

STATE OF COLORADO CONTRACT

COVER PAGE

State Agency Department of Health Care Policy & Financing	Contract Number 22-169631	
Contractor Health Management Systems, Inc.	Contract Performance Beginning Date The later of the Effective Date or July 1, 2021	
Contract Maximum Amount Initial Term State Fiscal Year 2022 Contingency Based	Initial Contract Expiration Date June 30, 2022	
Extension Terms State Fiscal Year 2023 Contingency Based State Fiscal Year 2024 Contingency Based State Fiscal Year 2025 Contingency Based State Fiscal Year 2026 Contingency Based Total for All State Fiscal Years Contingency Based	Contract Authority Authority to enter into this Contract exists in C.R.S. §25.5-1-101, <i>et. seq</i>	
Contract Purpose The Colorado Department of Healthcare Policy and Financing (Department) is contracting with Heath Management Systems, Inc. (Contractor) to provide Recovery Audit Services for the Department. This contract is created in response to solicitation #RFP UHAA 21-00242.		
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none">1. Exhibit A – HIPAA Business Associates Addendum2. Exhibit B – Statement of Work3. Exhibit C – Rates4. Exhibit D – Terminology5. Exhibit E – Contractor’s Administrative Requirements6. Exhibit F – Sample Option Letter7. Exhibit G – Federal Provisions8. Exhibit H, FraudCapture™ Services Supplemental Terms 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: <ol style="list-style-type: none">1. Exhibit A, HIPAA Business Associates Addendum.2. Exhibit G, Federal Provisions3. Colorado Special Provisions in §18 of the main body of this Contract.4. The provisions of the other sections of the main body of this Contract.5. Exhibit B, Statement of Work.6. Exhibit D, Terminology7. Exhibit E, Contractor’s Administrative Requirements8. Exhibit C, Rates9. Exhibit F, Sample Option Letter10. Exhibit H, FraudCapture™ Services Supplemental Terms		
Principal Representatives For the State: Alyssa Gilger Healthcare Policy & Financing 1570 Grant St. Denver, CO 80203 Email: Alyssa.Gilger@state.co.us		For Contractor: Courtney Walters Health Management Systems, Inc. 5615 High Point Drive Irving, TX 75038 Email: Courtney.Walters@hms.com With a copy to Senior Vice President, Government Services, 5615 High Point Drive, Irving, Texas 75038, With a copy to Attn: Legal Department, 5615 High Point Drive, Irving, Texas 75038

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p style="text-align: center;">CONTRACTOR Health Management Systems, Inc.</p> <p>By: _____</p> <p style="margin-left: 40px;">Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Health Care Policy and Financing Kim Bimestefer, Executive Director</p> <p>By: _____</p> <p style="margin-left: 40px;">Date: _____</p>
	<p style="text-align: center;">LEGAL REVIEW Phil Weiser, Attorney General</p> <p>By: _____ <u>N/A</u> _____</p> <p style="margin-left: 40px;">Date: _____</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 style="margin-top: 20px;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p style="margin-left: 40px;">Effective Date: _____</p>	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

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

C. Extension Terms - State’s Option

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

D. End of Term Extension

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

E. Early Termination in the Public Interest

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

governed by §12.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

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

iii. Payments

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

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

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

developed, licensed or otherwise acquired by Contractor prior to the Effective Date of this Contract and independent of any services rendered under any other contract with the State.

- G. **“Colorado Open Records Act (CORA)”** means C.R.S. §24-72-200.1, *et. seq.*
- H. **“Criminal Justice Information (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 C.R.S. §24-72-302.
- I. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Cover Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Cover Page for this Contract.
- J. **“End of Term Extension”** means the time period defined in **§2.D**
- K. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- L. **“Extension Term”** means the time period defined in **§2.C**
- M. **“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.
- N. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in C.R.S. §24-37.5-401, *et. seq.* Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- O. **“Initial Term”** means the time period defined in **§2.B**
- P. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- Q. **“Payment Card Information (PCI)”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- R. **“Personal Health Information (PHI)”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the

individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

- S. **“Personally Identifiable Information (PII)”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in C.R.S. §24-72-501.
- T. **“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.
- U. **“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.
- V. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to C.R.S. §24-30-202(13)(a).
- W. **“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.
- X. **“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.
- Y. **“Subcontractor”** means third parties, if any, engaged by Contractor to aid in performance of the Work.
- Z. **“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.
- AA. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- BB. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work

Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work. For clarity, “Work Product” does not include the FraudCapture Platform, associated documentation, or any works based on, derived from, or incorporating the FraudCapture Platform or associated documentation, unless specifically developed for the State.

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**, Terminology.

4. STATEMENT OF WORK

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

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

5. PAYMENTS TO CONTRACTOR

CONTINGENCY FEE

A. Contingency Fee

The maximum amount payable under this Contract to Contractor by the State for Work performed shall be at the contingency fee percentage rate(s) in **Exhibit C**, Rates, subject to adjustment as described below in **§5.B**. Contingency fees shall be paid as earned, in whole or in part, from the sum the Department recovers, in accordance with **Exhibit B**, identified as a result of Contractor’s work.

B. Maximum Contingency Fee Percentage Rate

The maximum contingency fee percentage rates to calculate the contingency fee for the Contract to be paid to Contractor shall not exceed the rates described in Exhibit B.

The total Contingency Fee Percentage Rates (as defined in **Exhibit B**) plus Administrative Payments in the Contract shall not exceed the percentage set forth in CRS §25.5-4-301(3)(VIII)(b) and shall be in compliance with Federal regulations.

In the event that the Federal government decreases the maximum contingency fee percentage rate such that the total of the Contingency Fee Percentage Rates plus the Administrative Payments is greater than the maximum contingency fee percentage rate allowed by the Federal government for a Medicaid RAC, the Department will decrease the Contingency Fee Percentage Rates. The Department will decrease the Contingency Fee Percentage Rates so that the total of the Contingency Fee Percentage Rates plus the Administrative Payments is

equal to the Federal government's rate for a Medicaid RAC. The Department may make this modification through the use of an option letter.

All costs associated with the performance of this Contract are the responsibility of Contractor and shall be borne entirely by Contractor regardless of whether any funds are actually recovered, or any contingency fee is actually paid.

C. 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 45th day at the rate of one percent per month, as required by C.R.S. §24-30-202(24)(a), until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 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. Quarterly Reports.

In addition to any reports required pursuant to this Contract or pursuant to any other Exhibit, for any contract having a term longer than 3 months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than 5 Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

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

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

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

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor

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

B. Inspection

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

C. Monitoring

The State, in its discretion, may monitor Contractor’s performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor’s performance in a manner that does not unduly interfere with Contractor’s performance of the Work.

D. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

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

E. Data Protection and Handling

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

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage

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

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

10. INSURANCE

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

A. Workers’ Compensation

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

B. General Liability

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

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

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned

autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Protected Information

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

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

E. Professional Liability Insurance

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

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

G. Additional Insured

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

H. Primacy of Coverage

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

I. Cancellation

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

J. Subrogation Waiver

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

K. Public Entities

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

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

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section. Contractor shall provide all certificates electronically to the Department's designated insurance certificate submission site, unless the Department has specifically directed otherwise.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

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

i. Termination for Breach

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

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or

inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

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

e. Intellectual Property

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

B. Contractor's Remedies

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

13. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or

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

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

i. Copyrights

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

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.

B. Exclusive Property of the State

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

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all 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 Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Contract; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

Fraud Capture Supplemental terms are attached hereto and incorporated by reference herein as Exhibit H.

16. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

Except as otherwise provided in §16.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

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

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

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

K. External Terms and Conditions

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

L. Severability

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

in accordance with the intent of this Contract.

M. Survival of Certain Contract Terms

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

N. Taxes

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

T. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties to the extent caused by 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 to the extent caused by any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

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

U. Additional Provisions

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

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any

manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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

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

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to C.R.S. §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101, *et seq.*, the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

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

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

EXHIBIT A, HIPAA BUSINESS ASSOCIATES ADDENDUM

This HIPAA Business Associate Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as “Covered Entity” and 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, ii. 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.
 - iii. 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.
 - iv. 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

a. 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.

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

i. Reserved.

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

i. Reserved.

d. Definition of Receipt of PHI. Business Associate’s receipt of PHI under this Contract shall be deemed to occur, and Business Associate’s obligations under the Agreement shall commence, as follows:

i. Reserved.

e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate’s use and disclosure of PHI under the Contract:

i. Reserved.

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

i. Reserved.

EXHIBIT B, STATEMENT OF WORK

1. PROJECT SPECIFIC STATEMENT OF WORK

1.1. SCOPE OF RECOVERY FOR MEDICAID CLAIMS AND CHP+ CLAIMS

- 1.1.1 Contractor shall be prepared to suspend, in whole or in part, any Work as outlined in the Project Specific Statement of Work upon direction and notice of the Department.
- 1.1.2 Contractor shall analyze and review Medicaid claims and CHP+ claims from all Provider types. Contractor shall only review adjusted claims.
- 1.1.3 Contractor shall identify overpayments due to the following:
 - 1.1.3.1 Incorrect billing.
 - 1.1.3.2 Processing errors.
 - 1.1.3.3 Fraud, waste or abuse.
- 1.1.4 Contractor shall suggest best methods of obtaining and using managed care data and collaborate with the Department to determine the best methods. Contractor shall incorporate best methods of obtaining and using managed care data in Contractor's Audit Project Plan.
- 1.1.5 When managed care data (encounter or claims) becomes available, Contractor shall analyze and review claims for Medicaid and CHP+ managed care enrolled Members, from all Provider types, to identify improper payments.
- 1.1.6 Contractor shall identify, review and recover all of the following:
 - 1.1.6.1 Erroneous Medicaid fee-for-service billings paid on behalf of newborns whose mothers were enrolled in a physical health managed care plan on the date of birth.
 - 1.1.6.2 Any managed care covered benefit submitted to, and paid by, Medicaid fee-for-service on a managed care enrolled member.
- 1.1.7 Contractor shall provide all suggestions and analysis in a form determined by the Department.
- 1.1.8 Contractor shall begin auditing services and have a final review plan approved by the Department within 60 days of the Contract Effective Date.

1.2. SCOPE OF RECOVERY FOR HOSPITAL CLAIMS

- 1.2.1 Contractor shall analyze and review hospital claims utilizing DRG methodology and report the result of this analysis and review to the Department in a form acceptable to the Department.
- 1.2.2 Contractor shall identify overpayments and improper payments due to any of the following:
 - 1.2.1.1 Inappropriate setting.
 - 1.2.1.2 Medically and non-medically necessary services.
 - 1.2.1.3 Incorrect billing.
 - 1.2.1.4 Processing errors.
 - 1.2.1.5 Fraud, waste and abuse.

