later of 30 days prior to the Subcontractor beginning work or the Effective Date
    - 2.4.3.3. Contractor shall obtain prior consent and written approval for any use of Subcontractor(s).

### **3. INFORMATION TECHNOLOGY RELATED REQUIREMENTS**

- 3.1. Protection of System Data
  - 3.1.1. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Records by the State or its agents in connection with Contractor's performance under the Contract, Contractor shall protect all State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
  - 3.1.2. For the avoidance of doubt, the terms of this Exhibit shall apply to the extent that any of the following statements is true in regard to Contractor access, use, or disclosure of State Records:
    - 3.1.2.1. Contractor provides physical or logical storage of State Records.
    - 3.1.2.2. Contractor creates, uses, processes, discloses, transmits, or disposes of State Records.

- 3.1.2.3. Contractor is otherwise given physical or logical access to State Records in order to perform Contractor's obligations under this Contract.
- 3.1.3. Contractor shall, and shall cause its Subcontractors, to do all of the following:
  - 3.1.3.1. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
  - 3.1.3.2. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
  - 3.1.3.3. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
  - 3.1.3.4. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
  - 3.1.3.5. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to the State.
- 3.1.4. Colorado Information Security Policy (CISP) Compliance
  - 3.1.4.1. Contractor shall assess its compliance with the CISPs, in effect at the time of the assessment, issued by the Governor's Office of Information Technology ("OIT") posted at [www.oit.state.co.us/about/policies](http://www.oit.state.co.us/about/policies) under Information Security.
  - 3.1.4.2. For the purposes of reviewing and assessing compliance with the CISPs, Contractor shall consider itself to be both the Information Technology Service Provider (ITSP) and Business Owner.
  - 3.1.4.3. Contractor shall deliver to the State the signed CISP Attestation, on a form provided by the Department, indicating that Contractor has assessed its compliance with the CISPs and has developed a plan to correct, in a timely manner, any security vulnerabilities identified during the assessment.
    - 3.1.4.3.1. DELIVERABLE: CISP Attestation
    - 3.1.4.3.2. DUE: Within 30 Business Days after the Effective Date
  - 3.1.4.4. Contractor shall assess its compliance with the CISPs on an annual basis and deliver to the State the signed CISP Attestation, on a form provided by the Department.
    - 3.1.4.4.1. DELIVERABLE: Annual CISP Attestation
    - 3.1.4.4.2. DUE: Annually, by June 30<sup>th</sup> of each year
  - 3.1.4.5. Contractor shall cause its Subcontractors to comply with the CISPs and to assess their compliance on at least an annual basis. If any Subcontractor's assessment determines that the Subcontractor is not in compliance, then Contractor shall ensure that Subcontractor corrects, in a timely manner, any security vulnerabilities identified during the assessment.
- 3.1.5. Health and Human Services HIPAA Security Rule Risk Assessments
  - 3.1.5.1. Contractor shall deliver to the State a signed Initial HHS Attestation, on a form provided by the Department, indicating that Contractor has conducted a risk assessment of its operations related to the services provided under this Contract that satisfies the

requirement of 45 CFR. §164.308(a)(1)(ii)(A) (the “HIPAA Security Rule”), and that Contractor has developed a plan to correct, in a timely manner, any vulnerabilities in administrative, technical, or physical safeguards identified during the assessment.