1.3. IMPROPER PAYMENTS

- 1.3.1. Improper Payments for Medicaid Claims and CHP+ Claims from All Provider Types and Improper DRG Payments.
- 1.3.2. Contractor shall identify improper payments (Improper Payments) for Medicaid claims and CHP+ claims from all Provider types using the post payment claims review process. In addition, Contractor shall identify Improper DRG Payments using the post payment claims review process. Improper Payments may result from any of the following:
 - 1.3.2.1. Fraud, waste and abuse.
 - 1.3.2.2. Erroneous payment amounts for any Covered Service, as defined in 42 CFR 455.506.
 - 1.3.2.3. Paid and denied claims.
 - 1.3.2.4. Payments for any medically and non-medically necessary service.
 - 1.3.2.5. Payment for an inappropriate setting (inpatient vs. observation/outpatient).
 - 1.3.2.6. Payment for unnecessary outlier days.
 - 1.3.2.7. Payments for any Non-Covered Service.
 - 1.3.2.8. Payments for any non-covered Member (e.g., illegal aliens).
 - 1.3.2.9. Payments where the Member is dead.
 - 1.3.2.10. Payments where the Provider is dead.
 - 1.3.2.11. Payments where the Provider was not licensed (at the time) to provide the service.
 - 1.3.2.12. Payments where the Provider and/or managing employees and/or Provider Subcontractors were excluded at the time of service.
 - 1.3.2.13. Payments made for an otherwise covered Member, but temporarily ineligible (e.g., in jail, or in prison).
 - 1.3.2.14. Incorrectly coded services.
 - 1.3.2.15. Unbundled services.
 - 1.3.2.16. Upcoded services.
 - 1.3.2.17. Duplicate services.
 - 1.3.2.18. Drugs/prescriptions.
 - 1.3.2.19. Payments associated with claims made outside the timely filing period.
 - 1.3.2.20. Managed Care payments that should not have been paid.
 - 1.3.2.21. Managed care “birth bump payments” that should not have been paid.
 - 1.3.2.22. Payments made by Fee for Service (FFS) that should have been covered by another State, County or State department, facility, entity, or different reimbursement structure.
 - 1.3.2.23. Anything identified by the Department as a hospital DRG-related overpayment.
 - 1.3.2.24. Anything identified by the Department as an overpayment.
 - 1.3.2.25. Excluded improper payments.
- 1.3.3. Excluded Claims

- 1.3.3.1. Contractor shall use only the post payment claims review process to identify Improper Payments.
- 1.3.3.2. All of the following kinds of claims are excluded from this Contract:
 - 1.3.3.2.1. Claims that have previously been audited.
 - 1.3.3.2.2. Claims under investigation for criminal or civil recovery actions.
 - 1.3.3.2.3. Claims currently subject to reviews or audits by other contractors or entities performing audits of Providers.
 - 1.3.3.2.4. Medicaid-paid primary payer claims where Medicaid should have been a secondary payer, and the other payer(s) were neither identified nor billed by the Provider.
 - 1.3.3.2.5. Medicaid-paid payer claims for Members dually eligible for Medicaid and Medicare where Medicaid should have been the payer of last resort.
 - 1.3.3.2.6. Capitation payments and quality of care reviews.
 - 1.3.3.2.7. Any claims that are identified by the Department for any reason including, but not limited, to situations where an active investigation is occurring, and litigation is occurring related to a formal appeal.
- 1.3.3.3. Contractor shall not attempt recoupment from a beneficiary.

1.4. **LIMITATIONS ON THE SCOPE OF RECOVERY**

- 1.4.1. The Department reserves the right to limit, control or exclude certain categories of recovery, certain Providers, recipients and/or medical services from Contractor's Work under this Contract to prevent duplication of recovery efforts, to protect fraud investigations or recoveries, or to honor prosecutorial, political or federal requests to delay or cease recovery actions. Contractor shall pause, cease pursuit, or make changes to a case or project immediately when directed by the Department.
- 1.4.2. Contractor shall pause or cease pursuit of a case or project immediately upon the Department's direction for any reason. Contractor shall not receive any payment for any cases or projects paused or terminated at the Department's direction. Any claims for which notice of adverse action letters were sent to Providers outlining overpayments are subject to recovery and shall be paid in accordance with the Contract to Contractor, unless the Department determines that Contractor's findings are not correct and the overpayment amounts should not be recovered from the respective Providers.
- 1.4.3. Where generalized, the Department will notify Contractor of the region affected, by claim type, by Provider type, or by other reason.
- 1.4.4. Contractor shall not review claims that are older than seven years from the paid date of the claim, unless it receives approval from the Department. The Department has received a waiver from CMS in regard to 42 CFR §455.508(f) requiring a maximum of a seven-year look-back period. The Department will determine the audit review period.
- 1.4.5. Contractor shall not review claims that have already been audited or that are currently being audited by another entity. See 42 CFR §455.508(g). Excluded claims may include, but are not limited to, reviews conducted by the following entities:
 - 1.4.5.1. Department's Program Integrity and Contract Oversight section.
 - 1.4.5.2. Other Department staff.

- 1.4.5.3. Other Department contractors.
- 1.4.5.4. Other State departments.
- 1.4.5.5. CMS.
- 1.4.5.6. The Federal Medicaid Integrity Contractors (MIC).
- 1.4.5.7. The State Auditor's Office (SAO).
- 1.4.5.8. The Federal Medicare-Medicaid data matching project (Medi-Medi).
- 1.4.5.9. MFCU.
- 1.4.5.10. The Federal Payment Error Rate Measurement (PERM) project.
- 1.4.5.11. Unified Program Integrity Contractor (UPIC).
- 1.4.5.12. Other audits that have already been audited or that are currently being audited by another entity, as determined by the Department.
- 1.4.5.13. The Health and Human Services, Office of the Inspector General (HHS-OIG).
- 1.4.6. Contractor shall disclose audit/claims selection logic, rationale and criteria upon request, but may withhold Contractor confidential and/or proprietary information. Rationale shall include all relevant state and federal regulations and coding guidelines. Contractor shall provide the rationale with citation and full text as requested by the Department. The Department reserves the right to prohibit the use of certain Contractor algorithms, criteria or rationales or to modify and limit the use of them.
- 1.4.7. Where rebilling is an option (e.g. an inappropriate inpatient stay is converted to an outpatient or observational stay), and when directed by the Department, Contractor shall first evaluate the likely amount to be reimbursed under the rebill and shall validate that the rebill amount (using a cost-charge reimbursement methodology) is less than the inappropriate DRG payment. If the rebill amount is likely to be equal to or higher than the inappropriate DRG payment, no notice of adverse action letter shall issue on the claim.
- 1.4.8. Where rebilling is an option, and when directed by the Department, Contractor shall conduct re-pricing calculations for that claim that Contractor is reviewing. Contractor will not have access to interChange in order to conduct re-pricing calculations.
- 1.4.9. Where medical records or documentation are available to Contractor during a review of a case or project and a correction to a medical code or DRG weight can be identified, Contractor shall conduct re-pricing calculations for the claim that Contractor is reviewing to determine an overpayment amount.

1.5 PATTERN LETTERS, MANUAL LETTERS AND APPROVALS

- 1.5.1 Pattern Letters
 - 1.5.1.1. Contractor shall draft Pattern Letters or templated letters, using Department provided content and submit the draft Pattern Letters to the Department for approval. Contractor shall use the Department-approved Pattern Letters only upon receiving the Department's formal, written approval.
 - 1.5.1.2. Contractor shall draft Pattern Letters including, but not limited to the following:

- 1.5.1.2.1. Audit Notification Letters.
- 1.5.1.2.2. Notice of Adverse Action Letters and Accompanying Case Summary.
- 1.5.1.2.3. No Audit Findings/“Thank You” Letters.
- 1.5.1.2.4. Medical Records Request (MRR) Letters and Accompanying Attachment(s).
- 1.5.1.2.5. Informal Reconsideration Response Letters and Accompanying Case Summary.
- 1.5.1.2.6. Audit Reversal Letters and Accompanying Case Summary.
- 1.5.1.2.7. Unable to Render a Timely Decision Letter.
- 1.5.1.2.8. Audit Cancellation Letters and Accompanying Case Summary.
- 1.5.1.2.9. Other letters deemed necessary by the Department.
- 1.5.1.3. Contractor shall ensure that all Pattern Letters and accompanying attachments that it sends to Providers:
 - 1.5.1.3.1. Are on the Department’s letterhead.
 - 1.5.1.3.2. Are signed by the Department.
 - 1.5.1.3.3. Comply with all state and federal laws, rules and regulations.
 - 1.5.1.3.4. Have received written, formal approval from the Department.
 - 1.5.1.3.5. Are in a Department-approved format. At the Department’s request, this format shall include information being available in electronic form that is text-searchable or in specified file types.
- 1.5.1.4. Contractor shall have a merge/macro letter generation system that generates the Pattern Letters.
- 1.5.1.5. Contractor’s automated merge/macro letter generation system shall be nimble and flexible to accommodate Department requested edits, changes and deletions to existing Pattern Letters. Contractor shall use this system to generate Department-approved Pattern Letters within three (3) Business Days of Department requested edits, changes and deletions to existing Pattern Letters for review.
- 1.5.1.6. Contractor shall include trackable unique identification numbers for all finalized letters.
- 1.5.1.7. Contractor shall maintain all Pattern Letters.
- 1.5.2. Manual Letters
 - 1.5.2.1. Should a Pattern Letter not sufficiently cover a specific Provider scenario as determined by the Department, Contractor shall draft Manual Letters and submit the draft Manual Letters to the Department for approval. Contractor shall use the Department-approved Manual Letters only upon receiving the Department’s formal, written approval.
 - 1.5.2.2. Manual letters shall include, but not be limited to:
 - 1.5.2.2.1. Ad hoc letters.
 - 1.5.2.2.2. General Correspondence.
 - 1.5.2.2.3. Informal Reconsideration Determination response letters.
 - 1.5.2.2.4. Any other letters as determined by the Department.

1.5.2.3. Contractor shall include individual trackable unique identification numbers for all finalized letters.

1.5.3. Letter Revision Process

1.5.3.1. Contractor shall provide draft Pattern Letters and Manual Letters to the Department for review and approval within ten (10) Business Days of the Department's request for that letter.

1.5.3.1.1. DELIVERABLE: Pattern Letters and Manual Letters

1.5.3.1.2. DUE: Within ten (10) Business Days of the Department's request for that Letter.

1.5.3.2. Unless otherwise specified in writing by the Department, Contractor shall make all changes requested by the Department, modify and edit the Letters and submit a complete revised version of the Letters within ten (10) Business Days following receipt of the Department's directed changes.

1.5.3.3. The Department may direct changes to Letters at any time. Changes to previously approved pattern letters will be made on a go-forward basis and letters previously generated may be sent in the original approved format unless the change is necessary to remedy a statutory, regulatory, or other error and sending out letters with that error would drive additional appeals or would provide information that conflicts with law.

1.5.3.3.1. DELIVERABLE: Changes to Pattern Letters and Manual Letters

1.5.3.3.2. DUE: Unless otherwise specified in writing by the Department, within ten (10) Business Days following receipt of the Department's directed changes.

1.6. **CORRESPONDENCE, REPORTS AND DATA**

1.6.1. Contractor shall ensure that its Pattern Letters, Manual Letters, case summaries, attachments and other enclosures meet Department-approved format and content requirements. At the Department's direction, Contractor shall provide such documents in electronic form that is text searchable.

1.6.2. The Department may change formatting requirements at any time.

1.6.3. At the Department's request, Contractor shall deliver all correspondence, reports data and any other information generated as a result of this Work. Contractor shall provide tracking numbers and proof that Provider correspondence was delivered within twenty-four (24) hours of the Department's request for such proof.

1.7. **DATABASE OF PROVIDER CONTACTS, PROGRESS OF AUDIT AND STATUS OF CASE**

1.7.1. Contractor shall create and maintain a database of Provider contact information to properly address all Provider correspondence to the individual(s) that the Providers themselves identify. Contractor shall include in the database a second delivery address for a second copy of any notice to be sent to an additional contact specified by the Provider. The database of Provider contact information shall be provided to the Department within twenty-four (24) hours of the Department's request.

1.7.2. Contractor shall develop and maintain a secure Provider web portal, allowing multiple-user access, to let Providers:

1.7.2.1. Obtain Contractor contact information.

- 1.7.2.2. View and download various RAC project related letters.
- 1.7.2.3. Customize their addresses.
- 1.7.2.4. Update their contact information at any time.
- 1.7.2.5. View the progress of their medical records audits shall include, but not be limited to:
 - 1.7.2.5.1. Date of introductory letter mailed.
 - 1.7.2.5.2. Date of MRR or documentation request letter mailed.
 - 1.7.2.5.3. Date of receipt of medical records by Contractor (at the patient/Member detail level).
 - 1.7.2.5.4. Acknowledgement that what has been received matches what was requested (i.e. the submission is complete at the patient/Member detail level).
 - 1.7.2.5.5. Date coders and/or reviewers start to read the records (generalized, at the review level, not patient/Member level).
 - 1.7.2.5.6. Date coders and/or reviewers have finished reading the records (generalized, at the review level, not patient/Member level).
 - 1.7.2.5.7. Date of referral to Department for approval.
 - 1.7.2.5.8. Date of Department approval.
 - 1.7.2.5.9. Date notice of adverse action letter was mailed out.
 - 1.7.2.5.10. Date of receipt of request for informal reconsideration by Contractor (at the patient/Member detail level).
 - 1.7.2.5.11. Date coders and/or reviewers start to read the informal reconsiderations (IR) records (generalized, at the review level, not patient/Member level).
 - 1.7.2.5.12. Date coders and/or reviewers have finished reading the IR records (generalized, at the review level, not patient/Member level).
 - 1.7.2.5.13. Date informal reconsideration letter was mailed out.
- 1.7.2.6. Information about the status of a Medical Record Review Project. Contractor shall use status terminology only upon the Department's approval. Appropriate status terminology may include:
 - 1.7.2.6.1. Outstanding.
 - 1.7.2.6.2. Received.
 - 1.7.2.6.3. Review underway.
 - 1.7.2.6.4. Review complete.
 - 1.7.2.6.5. Case closed.
- 1.7.2.7. Results of audits conducted by Contractor, including Provider-specific results and overall audit results.
- 1.7.2.8. Training presentations and Provider outreach materials.
- 1.7.2.9. Any documentation, data or information as determined by the Department.
- 1.7.3. Any Contractor-generated Provider web portal access agreements or confidentiality agreements will be subject to Department review and approval prior to implementation.

- 1.7.3.1. DELIVERABLE: Provider web portal
- 1.7.3.2. DUE: Within thirty (30) days of the Effective Date of the Contract.

1.8. MAINTAIN REVIEW PROJECT CASE FILES

- 1.8.1. Contractor shall maintain a case file for each Review Project. Case files include any and all documents and information created by Contractor whether the information is in draft or final form. Documents include any document created in performing an audit and include, but not limited to, reports, hand-written notes, auditor's notes, and electronic media.
- 1.8.2. Each case file shall contain, at a minimum:
 - 1.8.2.1. A copy of all correspondence sent to the Provider, Provider representatives, Provider groups and associations, and any other entities in regard to the claims under review.
 - 1.8.2.2. A description, including dates, times and Contractor personnel involved, of all contacts with Providers, Provider representatives, Provider groups and associations, and any other entities communicating with Contractor about the claims under review.
 - 1.8.2.3. A copy of all medical records, documents and correspondence received from the Provider, Provider representatives, Provider groups and associations, and any other entities related to the claims under review.
 - 1.8.2.4. Notes, write-ups, opinions and all other materials generated by Contractor in each case.
- 1.8.3. Contractor shall provide a case file to the Department within five (5) Business Days of the Department's request.
- 1.8.4. At the Department's request or no later than fifteen (15) days after Contract termination, Contractor shall provide the Department scanned or PDF versions of all case files.

Upon the Department's request, Contractor shall use the Statistical Analysis Software or an equivalent system, as provided by the Department's Business Intelligence and Data Management System and Services contractor to track and monitor audit activity. While conducting each audit, Contractor shall enter all case file documentation, financial information and any other information as requested by the Department into such system.

1.9. SPREADSHEET BASED ON RECOVERY PAYMENT DATA

- 1.9.1. Contractor shall maintain a balance tracking report in Microsoft Excel with individual tabs for each Provider to track all recovery payments received from a Provider against each single notice of adverse action letter. The report shall be grouped by Review Project, including updates and changes to earlier Review Projects.
- 1.9.2. The tracking report shall be in a format acceptable by the Department, shall contain information at the Transaction Control Number (TCN) line or detail level and shall include:
 - 1.9.2.1. Name of the Provider.
 - 1.9.2.2. Provider Medicaid ID number.
 - 1.9.2.3. Recipient name.
 - 1.9.2.4. Recipient ID.
 - 1.9.2.5. Case name.
 - 1.9.2.6. Case number.

- 1.9.2.7. Project name.
- 1.9.2.8. Total of the amounts owed by the Provider as a roll-up of Member/TCN sub-detail.
- 1.9.2.9. Original amount paid.
- 1.9.2.10. Category of Service and Subcategory of Service.
- 1.9.2.11. Demand amount on the TCN line level.
- 1.9.2.12. Date of demand.
- 1.9.2.13. Aggregate demand amount for all TCNs with that Provider for that audit.
- 1.9.2.14. Payments, offsets, or rebilling applied to the total owed.
- 1.9.2.15. Outstanding balances owed by the Provider.
- 1.9.2.16. Total contingency fee.
- 1.9.2.17. Amount of contingency fee for a single payment received.
- 1.9.2.18. Balance of un-invoiced contingency fee.
- 1.9.2.19. Member/TCN sub-detail which shall contain:
 - 1.9.2.19.1. Name(s) of the Medicaid Member(s)
 - 1.9.2.19.2. Procedure code(s) and modifier(s), or DRG and descriptions (if applicable).
 - 1.9.2.19.3. Header (HDR) adjustment TCN.
 - 1.9.2.19.4. Line item number.
 - 1.9.2.19.5. Specific amount recovered in that month associated with that line-item detail.
 - 1.9.2.19.6. Source of the recovery.
 - 1.9.2.19.7. Unique identification numbers associated with the recovery (adjusted and/or voided TCN numbers, etc.).
 - 1.9.2.19.8. Specification if the amount is a partial, or full satisfaction of the total amount owed.
- 1.9.2.20. Upon Department providing the necessary information to Contractor, Contractor shall initiate implementation for calculation and repayment of federal financial payments (FFP) which shall include all of the following:
 - 1.9.2.20.1. Claim paid date.
 - 1.9.2.20.2. Fund code associated with the claim paid date and as shown in the accounting master code book provided by the Department. The Department will notify Contractor of any code changes. Contractor shall use the updated fund coding.

- 1.9.2.20.3. Federal Medical Assistance Percentage (FMAP) percentage.
- 1.9.2.20.4. Recovery GBL code.
- 1.9.2.20.5. State share of recovery.
- 1.9.2.20.6. Federal share of recovery minus the applicable Contract contingency fee.
- 1.9.2.21. Notes and comments.
- 1.9.2.22. Any other information as requested by the Department.
- 1.9.3. Contractor shall submit a copy of the applicable Provider balance tracking report discussed in Section 1.9.1 when a Notice of adverse action letter is delivered to the Provider and when a Contractor's invoice is submitted to the Department. If adjustments are made to the Provider's overpayment amount, including but not limited to changes in determination through an Information Reconsideration, Formal Appeal, or litigation, Contractor shall revise the Provider balance tracking report and provide a copy to the Department. Contractor shall maintain a summary report reconciling the total contingency fees invoiced by Contractor against the Contract with the total source of funds received, where the funds were received from, offsets made, and rebilling completed.
- 1.9.4. The Department may change the format and content of the tracking report at any time. Within two (2) Business Days, Contractor shall make changes to the format and content of the spreadsheet as directed by the Department.

1.10. DOCUMENT EXCHANGE AND STORAGE

- 1.10.1. Contractor shall store and share imaged medical records and all documents that Contractor creates or receives within the scope of Work performed under this Contract. Documents include any document created in performing an audit and include, but are not limited to, reports, hand-written notes, auditor's notes, and electronic media. Contractor shall provide an image document management system to track electronic documents and electronic images of scanned paper approved by the Department.
- 1.10.2. Contractor shall provide the Department, at Contractor's own expense, a method to securely transmit Protected Health Information (PHI) between Contractor and the Department.
- 1.10.3. Contractor shall provide for the secure transfer of documents from Providers to Contractor, from Contractor to the Department and from Department to Contractor via a File Transfer Protocol (FTP) site, a web-based file storage site or an equivalent form of electronic data transfer. Contractor shall organize the stored medical records and documents by Review Project and Provider. Contractor shall store each Provider's information as a group/collection for ease of retrieval.
- 1.10.4. Contractor shall ensure that all electronic mail communications that contain PHI are either sent securely, encrypted or both. PHI on removable media shall be encrypted.
- 1.10.5. Contractor's electronic file sizes shall not exceed five (5) megabytes to facilitate email redistribution by the Department. Partitioning of records, information and data into multiple files is permissible under a format approved by the Department.
- 1.10.6. Contractor's electronic files shall be appropriately named so that persons unfamiliar with the projects can identify the file's content without needing to open them.

- 1.10.7. Contractor shall deliver, or make available for download, word-searchable electronic portable document format (PDF) files of Contractor's correspondence to Providers (MRR letters, notice of adverse action letters, informal reconsideration letters, etc.) within five (5) Business Days of mailing. The Department, at its sole discretion, may allow other formats.
- 1.10.8. Contractor shall deliver, or make available for download, a copy of all Provider correspondence to Contractor, in word-searchable PDF files to the Department within two (2) Business Days of receipt. The Department, at its sole discretion, may allow other formats.
- 1.10.9. Contractor shall deliver to the Department, or make available for download by the Department, all case files, medical records and other correspondence within five (5) Business Days of the Department's request.
- 1.10.10. Contractor shall maintain a log of all requests for medical records and rationale documents indicating at least the requester, a description of the record being requested, the date the request was received and the date the request was fulfilled.

1.11. OBTAINING CLAIMS DATA

- 1.11.1. Contractor shall have and maintain all hardware, software and interfaces necessary to access the INTERCHANGE claims data without requiring any modification to the Department's systems. Contractor shall follow all Department policies, processes and procedures necessary to gain access to the Department's systems.
- 1.11.2. The Department shall assist Contractor with obtaining Virtual Private Network (VPN) and/or FTP access to the INTERCHANGE claims data. Contractor shall be responsible for any costs for the initial set up.
- 1.11.3. Any costs associated with data extraction, with expansion or alteration of the data files or their contents and with data transmission shall be the sole responsibility of Contractor.

1.12. CUSTOMER SERVICE STANDARDS

- 1.12.1. Contractor shall establish and maintain a Provider call center, a toll-free telephone number, email address and fax line for communication with Providers. Contractor shall be available to Providers to discuss the claim audit review processes, results, repayment plans and practice modifications via the toll-free number.
- 1.12.2. Contractor shall respond to Provider questions and requests for information expeditiously, within forty-eight (48) business hours maximum, with a high degree of professional courtesy. Contractor shall perform periodic informal conferences via telephone or in person with Providers as required. The Department reserves the right to attend and prior approve such conferences.
- 1.12.3. Contractor shall keep a log of all Provider comments and feedback regarding the entire review process. At the Department's request and with Department approval, Contractor shall amend its review process to address Provider concerns while maintaining regulatory compliance.
- 1.12.4. Contractor shall document and log all calls and emails with Providers regarding Review Projects. The documentation shall include, but is not limited to, all of the following:
 - 1.12.4.1. The Provider's topics.
 - 1.12.4.2. Questions and issues.

- 1.12.4.3. Requests for information and requests for documentation.
- 1.12.4.4. What Contractor told the Provider.
- 1.12.4.5. The date and time the Provider's call or email was received.
- 1.12.4.6. The date and time the call or email was returned by Contractor.
- 1.12.4.7. Contractor shall document a call and e-mail as returned only when either:
 - 1.12.4.7.1. Contractor has made direct contact with the Provider representative who made the initial contact. Direct contact occurs when the Provider speaks to Contractor on the telephone or when the Provider responds via e-mail, e-mail delivery receipt, e-mail read receipt or via another method.
 - 1.12.4.7.2. Contractor has made three (3) documented attempts to contact the Provider with no response from the Provider. Contractor shall make these attempts at no greater than four (4) hour intervals. These documented attempts include voicemails and e-mails.
 - 1.12.4.7.3. Contractor shall document a request for information and a request for documentation as returned only when:
 - 1.12.4.7.4. Contractor has sent the Provider the requested information and/or documentation via e-mail or mail. The time stamp on the e-mail and the post mark on the mail shall be considered the date and time of Contractor's return of the requested information and/or documentation.
- 1.12.4.8. The Provider's Medicaid ID.
- 1.12.4.9. The name of the person communicated with.
- 1.12.4.10. The email address or phone number of the Provider.
- 1.12.4.11. The name of Contractor's staff person who took the call or answered the email.
- 1.12.4.12. The start and stop times of the phone call.
- 1.12.4.13. Other documentation deemed necessary by the Department.
- 1.12.5. Contractor shall provide the document and log of the communications to the Department within 10 calendar days of the Department's request or within the timeframe as outlined in Section 1.19.7 if there is a formal appeal.

1.13. PREPARATORY PHASE — REVIEW PROJECT IDENTIFICATION

- 1.13.1. Identifying Review Projects
 - 1.13.1.1. Contractor shall perform an analysis of Department's claims data to identify the Provider(s) or Provider types, services or claims types that should be subject to analysis. The Department will provide claims data and Provider data to Contractor.
 - 1.13.1.2. Within four (4) weeks of the initial kick-off meeting, Contractor shall deliver to the Department a list of potential or proposed Review Projects, based upon Contractor's data mining, analysis and expertise. The Department may identify recovery strategies and Secondary Audit/Review Projects, with or without input from Contractor. Contractor shall include Department-identified recovery strategies and Department-Directed Secondary Audit/Review Projects on the list of potential or proposed Review Projects.