- 3.1.5.1.1. DELIVERABLE: Initial HHS Attestation
- 3.1.5.1.2. DUE: Within 30 Business Days after the Effective Date
- 3.1.5.2. Contractor shall conduct an annual risk assessment of its operations related to the services provided under this Contract that satisfies the requirement of the HIPAA Security Rule and deliver to the State the signed Annual HHS Attestation, on a form provided by the Department.
- 3.1.5.2.1. DELIVERABLE: Annual HHS Attestation
- 3.1.5.2.2. DUE DATE: Annually, by June 30<sup>th</sup> of each year
- 3.1.5.3. Contractor shall cause its Subcontractors to comply with the HIPAA Security Rule and assess their compliance on at least an annual basis. If any Subcontractor’s assessment determines that the Subcontractor is not in compliance, then Contractor shall ensure that Subcontractor corrects, in a timely manner, any vulnerabilities in administrative, technical, or physical safeguards identified during the assessment.
- 3.1.6. Subject to Contractor’s reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
- 3.1.7. Contractor shall perform background checks on all of its respective employees and agents performing services or having access to State Records provided under this Contract. A background check performed during the hiring process shall meet this requirement. Contractor shall perform a background check on any employee if Contractor becomes aware of any reason to question the employability of an existing employee. Contractor shall require all Subcontractors to meet the standards of this requirement.
- 3.1.7.1. Contractor shall deliver to the State the signed Background Check Attestation, on a form provided by the Department, indicating that background checks have been completed on employees participating in operations related to this Contract.
- 3.1.7.1.1. DELIVERABLE: Background Check Attestation
- 3.1.7.1.2. DUE: Within 30 Business Days of the Effective Date
- 3.1.7.2. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State’s requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

## 3.2. Data Handling

- 3.2.1. The State, in its sole discretion, may securely deliver State Records directly to Contractor. Contractor shall maintain these State Records only within facilities or locations that Contractor has attested are secure, including for the authorized and approved purposes of backup and disaster recovery purposes. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of the State.

- 3.2.2. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- 3.2.3. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete and secure download file of all data that is encrypted and appropriately authenticated. This download file shall be made available to the State within 10 Business Days of the State's request, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If legislation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore.
- 3.2.4. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract.

**EXHIBIT F, SAMPLE OPTION LETTER****OPTION LETTER**

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

**1. Options**

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

**2. Required Provisions**

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

**3. Option Effective Date**

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

<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Health Care Policy and Financing Kim Bimestefer, Executive Director</p> <p>_____</p> <p>By: Kim Bimestefer, Executive Director</p> <p>Date: _____</p>	<p>In accordance with C.R.S. §24-30-202, this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____</p> <p>Jerrold Cotosman, Controller; Department of Health Care Policy and Financing</p> <p>Option Effective Date: _____</p>
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## **EXHIBIT G, CONTRACT FEDERAL PROVISIONS**

### **1. APPLICABILITY OF PROVISIONS.**

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

### **2. COMPLIANCE.**

- 2.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

### **3. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID REQUIREMENTS.**

- 3.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 3.2. Unique Entity ID. Contractor shall provide its Unique Entity ID to its Recipient, and shall update Contractor's information at <http://www.sam.gov> at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

### **4. CONTRACT PROVISIONS REQUIRED BY UNIFORM GUIDANCE APPENDIX II TO PART 200.**

- 4.1. **Contracts for more than the simplified acquisition threshold**, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. The simplified acquisitions threshold is \$250,000
- 4.2. **All contracts in excess of \$10,000 must address termination for cause and for convenience** by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

- 4.3. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- 4.4. **Davis-Bacon Act,** as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 4.5. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.



- 4.6. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 4.7. **Clean Air Act (42 U.S.C. 7401-7671q.) and the federal Water Pollution Control Act (33 U.S.C. 1251-1387),** as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 4.8. **Debarment and Suspension** (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 4.9. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 4.10. **Prohibition on certain telecommunications and video surveillance services or equipment §2 CFR 200.216**
  - 4.10.1. Recipients and sub recipients are prohibited from obligating or expending loan or grant funds to:
    - 4.10.1.1. Procure or obtain;
    - 4.10.1.2. Extend or renew a contract to procure or obtain; or
    - 4.10.1.3. Enter into a contract (or extend a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered

telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- 4.11. **Contracts with small and minority businesses, women's business enterprises, and labor surplus area firms. (2 CFR §200.321).** The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- 4.12. **Domestic preferences 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.
- 4.13. **Procurement of recovered materials. (2 CFR §200.323)** A non-Federal entity that is a state agency or agency of a political subdivision of a state and 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.