- 1.13.1.3. Contractor shall pre-validate its recovery strategies and Review Projects by testing all criteria and algorithms' effectiveness against real data.
- 1.13.1.4. For each Review Project on the list, Contractor shall describe at a minimum, all of the following:
 - 1.13.1.4.1. State and federal regulations to be used with citation and full text.
 - 1.13.1.4.2. Coding references and guidelines with citation and full text.
 - 1.13.1.4.3. Codes and/or DRG weights to be audited.
 - 1.13.1.4.4. Provider type to be audited.
 - 1.13.1.4.5. Vulnerability issues to be investigated (e.g. office visit upcoding, unbundling, etc.).
 - 1.13.1.4.6. Type of review (Automated Review or Complex Review).
 - 1.13.1.4.7. Rationale or case for doing the Review Project.
 - 1.13.1.4.8. Confirmation that Contractor tested its criteria and algorithm effectiveness against real data to pre-validate the recovery strategy and Review Project.
 - 1.13.1.4.9. Provider communication and education dates and methods.
 - 1.13.1.4.10. Estimated potential recovery, if available.
 - 1.13.1.4.11. Estimated time, including date ranges, to conduct and complete the review.
- 1.13.1.5. Contractor and the Department will finalize and prioritize the Review Projects together.
 - 1.13.1.5.1. DELIVERABLE: List of Potential or Proposed Review Projects
 - 1.13.1.5.2. DUE: Within four (4) weeks of the kick-off meeting
- 1.13.2. Audit Project Plan
 - 1.13.2.1. Within two (2) weeks of finalizing and prioritizing the Review Projects, Contractor shall prepare a master multi-year Audit Project Plan, using Microsoft Project or other similar software, which outlines the resources and time frames for completing the agreed upon Work for the next two (2) SFYs. The Audit Project Plan shall be a flexible document that shall be modified, upon receiving Department-approval, when new overpayment opportunities are identified.
 - 1.13.2.2. Contractor shall include all of the following in the Audit Project Plan:
 - 1.13.2.2.1. The date by which Contractor shall validate its recovery strategies and the appropriateness and viability of its Review Projects by testing the criteria or algorithms effectiveness against real INTERCHANGE data.
 - 1.13.2.2.2. Each Provider and the audit look-back period for each Review Project.
 - 1.13.2.2.3. The associations, Provider groups, and managed care contractors who shall receive presentations on the nature of the Review Projects before they begin, and the date and method to deliver the presentations.
 - 1.13.2.2.4. A minimum level of Work which Contractor shall perform during the Full Performance Period of the Contract. A method by which Contractor shall maintain and ensure the minimum level of Work is completed.
 - 1.13.2.2.5. Milestone dates in the audit process including:

- 1.13.2.2.6. The target dates to send medical record request letters.
- 1.13.2.2.7. The expected date to complete evaluation of the medical records following receipt from the Provider.
- 1.13.2.2.8. The expected date to issue notice of adverse action letters.
- 1.13.2.3. The Audit Project Plan shall assure that no Provider is subject to more than one (1) Contractor audit at a time without prior written approval by the Department. Contractor shall not have more than one (1) audit pending with a Provider at one (1) time without having prior-Departmental approval.
- 1.13.2.4. In the Audit Project Plan, Contractor shall group review activities into the following seven (7) phases:
 - 1.13.2.4.1. Preparatory.
 - 1.13.2.4.2. Provider Outreach.
 - 1.13.2.4.3. Investigatory.
 - 1.13.2.4.4. Review.
 - 1.13.2.4.5. Informal Reconsideration.
 - 1.13.2.4.6. Formal Appeal.
 - 1.13.2.4.7. Litigation.
- 1.13.2.5. As part of the Audit Project Plan, for the first six (6) months of the Full Performance Period, Contractor shall, have a ramp up period. During the ramp up period, Contractor shall:
 - 1.13.2.5.1. Only conduct audits focusing on one (1) or two (2) Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS), or International Classification of Diseases, ninth revision (ICD-9) and tenth revision (ICD-10) diagnosis codes. Contractor shall suggest one (1) or two (2) codes on which to focus. Contractor shall suggest and audit for only codes that are similar in scope and condition. The CPTs are subject to the Department's approval.
 - 1.13.2.5.2. The Department, at its sole discretion, may allow Contractor to focus on more than two (2) Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS), or International Classification of Diseases, ninth revision (ICD-9) and tenth revision (ICD-10) diagnosis codes. The Department will make this determination based on the Department's satisfactory findings in Quality Assurance Reviews. At the Department's request, Contractor shall focus on more than two (2) codes and shall audit for the codes as directed by the Department.
- 1.13.2.6. The Department may change the period of audit to account for the change in matching fund rates over time. Contractor shall calculate limits on the amount of claims and/or medical records that can be audited for each review conducted by Contractor. The Department will approve formulas and methodology to be used by Contractor to calculate the limits. The Department will also determine and approve maximum limits on the amount of claims and/or medical records that can be audited. Contractor shall adhere to the limits for the amounts of claims and medical records that can be audited for each review as directed by the Department.

- 1.13.2.7. The Audit Project Plan shall be a flexible document. Contractor shall contact the Department to suggest updates to the Audit Project Plan when new overpayment opportunities are identified, as adjudication issues arise, new regulations are implemented, new algorithms are developed and refined, and Provider billing practices change.
- 1.13.2.7.1. The Department may identify Secondary Reviews and Audits and direct Contractor to conduct the Secondary Reviews and Audits. Contractor shall modify its Audit Project Plan to include reviews and audits identified by the Department. The Department-directed Secondary Reviews and Audits may include, but are not limited to the following:
 - 1.13.2.7.2. Utilization management reviews and audits.
 - 1.13.2.7.3. Focused review of specific Providers, Departments, services, rules or periods of time.
 - 1.13.2.7.4. Dental claims reviews and audits.
 - 1.13.2.7.5. Other reviews as directed by the Department.
- 1.13.2.8. Contractor shall modify the Audit Project Plan when the audit project changes, or upon Department request. Contractor shall submit all modifications to the Department for approval prior to implementing the modified Audit Project Plan.
- 1.13.2.9. Once the Department has notified Contractor of its acceptance of the Audit Project Plan or of an updated Audit Project Plan, Contractor shall implement all requirements of that plan and perform all audits according to the Audit Project Plan. Contractor shall not implement the final Audit Project Plan and shall not perform Work on any projects until the Department accepts Contractor's Audit Project Plan or modification of the Audit Project Plan.
 - 1.13.2.9.1. All requirements, due dates, and milestones contained in the most recently approved Audit Project Plan or updated Audit Project Plan shall be considered to be requirements, due dates, and milestones of this Contract.
 - 1.13.2.9.2. Contractor shall follow all plans, standards, processes and procedures of the most recently approved Audit Project Plan.
 - 1.13.2.9.3. DELIVERABLE: Audit Project Plan
 - 1.13.2.9.4. DUE: Within two (2) weeks of finalizing and prioritizing the Review Projects
 - 1.13.2.9.5. DELIVERABLE: Updates and Changes to Audit Project Plan
 - 1.13.2.9.6. DUE: Within two (2) weeks of the Department requesting the changes or when the Review Project changes
- 1.13.3. In collaboration with each other, Contractor and the Department shall prioritize the Review Projects into a multi-year work plan. The work plan shall be modified and updated periodically, as required by the Department.
- 1.13.4. Contractor shall identify an audit date range for each Review Project. All targeted claims within the date range shall be audited at once. Contractor shall not re-audit the same date range for the same kind of overpayment issue, absent fraud or deliberate interference with the audit by the Provider.

1.14. PROVIDER OUTREACH PHASE

- 1.14.1. Contractor shall perform Provider outreach in order to inform specific Providers, either collectively or through a Provider organization or association, about the review process and the rights and responsibilities of all parties in advance of initiating medical record request or document request letters. Contractor shall work collaboratively with the Department to identify Providers requiring outreach prior to upcoming reviews.
- 1.14.2. Contractor shall perform provider outreach prior to selected audits, as determined by the Department. Contractor shall perform additional outreach as determined by Provider request and interest, and as requested by the Department.
- 1.14.3. In Complex Review cases, Contractor shall complete Provider-type specific outreach, to the Department's satisfaction, at least thirty (30) calendar days prior to issuing any medical record request letter to the Provider. For Automated Review, the Department will advise Contractor whether outreach is needed and if so, the preferred method and timing of that outreach. Contractor shall perform outreach as directed by the Department for Automated Review cases.
- 1.14.4. After an initial presentation to a Provider community, at the Department's request, Contractor shall do supplemental Provider outreach in order to describe changes to the review program or, after a long period of time with no activity, in order to refresh Provider recollections of the RAC program.
- 1.14.5. Contractor shall conduct Provider outreach in person, by webinar and by phone. Contractor's Project Manager, at a minimum, shall attend the outreach meeting. The Department will determine which party—the Department or Contractor— presents the information and the manner in which it is presented. At the Department's request and direction, Contractor shall present the information and shall do so in the manner (person, webinar, or phone) directed by the Department.
- 1.14.6. Contractor shall prepare all written materials and presentation materials, which will be subject to Department review and prior approval. The Department reserves the right to specify what will and will not be shared at the outreach presentations.
- 1.14.7. Contractor shall arrange the times, places and means of presentation, in consultation with the Department and the affected Providers, Provider groups or associations.
- 1.14.8. Contractor shall not speak for, nor represent that it speaks for, the Department, or Department policy.
- 1.14.9. Provider Outreach Plan
 - 1.14.9.1. Contractor shall develop a Provider Outreach Plan.
 - 1.14.9.1.1. The Provider Outreach Plan, shall contain, at a minimum, all of the following:
 - 1.14.9.1.1.1. The method(s) for notification to Providers regarding:
 - 1.14.9.1.1.1.1. Audit policies and procedures.
 - 1.14.9.1.1.1.2. Right to request extensions.
 - 1.14.9.1.1.1.3. Exit interviews.
 - 1.14.9.1.1.1.4. Appeals process, including formal and informal processes.
 - 1.14.9.1.1.1.5. Audit processes and correct billing methods, protocols, and policies.
 - 1.14.9.1.1.1.6. Changes in billing and/or coding.

- 1.14.9.1.1.1.7. Who to call for an extension of time.
- 1.14.9.1.1.1.8. How to access the Provider Web portal.
- 1.14.9.1.1.1.9. How to customize addresses and contact information for all correspondence, including medical record request letters, notice of adverse action letters and informal reconsiderations.
- 1.14.9.1.1.1.10. How to obtain information on:
 - 1.14.9.1.1.1.10.1. The progress of an audit.
 - 1.14.9.1.1.1.10.2. The status of a case.
 - 1.14.9.1.1.1.10.3. Submitting records electronically.
 - 1.14.9.1.1.1.11. Any other information as requested by the Department.
- 1.14.9.1.1.1.12. The method(s) Contractor will utilize to communicate relevant information to Providers. These methods may include:
 - 1.14.9.1.1.1.12.1. Direct mailings.
 - 1.14.9.1.1.1.12.2. Pamphlets/brochures.
 - 1.14.9.1.1.1.12.3. Website.
 - 1.14.9.1.1.1.12.4. Webinars.
 - 1.14.9.1.1.1.12.5. In-person presentations.
 - 1.14.9.1.1.1.12.6. Telephone conferences.
 - 1.14.9.1.1.1.12.7. Contractor shall deliver the Provider Outreach Plan to the Department for review and approval.
- 1.14.9.1.2. Contractor shall not initiate Provider outreach without Department approval as to content, form and forum.
- 1.14.9.1.3. Contractor shall prepare all written education materials and presentation materials and provide the materials to the Department for approval. Contractor shall not engage in education program activities, nor distribute written education materials, without the express prior approval of the Department.

1.15. INVESTIGATORY PHASE

1.15.1. Claim Identification

- 1.15.1.1. In identifying cases for medical review, Contractor shall use generally accepted auditing, accounting, analytical, statistical or peer-review methods, or combinations thereof. Contractor shall give preference to targeted review methods that identify claims most likely to contain overpayments, rather than random review methods or focusing upon high dollar claims. Contractor shall provide all methods that Contractor uses for identifying cases to the Department within twenty-four (24) hours of the Department's request. If Contractor's methods are proprietary, Contractor shall provide an explanation of why it cannot provide the detailed-methods and a general synopsis of Contractor's methods.
 - 1.15.1.1.1. Contractor shall identify the most-recent ICN for each claim including adjustments made.

- 1.15.1.1.2. Contractor shall implement its own process in determining the most recent ICN to examine.
- 1.15.1.2. Contractor's claim identification shall be based upon the professional coding manuals, Department's benefit plans, rules, regulations, reimbursement policies, contracts, billing instructions, and claims processing edits in effect on the dates of service. Contractor shall provide all documentation and methods used for claim identification to the Department within one (1) Business Day of the Department's request.
- 1.15.1.3. Contractor shall identify all claims for the entire period under review or audit at the same time.
- 1.15.1.4. Contractor shall temporarily suspend any review activities and actions, and seek direction from the Department, if the claim identification results seem to indicate that fraud, waste or abuse is involved, or when requested to suspend review activities by the Department.
- 1.15.2. Evidence
 - 1.15.2.1. Contractor shall only identify claim overpayments where there is supportable evidence of the overpayment. Contractor shall use the following means of overpayment identification:
 - 1.15.2.2. Through "Automated Review" of claims data without human review of medical and other records.
 - 1.15.2.3. Through "Complex Review" which entails human review of a medical record or other documentation and an evaluation of Medical Necessity, as defined in 10 CCR 2505-10 8.076.1.8; and medical or other records.
 - 1.15.2.4. Whenever practical or by direction of the Department, Contractor shall base a determination of an overpayment on a Complex Review.
 - 1.15.2.5. A physician's record or other order for health care services, drugs, or medicinal supplies in a form transmitted electronically shall be sufficient to validate the Provider's records regarding the ordering of the health care services, drugs, or medicinal supplies.
 - 1.15.2.6. Contractor shall follow all relevant Department procedures and policies, state and federal regulations, and coding conventions and guidelines.
 - 1.15.3. Automated Review
 - 1.15.3.1. Contractor may use Automated Review when *all* of the following conditions apply:
 - 1.15.3.1.1. There is certainty that the service is not covered or is incorrectly coded.
 - 1.15.3.1.2. A written Medicaid policy, Medicaid article or Medicaid-sanctioned coding guideline exists.
 - 1.15.3.1.3. Contractor may use Automated Review when making other determinations (e.g., duplicate claims, pricing mistakes) when there is certainty that an improper payment exists. Written policies/articles/guidelines often do not exist for these situations.
 - 1.15.3.1.4. With Department approval, Contractor may use Automated Review when Contractor identifies a "clinically unbelievable" situation (i.e., the total of all timed Current Procedural Terminology (CPT) codes in a day exceed the number of hours in a day).
 - 1.15.3.2. Contractor will recalculate or reprice claims when directed by the Department.
 - 1.15.4. Complex Review

- 1.15.4.1. Contractor shall use a Complex Review in the following situations:
 - 1.15.4.1.1. Where the requirements for Automated Review are not met.
 - 1.15.4.1.2. Where Contractor is unsure whether the requirements for Automated Review are met.
 - 1.15.4.1.3. When directed to do so by the Department. If this occurs, Contractor and the Department will validate the viability of performing a Complex Review.
 - 1.15.4.1.4. Where there is a high probability (but not certainty) that the service is not covered.
 - 1.15.4.1.5. Where no Medicaid policy, Medicaid article, or Medicaid-sanctioned coding guideline exists.
 - 1.15.4.1.6. When Medical Necessity has been determined in audit criteria by Contractor or the Department
- 1.15.4.2. Contractor will recalculate or reprice claims when directed by the Department.
- 1.15.5. TCN vetting for Excluded Claims
 - 1.15.5.1. In order to minimize the impact on the Provider Community, Contractor shall avoid situations where Contractor and another entity are working on the same claim or where fraud investigations or law enforcement actions are being contemplated or are underway.
 - 1.15.5.2. Before making any request for medical records on a claim, Contractor shall determine if an exclusion exists for that claim. If an exclusion exists for that claim, Contractor shall not review that claim.
 - 1.15.5.3. The Department's maintains a TCN Data Warehouse which includes a master table of excluded Providers and claims. This table is updated on an as needed basis.
 - 1.15.5.4. To determine exclusion, Contractor shall supply to the Department, in MS Excel or MS Access format, a list of all TCNs that Contractor intends to use to support MRR letters in a Complex Review case or to support notice of adverse action letters in Automated Review cases. The Department will inform Contractor if any TCN is an excluded claim as determined in accordance with Section 1.4 herein ("Excluded Claim"). The Department will add these TCNs to the TCN Data Warehouse.
 - 1.15.5.5. Contractor shall not issue MRR or notice of adverse action letter for any claim that has not first been evaluated for exclusion.
 - 1.15.5.6. If another entity enters one of Contractor's proposed TCNs after Contractor begins review, but before a notice of adverse action letter has issued, the Department will determine, in cooperation with the other entity and Contractor, which entity may review the claim.
 - 1.15.5.7. Contractor shall not review Excluded Claims.
- 1.15.6. Medical Record Requests ("MRRs")
 - 1.15.6.1. In Complex Review cases, Contractor, in accordance with CRS 25.5-4-301(3)(a)(IV), shall request a Provider's records by delivering to the Provider, either directly or through a trade group, a written request for records, not less than ten (10) Business Days prior to the commencement of the review. At the Provider's request, Contractor shall also deliver a copy of the request to a second specifically identified individual.
 - 1.15.6.2. Prior to any notice being sent to a Provider, or prior to the start of an audit, Contractor shall confirm Provider contact information by reaching out to the Provider.

- 1.15.6.2.1. If no contact can be found, Contractor shall determine whether the Provider is still in business or has ceased doing business; if a Provider has ceased doing business, Contractor shall cease pursuit of the medical record and no audit will occur.
- 1.15.6.3. Contractor shall address MRRs to a specific, named individual at a confirmed address.
- 1.15.6.4. Contractor shall deliver MRRs by methods which return to Contractor signed evidence of actual receipt, or documentary equivalent, by the Provider.
- 1.15.6.5. Contractor shall request the Provider records through the MMR-approved pattern letter with the Department's signature.
- 1.15.6.6. Contractor shall not issue an MRR letter that deviates from the approved pattern template without the Department's prior approval.
- 1.15.6.7. Contractor's MRR content shall comply with requirements set forth in 10 CCR 2505-10, Section 8.076.2. In each request, Contractor shall describe the requested medical records and/or medical documentation in detail and offer the Provider the option of delivering, via secure transmission, a reproduction of the medical records and/or medical documentation or the option of inspection/duplication by Contractor's reviewer at the Provider's site.
- 1.15.6.8. If the Provider chooses to provide a reproduction of the medical records and/or medical documentation requested by Contractor instead of on-site inspection, Contractor shall give the Provider a reasonable period of time, that will be not less than forty-five (45) calendar days, to provide such records taking into account the scope of the request, the time frame covered, and the reproduction arrangements available to the Provider.
 - 1.15.6.8.1. Contractor shall ensure that MRR letters contain:
 - 1.15.6.8.2. Milestone dates pertaining to due dates for medical records and or/medical documentation submission by the Provider.
 - 1.15.6.8.3. Permissible extensions of dates.
 - 1.15.6.8.4. Timelines for informal reconsideration.
 - 1.15.6.8.5. Deadlines for the Provider to request a formal appeal.
 - 1.15.6.8.6. Contact information the Provider may use for questions.
 - 1.15.6.8.7. Information about the mechanism the Provider can use to update the Provider's contact information.
 - 1.15.6.8.8. Any other information as determined by the Department.
- 1.15.6.9. Contractor shall limit the medical records subject to the request to such records directly related to claims under review by Contractor for Improper Payment determination and reimbursement by the Provider.
- 1.15.6.10. Contractor shall accept imaged or electronic medical records from Providers, claim clearinghouses and medical record clearinghouses. Contractor shall accept imaged or electronic medical records via a 277 Transaction Record. Contractor shall ensure that Providers and clearinghouses first successfully complete a connectivity and readability test with Contractor before being invited to submit imaged or electronic records to Contractor.
- 1.15.6.11. Contractor may allow extensions of time for the Provider to deliver the documents in phases. Contractor shall confirm any such extensions in writing.

- 1.15.6.12. Contractor may (but is not required to) pay for medical records requested. Contractor shall submit any pricing formula to the Department for review. Contractor shall not agree to pay the Provider without prior Department approval.
- 1.15.6.13. In the event the records are available from a County Department of Social Services or another agency, subdivision, or contractor of the State, Contractor shall request such records from such other agencies as may be appropriate, with the approval and guidance of the Department, prior to making a request to the Provider.
- 1.15.6.14. When requesting medical records, Contractor shall ensure the number of medical records in the request shall not negatively impact the Provider's ability to provide care.
- 1.15.6.15. Contractor shall not send a Medical Records Request Letter with a delivery or inspection due date that falls on a weekend or State holiday.
- 1.15.6.16. Contractor shall provide signed copies of each MRR letter to the Department through the electronic document exchange within twenty-four (24) hours of the letters being sent to the Provider.
- 1.15.7. On-site Inspection of Medical Records
 - 1.15.7.1. Contractor shall not conduct unannounced, on-site inspections of any Provider locations. Prior to an on-site inspection, Contractor shall contact the Provider to set up an on-site inspection at a reasonable time during the Provider's regular business hours.
 - 1.15.7.2. If the Provider chooses on-site inspection for the delivery of records rather than to provide a reproduction of the records, Contractor shall conduct on-site inspections at reasonable times during the Provider's regular business hours.
 - 1.15.7.3. Contractor shall make arrangements necessary for the reproduction of such records on site.
 - 1.15.7.4. Contractor shall obtain Department approval prior to arranging an on-site Provider review.
 - 1.15.7.5. Contractor may copy all medical records on-site and evaluate them for overpayment later off-site.
 - 1.15.7.6. Contractor may, but is not required to, assess the likelihood of an overpayment at the time of the on-site inspection. If Contractor elects to inspect the medical records on-site, and if the on-site inspection appears likely to result in an Improper Payment finding, Contractor shall copy the relevant portions of the medical record and retain them for future use. If the on-site inspection of a medical record results in no finding of Improper Payment, Contractor shall retain a copy of the medical record.

1.16. REVIEW PHASE

- 1.16.1. Timeliness of Medical Record Review
 - 1.16.1.1. Contractor shall complete its review of medical records within the timeline indicated in each Review Project Request. This timeline is subject to Department approved extensions for good cause. Any such extensions must be approved prior to the end of the timeline indicated in the Review Project Request.

1.16.1.2. In the event the Provider waives an in-person or telephone exit interview, Contractor shall provide the Department notice of adverse action letter(s) for review and approval within ten (10) calendar days following Contractor's medical record review. If an in-person or telephone exit interview is conducted, Contractor shall provide the Department notice of adverse action letter(s) for review and approval within thirty-five (35) calendar days following Contractor's medical record review. Contractor shall inform the Department if it needs an extension to the dates five (5) days prior to the due date. The Department, at its sole discretion, may provide an extension.

1.16.2. Insufficient Records

1.16.2.1. Contractor shall deem claims without supporting documentation to be overpayments. Providers are required to maintain documentation to substantiate their claims for six (6) years.

1.16.3. Medical Necessity Determinations

1.16.3.1. Contractor shall use a Complex Review in the situations listed in Section 1.15. entitled "Complex Review."

1.16.4. Denials

1.16.4.1. Technical Overpayment or Denial

1.16.4.1.1. Contractor may find an entire claim to be an overpayment if medical records are requested and not received within forty-five (45) calendar days after the date of the medical record request letter or any extension thereof. Additional letters and calls to the Provider to try and obtain the documents after the deadline are at the discretion of Contractor.

1.16.4.1.2. If a Provider has not responded to an MRR letter and not submitted any medical records within the allowed time limits of the MRR letter, Contractor shall issue a notice of adverse action to the Provider within 60 calendar days of when the medical records were due. The Department will support this Contractor deliverable by approving the notice of adverse action letter within 10 Business Days of submission by Contractor to the Department for approval. If the Department is unable to approve the letter within such period, Contractor and the Department shall agree on a new Letter Review Plan.