## 5. EVENT OF DEFAULT.

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

## EXHIBIT H, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit. If there is language in the main body of this Contract or any other exhibit referencing “Force Majeure”, this Exhibit shall not be subject to the “Force Majeure” language. The provisions of this Exhibit are of vital importance to the State and the security of the State.

### 1. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
- B. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. Information Technology is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
  - i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;
  - ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
  - iii. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
- C. Contractor shall, and shall cause its Subcontractors to meet all of the following:
  - i. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
  - ii. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
  - iii. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
  - iv. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
  - v. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State’s Office of Information Security (“OIS”).

- vi. Comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology ("OIT"), including change management, project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>
- D. Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
- E. Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its respective employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be deemed to be current. Notwithstanding the above, employees that worked with Colorado State Records on contract 14-64254 will not undergo a new background check.
  - i. Upon request, Contractor shall provide notice to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
  - ii. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

## 2. DATA HANDLING

- A. The State, in its sole discretion, may securely deliver State Records directly to the facility where such data is used to perform the Work. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- B. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- C. Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State data.

- i. This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
  - ii. Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.
- D. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract.

### **3. DELIVERY AND ACCEPTANCE**

- A. Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.
- B. Contractor's delivery of any Work or Deliverables to the State shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.
- C. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. Such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor's gross negligence or willful misconduct.

#### 4. WARRANTY

- A. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
- B. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the State to ascertain the feasibility, risks, and impacts of each recommendation. The State's remedy for such defect or material non-conformity shall be:
  - i. Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or
  - ii. Contractor shall refund to the State all amounts paid for such Work or Deliverable, as well as pay to the State any additional amounts reasonably necessary for the State to procure alternative goods or services of substantially equivalent capability, function, and performance.
- C. Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.

#### 5. COMPLIANCE

- A. In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:
  - i. All Colorado Office of Information Security (OIS) policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>
  - ii. All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:

- a. Health Information Portability and Accountability Act (HIPAA)
  - b. IRS Publication 1075
  - c. Payment Card Industry Data Security Standard (PCI-DSS)
  - d. FBI Criminal Justice Information Service Security Addendum
  - e. CMS Minimum Acceptable Risk Standards for Exchanges
  - f. Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration
- B. Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include:
- i. An annual SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended by OIS; or
  - ii. The performance of security audit and penetration tests, as requested by OIS.
- D. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application level risk assessments, and other security assessment activities as required by this Contract or reasonably requested by OIS. Contractor will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the State. The State will work with Contractor and OIS to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and OIS will consider such requests in accordance with their policies and procedures referenced herein.

## 6. TRANSITION OF SERVICES

Upon request by the State prior to expiration or earlier termination of this Contract or any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State or any successor provider and shall promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at no additional cost, beyond what would be paid for the Services in this Contract, provided the Contractor's staff can provide the services on a substantially full time basis during the transition period that can be performed in their normal workday without derogation of their other duties. If the transition services cannot be performed during Contractor's staff normal workday using the customary staffing levels provided under the Contract, Contractor will charge for the services on a times and materials basis at the rates specified in the Contract, not to exceed the Contract Maximum

Amount. Contractor is not required to disclose any of its proprietary information or Confidential Information to any third party successor except to the extent that the State is entitled to receive Confidential Information under the Contract and provided that, prior to providing any transition services, the third party successor to the Contractor enters into a confidentiality agreement in a form reasonably required by Contractor for the protection of Contractor's Confidential Information.

## **7. LICENSE OR USE AUDIT RIGHTS**

- A. To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
- B. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.
- C. If upon receipt of the State's Audit Certification, the Parties reasonably determine that: (i) the State's use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Contract ("Overuse") and (ii) the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide, within one (1) business day, written notice, providing at least thirty (30) days to cure, to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.



## EXHIBIT I, 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: \_\_\_\_\_