1.16.4.1.3. Contractor shall provide cogent, compelling, thorough and persuasive written and oral opinions to support overpayment findings and to defend them in litigation.

1.16.4.2. Full Overpayment or Denial

1.16.4.3. Contractor may find an entire claim to be an overpayment if:

1.16.4.3.1. The claim was not reasonable and necessary and no other service (for that type of Provider) would have been reasonable and necessary.

1.16.4.3.2. No service was provided.

1.16.4.3.3. The claim is a duplicate.

1.16.4.3.4. The claim should have been bundled into another claim that was paid.

1.16.4.3.5. No documentation exists to support the claim.

1.16.4.3.6. Any other reason, approved by the Department, which precludes payment of the claim in its entirety.

1.16.4.4. Partial Overpayment or Denial

1.16.4.4.1. Contractor may find part of a claim to be an overpayment if:

1.16.4.4.2. The claim was not reasonable and necessary, but a lower level service would have been reasonable and necessary.

1.16.4.4.3. The claim was upcoded (and a lower level service was actually performed) or an incorrect code (such as a discharge status code) was submitted that caused a higher payment to be made.

1.16.4.4.4. Documentation supports some, but not all, line items on a claim.

1.16.4.4.5. The Provider failed to apply a payment rule that caused an improperly high payment (e.g., failure to reduce payment on multiple surgery cases).

1.16.4.4.6. Any other reason as approved by the Department.

1.16.4.4.7. In partial denial cases, Contractor shall determine the proper payment amount for the service described in the claim and in the medical record. The overpayment amount is the difference between the amount paid and the amount that should have been paid.

1.16.4.4.8. Where Contractor is unable to determine the proper payment amount, Contractor shall find the entire claim to be an overpayment.

1.16.5. Determinations

1.16.5.1. Coverage Determinations

1.16.5.1.1. Contractor may find a full or partial overpayment exists if the service is not covered. See e.g., 10 CCR 2505-10, §8.011.1.

1.16.5.2. Coding Determinations

1.16.5.2.1. Contractor may find that an overpayment exists if the services were not correctly coded.

1.16.5.3. Provider Disqualification Determinations

1.16.5.3.1. Contractor may find a full or partial overpayment exists if the service was delivered to a Member while the Provider lacked the licensure or credentials to perform the service or the Provider was excluded from participation at the time of service, or if the Provider was deceased.

1.16.5.4. County or State Department Primary Payer Determinations

1.16.5.4.1. Contractor may find a full or partial overpayment exists if the service was one included in the scope of services covered by a County, but it was paid by Medicaid in Fee for Service. Before making an overpayment determination, Contractor shall validate with the Department whether or not there might be a coverage exception at play.

1.16.5.5. Other Determinations

1.16.5.5.1. Contractor may determine that an overpayment exists if the claim was the result of an error in payment policy.

1.16.5.6. Medicaid Policies, Coding Guidelines and Procedures

1.16.5.6.1. Contractor shall not apply a Medicaid policy, coding guideline or procedure retroactively to claims processed prior to the effective date of the policy, coding guideline or procedure.

- 1.16.5.6.2. The Department reserves the right to control and limit policy, coding guidelines and procedures that are being applied by Contractor. Contractor shall abide by any Department instruction regarding the Department's interpretation of any policy, coding guideline or procedure.
- 1.16.5.7. Minor Omissions
 - 1.16.5.7.1. Contractor shall not base denials on minor omissions. Contractor shall follow all Departmental instructions regarding what constitutes minor omissions.
- 1.16.5.8. Managed Care Enrollment Determinations.
 - 1.16.5.8.1. Contractor may find a full or partial overpayment exists if the service was a managed care covered service, it was delivered to a managed care enrolled Member, but it was paid by Medicaid in Fee for Service reimbursement methodology. Before making an overpayment determination based on managed care enrollment, Contractor shall validate with the Department whether or not there might be a coverage exception at play.
- 1.16.5.9. Waiver Program Determinations
 - 1.16.5.9.1. Contractor may find a full or partial overpayment exists if the service was paid by Medicaid in Fee for Service but was duplicative or inconsistent with a waiver service payment to or on behalf of the same Member. Before making an overpayment determination, Contractor shall validate with the Department whether or not there might be a coverage exception at play.
- 1.16.5.10. Skilled Nursing Facility Determinations
 - 1.16.5.10.1. Contractor may find a full or partial overpayment exists if the service was one included in the skilled nursing facility's daily rate payment, was delivered to a Member living in a skilled nursing facility, but it was paid by Medicaid in Fee for Service. Before making an overpayment determination, Contractor shall validate with the Department whether or not there might be a coverage exception at play.
- 1.16.5.11. Hospice Determinations
 - 1.16.5.11.1. Contractor may find a full or partial overpayment exists if the service was one included in the scope of hospice services, was delivered to a Member in hospice, but it was paid by Medicaid in Fee for Service. Before making an overpayment determination, Contractor shall validate with the Department whether or not there might be a coverage exception at play.
- 1.16.6. In-Person or Telephone Exit Interview
 - 1.16.6.1. At the request of a Provider, Contractor shall conduct an in-person or telephone exit interview with the Provider prior to mailing the notice of adverse action letter or preliminary draft of the audit report in accordance with 10 CCR 2505-10, Section 8.076.2.H. Contractor shall collaborate with the Department to determine whether an in-person exit interview should be conducted.
 - 1.16.6.2. At the request of a Provider, Contractor shall provide preliminary findings in writing in preparation of an in-person or telephone exit interview. Preliminary findings shall be submitted to the Provider within two (2) calendar days of the scheduled in-person or telephone exit interview. The preliminary findings shall also be provided to the Department within twenty-four (24) hours of the Department's request.

- 1.16.6.3. At the exit interview, Contractor shall:
 - 1.16.6.3.1. Discuss the findings of the reviewer or auditor;
 - 1.16.6.3.2. Request any additional documentation useful for the Provider to refute the findings or that could reduce the amount of the overpayment;
 - 1.16.6.3.3. Discuss the next steps in the review or audit process.
 - 1.16.6.3.4. Contractor shall maintain a log narrative and minutes of what was discussed with the Provider, Provider education, and whether the Provider agreed or disagreed with each of Contractor's findings. The log narrative shall be made available to the Department within twenty-four (24) hours of the Department's request.
- 1.16.6.4. The exit interview may be attended by a Department representative.
- 1.16.6.5. Contractor shall ensure that reviewers will be available for the interview.
- 1.16.7. Notice of Adverse Action Letters
 - 1.16.7.1. When Contractor determines that there has been an overpayment to a Provider, Contractor shall prepare and deliver a notice of adverse action letter to the Provider. Contractor shall also make the notice of adverse action letter available to the Provider electronically via the Provider web portal, in accordance with Section 1.7.2.
 - 1.16.7.2. Contractor shall review claims data prior to Contractor's issuance of a notice of adverse action letter to ensure that adjustments or rebilling have not occurred. If an adjustment or rebilling has occurred, Contractor shall report that occurrence to the Department within twenty-four (24) hours and recalculate the overpayment if needed.
 - 1.16.7.3. Contractor shall address the notice of adverse action letter to a specific, named individual at a confirmed address. At the Provider's request, Contractor shall deliver a copy of the notice of adverse action letter to a second specifically identified individual.
 - 1.16.7.4. Contractor shall make delivery of notice of adverse action letters by a method which returns to Contractor signed evidence of actual receipt by the Provider.
 - 1.16.7.5. Contractor shall only send notice of adverse action letters in the approved pattern letter format with the Department's signature.
 - 1.16.7.6. Contractor's notice of adverse action letters shall comply with all state and federal laws, rules and regulations.
 - 1.16.7.7. Contractor shall ensure that notice of adverse action letters contain the rationale for the Improper Payment determination and a written explanation for each adverse review finding, including:
 - 1.16.7.7.1. Responses to any provider's concerns, statements or arguments brought up during the in-person or telephone exit interview, unless the Department approves otherwise.
 - 1.16.7.7.2. Technical findings based upon uniform coding practices, billing manuals, rules and other similar sources may be expressed in a summary form, similar to an Explanation of Benefit (EOB) message. Contractor shall include citations to all authorities.
 - 1.16.7.7.3. Medical Necessity or findings from professional reviewers shall be expressed in a longer narrative form designed to inform and educate the Provider.

- 1.16.7.7.4. Re-pricing of Claims, if performed by Contractor, shall be accompanied by a description of the method of calculation, the authority or source of the recalculation method, and the mathematical proof that the calculation is correct.
- 1.16.7.8. Contractor shall inform the Provider of the Provider's right to an informal reconsideration and offer the Provider a timely informal reconsideration of the review or audit findings.
- 1.16.7.9. Notice of adverse action letters shall include, but are not limited to:
 - 1.16.7.9.1. Rebilling instructions, if applicable.
 - 1.16.7.9.2. Payment instructions.
 - 1.16.7.9.3. Instructions and deadlines for filing a formal appeal or a request for informal reconsideration within thirty (30) days of the date of the notice of adverse action letter.
 - 1.16.7.9.4. Contact information the Provider may use for questions.
- 1.16.7.10. Contractor shall send the Provider no more than one (1) notice of adverse action letter per audit period. For example, Contractor shall not send the Provider a letter on January 10th containing the results of a Medical Necessity review and send a separate letter on January 20th containing the results of a correct coding review for the same audit period. Instead, Contractor shall wait until January 20th to inform the Provider of the results of both reviews in the same letter.
- 1.16.7.11. Contractor may communicate to Providers the results of Automated Reviews that do not result in Improper Payment.
- 1.16.7.12. Contractor shall communicate to the Provider the results of every Complex Review, including cases where no Improper Payments are identified. Contractor shall include findings where there is an error but not overpayment was identified for Provider educational purposes.
- 1.16.7.13. Contractor shall not allow extensions of time for the Provider to appeal or request informal reconsideration.
- 1.16.7.14. Contractor shall provide copies of each finalized notice of adverse action letter to the Department through the electronic document exchange within twenty-four (24) hours of the letters being sent to the Provider.

1.17. UNDERPAYMENT CASE REVIEW

- 1.17.1. Contractor is under no obligation to accept requests from Providers to conduct an underpayment case review. If medical records are received from Providers that were not requested by Contractor, Contractor may destroy the records. If Contractor destroys records sent by a Provider, Contractor shall notify the Department and create and log the documents destroyed and why.
- 1.17.2. In the event that Contractor reviews a claim and determines there is an underpayment, Contractor shall identify the underpayment and inform the Department of the discovery.
 - 1.17.2.1. Services that a Provider failed to include on a claim are not considered underpayments for the purposes of this Contract. For example, the medical record indicates that the Provider performed additional services such as an EKG, but the Provider did not bill for the service, or the medical record indicates that the Provider implanted a particular device for which a separate reimbursement could have been made, but the Provider did not bill for the device.

- 1.17.2.2. Contractor shall use only the post payment claims review process to identify underpayments.
- 1.17.2.3. Contractor may determine that an underpayment exists if the claim was the result of an error in payment policy.
- 1.17.2.4. Contractor may find that an underpayment exists if the services were not correctly coded.
- 1.17.3. Contractor may request medical records for the purpose of identifying an underpayment.
- 1.17.4. If during a claims review (either Automated or Complex) Contractor discovers a Provider has been underpaid, Contractor shall send a separate underpayment notification letter to the Provider.
- 1.17.5. Underpayment notification letters shall be prior approved by the Department and shall include all of the following:
 - 1.17.5.1. The claim(s) and beneficiary detail.
 - 1.17.5.2. The approved pattern letter for underpayments.
- 1.17.6. Upon a request from the Provider to explain an underpayment notification letter, Contractor shall contact the Provider and offer explanation or clarification. Underpayment determinations are not subject to informal reconsideration or appeal.
- 1.17.7. Contractor shall not include identified underpayments in any notice of adverse action letter.
- 1.17.8. Contractor shall create and provide to the Department underpayment notification letters.
- 1.17.9. Contractor may use Automated Review when making other determinations (e.g. duplicate claims, pricing mistakes) when there is certainty that an overpayment or underpayment exists. Written policies/articles/guidelines often do not exist for these situations.
- 1.17.10. Contractor shall provide the Department with a monthly report for any underpayments discovered during audits. This report shall include:
 - 1.17.10.1. Means by which underpayments were identified, or the project's particular methodology or purpose.
 - 1.17.10.2. Sum total of all initial underpayments identified in the prior month.
 - 1.17.10.3. Sum total of all underpayments still in queue for all open Review Projects (including those on appeal) as of the last day of the month.

1.18. INFORMAL RECONSIDERATION PHASE

- 1.18.1. Contractor shall not extend the time in which to request informal reconsideration.
- 1.18.2. When the Provider requests informal reconsideration, Contractor shall acknowledge receipt of the reconsideration with the Provider and shall notify the Department that an informal reconsideration has been requested by delivering a copy of the request to the Department. If the Department receives a request for informal reconsideration directly from a Provider, the Department will inform Contractor and deliver a copy of the request to Contractor. Contractor shall acknowledge receipt of the reconsideration request with the Provider.
- 1.18.3. Within thirty-five (35) days of receipt of the Provider's written informal reconsideration request and new documentation, Contractor shall re-review all new and previous documentation associated with the case under reconsideration and issue a new decision at the conclusion of its review.

- 1.18.4. For the purposes of this section, “receipt” is the earliest trackable receipt date by either the Department or Contractor. If the request for informal reconsideration is delivered to the Department first, that is the date that begins the thirty-five (35) day count, not the date Contractor receives a forwarded copy of the request or its own copy of the request.
- 1.18.5. If Contractor believes it will be unable to render a decision on the request for informal reconsideration within forty-five (45) days after the Provider’s request, Contractor shall submit a written notification to the Department stating why Contractor is unable to render a timely decision and a copy of the pattern letter regarding Contractor’s inability to complete a timely decision. Contractor shall provide the notification and pattern letter to the Department at least five (5) calendar days prior to delivery to the provider and prior to the expiration of the forty-five (45) day deadline.
- 1.18.6. Within forty-five (45) days after the request, Contractor shall notify the Provider by using the approved pattern letter no later than the forty-fifth (45th) day of Contractor’s inability to complete the decision timely and why. The letter shall include information concerning requesting a formal appeal, including informing the Provider that the request for appeal shall be filed within thirty (30) days after the receipt of Contractor’s notification that it is unable to render a decision. At the Provider's request, Contractor shall deliver a copy of this letter to a second specifically identified individual.
- 1.18.7. Contractor shall review claims data prior to Contractor’s issuance of an informal reconsideration response letter to ensure that adjustments or rebilling have not occurred. If an adjustment or rebilling has occurred, Contractor shall report that occurrence to the Department within one (1) business day and recalculate the overpayment if needed.
- 1.18.8. Contractor shall not issue an informal reconsideration without the Department’s prior approval of the letter or its contents. Contractor shall complete the informal reconsideration process early to allow the Department at least ten (10) calendar days to review and approve the reconsideration letter before a Provider response is due.
- 1.18.9. The letter on reconsideration decision shall include information concerning requesting a formal appeal, informing the Provider that the request shall be filed within thirty (30) calendar days after the date of the decision on the request for an informal reconsideration. At the Provider's request, Contractor shall deliver a copy of the reconsideration letter to a second specifically identified individual.
- 1.18.10. When the Provider has made an appeal without tendering any new documents, identifying any error on Contractor’s part, or making any argument about Contractor’s rationale or conclusions, Contractor may summarily decide and reaffirm the original notice of adverse action letter.
- 1.18.11. Contractor shall address each of the Provider’s issues and arguments raised in the request for reconsideration, unless the Department approves otherwise. Contractor’s responsibility to assist the Department with any informal reconsiderations relating to any of the Work completed by Contractor shall survive the termination of this Contract.

1.19. FORMAL APPEAL PHASE

- 1.19.1. Contractor shall provide formal appeals assistance consistent with CRS 25.5-4-301(3)(a)(VIII); CRS 24-4-105 and 10 CCR 2505-10, §8.050.
- 1.19.2. Contractor’s formal appeals assistance shall include, but not be limited to, all of the following:

- 1.19.2.1. Providing all information and supporting documentation as requested by the Department for the appeal.
- 1.19.2.2. Supporting its technical and professional findings.
- 1.19.2.3. Repricing claims prior to settlement conferences to evaluate the overpayments of each claim where there is not a repricing already completed.
- 1.19.2.4. Answering all questions regarding the appeal from the Department or the Attorney General's Office.
- 1.19.2.5. Appearing at hearings to provide appropriate testimony or answer questions.
- 1.19.2.6. Providing its professional opinion regarding the grounds of the appeal, and suggest an appropriate course of action for, or defense of, Contractor's position to the Department. Testify regarding its findings, information, supporting documentation and its professional opinion, if requested by the Department or the Attorney General's Office.
- 1.19.3. Contractor's responsibility to assist the Department with any appeals relating to any of the Work completed by Contractor shall survive the termination of this Contract.
 - 1.19.3.1.1. DELIVERABLE: Information and supporting documentation as requested by the Department for the appeal
 - 1.19.3.1.2. DUE: Within 30 (thirty) calendar days unless the Department extends this due date.
- 1.19.4. When a Provider formally appeals, the Department will notify Contractor of the appeal.
- 1.19.5. If Contractor receives a verbal request for appeal from a Provider, Contractor shall direct the Provider to their notice of adverse action letter where it describes how to file an appeal and where to mail it. Contractor shall notify the Department in writing of a Provider's intent to file an appeal within twenty-four (24) hours of the Provider's verbal request.
- 1.19.6. Contractor shall not extend appeal times.
- 1.19.7. Within thirty (30) calendar days of notice of appeal, Contractor shall provide all relevant investigative documents, case files and data reports to the Department including, but not limited to:
 - 1.19.7.1. Data analysis summaries.
 - 1.19.7.2. Field and desk review summaries.
 - 1.19.7.3. Overpayment determinations.
 - 1.19.7.4. Repricing of claims.
 - 1.19.7.5. Documentation of Provider relations communications.
 - 1.19.7.6. All written communications with Providers.
 - 1.19.7.7. All Provider education given to Providers.
- 1.19.8. Within thirty (30) calendar days of notice of appeal, Contractor shall provide the Department with an executive summary of the appealed case. It shall contain, but is not limited to, all of the following:
 - 1.19.8.1. A chronological narrative of Contractor's activities.
 - 1.19.8.2. A statement of the nature of the dispute.

- 1.19.8.3. The amount in controversy.
- 1.19.8.4. A summary of the Provider's basis and rationale for appeal.
- 1.19.8.5. A point-by-point refutation of, or agreement with, the Provider's basis and rationale for appeal with specific citation to supporting evidence in the record.
- 1.19.8.6. The curriculum vitae of the reviewer(s).
- 1.19.8.7. If the issues involve recoding, copies of the pages of the applicable coding manual and other learned resources that support Contractor's recoding methodology and rationale.
- 1.19.8.8. If the issues involve rules, regulations, policies or statutes, copies of the rules, regulations, policies and/or statutes upon which Contractor relied.
- 1.19.8.9. If the issues involve calculations, the relevant fee schedules and explanations for how Contractor made its calculations.
- 1.19.8.10. Recommended resolutions, if any.

1.20. LITIGATION PHASE

- 1.20.1. Contractor shall prepare for, and participate in, all litigation related conferences as requested by the Department or the Colorado Attorney General's Office. Such conferences include, but are not limited to:
 - 1.20.1.1. Pre-settlement conferences.
 - 1.20.1.2. Settlement conferences.
 - 1.20.1.3. Trial setting conferences.
 - 1.20.1.4. Hearings.
- 1.20.2. Contractor's litigation assistance shall include, but is not limited to, all of the following:
 - 1.20.2.1. Providing all information and supporting documentation as reasonably requested by the Department for the litigation.
 - 1.20.2.2. Supporting its technical and professional findings.
 - 1.20.2.3. Answering all questions regarding the litigation from the Department or the Attorney General's Office.
 - 1.20.2.4. Appearing at hearings to provide appropriate testimony or answer questions.
 - 1.20.2.5. Providing appropriate personnel and experts, at Contractor's expense, as requested by the Department.
 - 1.20.2.6. Providing its professional opinion regarding the grounds of the litigation, and suggest an appropriate course of action for, or defense of, Contractor's position to the Department. Testify regarding its findings, information, supporting documentation and its professional opinion, if requested by the Department or the Attorney General's Office.
 - 1.20.2.7. Contractor's responsibility to assist the Department with any litigation relating to any of the Work completed by Contractor shall survive the termination of this Contract.
 - 1.20.2.7.1. **DELIVERABLE:** Information and supporting documentation as requested by the Department for the litigation

- 1.20.2.7.2. DUE: Within ten (10) Business Days or earlier as requested by the Department or the Attorney General's Office, unless the Department extends this due date.
- 1.20.3. Contractor shall participate in conferences either in person or, with the prior permission of the Administrative Law Judge (ALJ), by teleconference, as directed by the Department's or the Department's legal representatives.
- 1.20.4. Contractor shall ensure that reviewers, physician reviewers, Contractor's Medical Director and others, as requested by the Department, are available either in-person, or by telephone when approved, to participate at settlement conferences, at depositions and at administrative or court proceedings.
- 1.20.5. Upon request, Contractor shall describe its analytic methods used to identify cases for audit and its statistical methods used to calculate an overpayment.
- 1.20.6. Contractor shall support the Department throughout the Informal Reconsideration process; the administrative appeals process and, where applicable, throughout any subsequent litigation.

1.21. POST AUDIT ACTIVITIES

1.21.1. Previous Recoveries

- 1.21.1.1. After recovery, and for the duration of the Contract, Contractor shall monitor INTERCHANGE transactions through claims data analysis semi-annually to assure that Providers have not resubmitted previously audited and settled claims back into INTERCHANGE for repayment or submitted new claims that are actually attempts to seek payment on all or part of any previously audited and settled claims. Contractor shall also monitor INTERCHANGE transactions for any claims adjustments made by the Department or any of its contractors.
- 1.21.1.2. Contractor shall submit a report within its Annual Report outlined in Section 1.33.4 to the Department detailing its efforts and forensic review of INTERCHANGE transactions.
- 1.21.1.3. Contractor shall not be entitled to another contingency fee for identifying impermissible re-billed amounts recovered through post-review audits. Instead, Providers found to be rebilling previously recovered claims shall be reported to the Department who will evaluate the occurrences for a fraud referral to the MFCU or other agency or entity.

1.22. FRAUD AND FALSE CLAIMS

- 1.22.1. Contractor shall notify the Department when it identifies or suspects Provider fraud or false claims at any stage of a Review Project.
- 1.22.2. At the direction of the Department, Contractor shall conduct active pattern and fraud scheme analysis and provide investigation-ready leads for the Department, law enforcement agencies, or its designees. The analysis shall include, but not be limited to, identification of suspicious behavior patterns, determination the reason or methodology for the suspicion, execution of a full background review/due diligence report, and recommendation of next steps and actions. At the approval of the Department, the Contract may use external data sources in its analysis.
- 1.22.3. Contractor shall host a secure, web-based detection and analytic tool with an easy to navigate graphical user interface. The solution shall assist the Department in making referrals of suspected fraud and/or abuse, as defined in 42 CFR 455.2, to the MFCU or other appropriate law enforcement agency.

- 1.22.3.1. The solution shall include a set of pre-defined, best practice analytic models designed to utilize, review and analyze Department data to detect suspected cases of fraud and abuse, detect emerging fraud, waste and abuse schemes, conduct outlier detection and comparisons of a group of providers, and assign risk scoring or ranking of providers.
- 1.22.3.2. The solution shall include the capability for Department users to develop queries that will generate an alert or warning to the user when claims meeting the criteria are received within the data set.
- 1.22.3.3. The solution shall provide intuitive ad hoc reporting tools that enable relatively inexperienced and non-technical users without programming language knowledge to quickly produce simple, relational reports.
- 1.22.3.4. The solution shall allow Department to export all reports into common desktop software applications and formats, including but not limited to, Microsoft Excel, .csv files, .pdf and .html.
- 1.22.3.5. At the request of the Department, the solution shall incorporate machine learning, artificial intelligent automation, or other advanced analytic techniques for detection of suspected fraud, waste and abuse.
- 1.22.3.6. Contractor shall ensure the Department has continuous access to the solution throughout the term of the Contract.
- 1.22.4. Suspected Fraud
 - 1.22.4.1. Suspected fraud includes identification or intentional deception or misrepresentation by a person with the knowledge that the deception could result in some unauthorized benefit to the individual or some other person, whether it constitutes possible criminal fraud under federal or state law or violation of federal or state civil false claims statutes.
 - 1.22.4.2. Upon discovery of suspected fraud or other findings described above, Contractor shall immediately make a verbal report to the Department's contract manager. Contractor shall submit written documentation to the Department within two (2) Business Days of the verbal report. The verbal and written reports to the Department shall include all details of the findings and concerns, including a chronology of Contractor actions that resulted in the reports. The report shall identify any affected claims that have been discovered. Contractor shall provide any claims data associated with its report. The written report shall be in a format that is specified and approved by the Department.
 - 1.22.4.3. Contractor shall not take any kind of recovery action or initiate any kind of activity against a Provider where fraud is suspected.
 - 1.22.4.4. Contractor shall not take any action that may interfere with an investigation of possible fraud by the Department, the MFCU, or any other law enforcement entity. Contractor shall assist the Department, the MFCU or any other law enforcement entity as requested with any investigation and any civil or criminal cases by the State or Federal governments, including false claims act cases.
 - 1.22.4.5. Contractor shall temporarily suspend any review activities or actions related to any Provider that Contractor suspects is involved in fraudulent activity.
- 1.22.5. Upon Department request, Contractor shall temporarily suspend all review activities or actions related to any Provider.

1.22.6. Contractor shall abandon a project and stop all work on it, when requested to do so by the Department.

1.23. **QUALITY CONTROL**

1.23.1. Quality Control Review Plan

1.23.1.1. Contractor shall develop a Quality Control Review Plan (“QC Review Plan”) to be used by the Department to assess the accuracy of Contractor’s audit determinations. The QC Review Plan will be used to assess the accuracy of Contractor’s audit determinations.

1.23.1.2. The QC Review Plan is subject to Department approval and shall include all of the following:

1.23.1.2.1. Edit parameters and review guidelines supported by Department rules, Colorado statutes, and federal regulations or, if state or federal rules and regulations are silent and/or do not exist, are supported by evidence based medical research.

1.23.1.2.2. A method by which the Department can determine whether the criteria for Automated Reviews was met or whether Contractor should have performed a Complex Review instead.

1.23.1.2.3. A process and method by which the Department can determine all of the following:

1.23.1.2.4. The accuracy of Contractor’s Improper Payment determination.

1.23.1.2.5. The accuracy of Contractor’s error type (ex: no documentation, insufficient documentation, medically unnecessary, incorrect coding) and subtype for each claim determination.

1.23.1.2.6. The clarity and accuracy of Contractor’s language used to communicate with the Provider regarding Improper Payment.

1.23.1.2.7. The appropriateness of Contractor’s language used to communicate with the Provider regarding the clinical evidence contained in the medical record that justifies the claim determination.

1.23.1.2.8. The accuracy of Contractor’s beneficiary liability determination.

1.23.1.2.8.1.1. DELIVERABLE: QC Review Plan

1.23.1.2.8.1.2. DUE: No later than fifteen (15) Business Days after the Operational Start Date.

1.23.1.2.8.1.3. DELIVERABLE: Updates and Changes to QC Review Plan

1.23.1.2.8.1.4. DUE: Within two (2) weeks of Department requesting the changes.

1.23.1.3. At the Department’s request, Contractor shall provide all documents and information associated with an audit and all documentation/information that justifies Contractor’s audit rationale and overpayment determinations, including but not limited to, the statutes, rules and regulations, and coding references that support the audit within one (1) Business Day of the Department’s request.

1.23.1.4. Contractor shall allow for a minimum ten (10) Business Days following receipt, of audit documentation/information, for the Department to conduct a quality assurance review. During this review period, Contractor shall not send a notice of adverse action letter to a Provider that is the subject of the quality assurance review.

- 1.23.1.5. If the Department determines that there are errors in accuracy, comprehensiveness or quality, Contractor shall make all changes directed by the Department. After the Department's notification, Contractor, at the direction of the Department, shall recode and re-price the claims. Contractor shall only send the notice of adverse action letter once Contractor has made all changes.
- 1.23.2. Quality Control Review of Audits
 - 1.23.2.1. Contractor shall develop a quality control system to ensure the accuracy, comprehensiveness and quality of all audits performed by Contractor. Contractor shall conduct quality control reviews of all audits that Contractor conducted.
 - 1.23.2.2. Contractor shall develop procedures for the quality control reviews and submit the procedures to the Department for approval. Contractor shall perform the quality reviews per the approved procedures. Contractor shall not perform quality control reviews prior to the Department's approval of the procedures.
 - 1.23.2.2.1. DELIVERABLE: Procedures for quality reviews
 - 1.23.2.2.2. DUE: No later than fifteen (15) Business Days after the Operational Start Date.
 - 1.23.2.3. Contractor shall not have the same staff conducting the quality reviews who were involved in the audit.
 - 1.23.2.4. Contractor shall immediately correct its errors, once identified during the quality control review.
 - 1.23.2.5. Contractor shall not send a notice of adverse action letter to a Provider if the audit that resulted in the notice of adverse action letter has not been subject to Contractor's quality control review or the results of the review revealed errors in accuracy, comprehensiveness or quality.
 - 1.23.2.6. Contractor shall submit a weekly Quality Control Review Report to the Department detailing the results of each review.

1.24. PROVIDER EDUCATION

- 1.24.1. Provider Education Plan
 - 1.24.1.1. Contractor shall develop a Provider Education Plan. Contractor shall conduct Provider education at least once a quarter.
 - 1.24.1.2. The Provider Education Plan shall contain, at a minimum, all of the following:
 - 1.24.1.2.1. Identification of common billing trends or issues that result in erroneous payments. Issues may include, but are not limited to:
 - 1.24.1.2.1.1. Incorrect coding.
 - 1.24.1.2.1.2. Incomplete coding.
 - 1.24.1.2.1.3. Untimely billing.
 - 1.24.1.2.2. The methods Contractor will utilize to communicate the trends and issues and corrective actions to Providers. These methods may include, but are not limited to:
 - 1.24.1.2.2.1. Direct mailings.
 - 1.24.1.2.2.2. Pamphlets/brochures.

- 1.24.1.2.2.3. Website.
- 1.24.1.2.2.4. Webinars.
- 1.24.1.2.2.5. In-person presentations.
- 1.24.1.2.2.6. Telephone conferences.
- 1.24.1.2.2.7. Contractor shall deliver the Provider Education Plan to the Department for review and approval.
- 1.24.1.2.2.8. Contractor shall modify the Provider Education Plan upon Department request. Contractor shall submit all modifications to the Department for approval prior to implementing the modified Provider Education Plan.
- 1.24.1.2.2.9. Once the Department has notified Contractor of its acceptance of the Provider Education Plan or of an updated Provider Education Plan, Contractor shall implement all requirements of that plan and perform all Provider education according to the Provider Education Plan. Contractor shall not implement the Provider Education Plan until the Department accepts the Plan or modification of the Plan.
- 1.24.1.2.2.10. All requirements, due dates, and milestones contained in the most recently approved Provider Education Plan or updated Provider Education Plan shall be considered to be requirements, due dates, and milestones of this Contract.
- 1.24.1.2.2.11. Contractor shall follow all plans, standards, processes and procedures of the most recently approved Provider Education Plan.
 - 1.24.1.2.2.11.1. DELIVERABLE: Provider Education Plan.
 - 1.24.1.2.2.11.2. DUE: Within ten (10) Business Days following the completion of a Review Project.
 - 1.24.1.2.2.11.3. DELIVERABLE: Updates and Changes to Provider Education Plan
 - 1.24.1.2.2.11.4. DUE: Within two (2) weeks of the Department requesting the changes
- 1.24.1.2.2.12. Contractor shall not initiate Provider education without Department approval as to content, form and forum.
- 1.24.1.2.2.13. Contractor shall prepare all written education materials and presentation materials and provide the materials to the Department for approval. Contractor shall not engage in education program activities, nor distribute written education materials, without the express prior approval of the Department.
 - 1.24.1.2.2.13.1. DELIVERABLE: All presentation and written education materials that will be distributed.
 - 1.24.1.2.2.13.2. DUE: Thirty (30) calendar days prior to use.
- 1.24.1.2.2.14. Contractor shall implement the most recently approved Provider Education Plan and shall complete all requirements of that plan. Contractor shall not implement any portion of the Provider Education Plan prior to the Department's approval of that plan unless directed to do so in writing by the Department.

- 1.24.2. Contractor shall identify common Provider billing trends or issues that result in large erroneous overpayments. If the issues resulting in erroneous overpayments can be addressed and corrected through educational efforts, Contractor shall initiate an education program to Providers throughout the state on why some errors are consistently being made and the methods to avoid making the errors.
- 1.24.3. Contractor shall deliver written education materials as directed by the Department. The Department may deliver Contractor's written education materials through the Department's Medicaid bulletin, newsletters, the Department's website, and Provider group publications.
- 1.24.4. At the Department's request, Contractor shall deliver Provider education written materials in person, via webinar, telephone conference, Contractor's Provider web portal or other mass media. In such a case, Contractor shall arrange the times, places and means of presentation, in consultation with the Department and the affected Providers, groups or associations. Contractor shall set up and schedule any education presentations. Contractor shall maintain a list of Providers attending the education presentations and shall provide the attendee list to the Department within one (1) Business Day of the Department's request. The Department may require that Department staff be present at any in person meeting, webinar, or telephone conference.
- 1.24.5. At the request of the Department, Contractor shall develop written materials on topics of the Department's choosing related to the Work and intended for Department distribution to Providers, legislators, stakeholders or other persons.
- 1.24.6. Contractor shall not speak for, nor represent that it speaks for, the Department, or Department policy.
- 1.24.7. Contractor shall notify the Department and obtain Department approval prior to attending and participating in any Provider/association meetings, presentations or conferences pertaining to the Work.
- 1.24.8. At the request of the Department, Contractor shall participate, in person or via telephonic conferences, in meetings with Provider groups, health care associations and others designated by the Department, when such meetings relate to the Work.

1.25. PROCESS IMPROVEMENTS

- 1.25.1. Contractor shall provide written recommendations for improvements in Department payment systems, processes, laws, rules, billing instructions and policies when shortcomings are identified. Contractor shall provide written recommendations to the Department within ten (10) Business Days of the discovery of shortcomings.
- 1.25.2. Contractor shall provide written identification of exploitable gaps in the Department's benefit plans, rules, regulations, reimbursement policies, contracts, billing instructions, existing/historic claims processing edits and audits that enable Providers to receive payments to which they are not (or should not be) entitled. Contractor shall provide written identification to the Department within ten (10) Business Days of the discovery of exploitable gaps.

1.26. PAYMENT ADDRESS

- 1.26.1. The Department will instruct Contractor of the applicable payment address.

- 1.26.2. If Contractor receives a Provider check directly, Contractor shall forward the check to the Department along with all accompanying documentation. Before forwarding the check, Contractor shall make copies of and otherwise document these payments. A copy shall be included in the appropriate case file.
- 1.26.3. When the Department receives a Provider refund check, the Department will notify Contractor.
- 1.26.4. Contractor acknowledges Federal regulations may change and shall cooperate fully with the State to make any necessary changes to the Contract to accommodate new or changed Federal regulations and their requirements.

1.27. OFFSET AND REPAYMENT PLANS

- 1.27.1. Contractor shall notify the Department when a Provider requests to repay the Department through an offset against future Provider payments.
- 1.27.2. Contractor shall, upon Department approval, validate that an offset is appropriate and validate its calculation.
- 1.27.3. Contractor shall complete all offsets, as approved, through interchange at the claim level, which would adjust claims and via the system, will recalculate the FFP.
- 1.27.4. If the Provider would like a repayment plan, Contractor shall relay to the Department the request from the Provider. The Department will handle the request and work with the Provider to establish the repayment plan. A repayment plan may be requested in addition to an offset plan.
- 1.27.5. Contractor shall receive a contingency payment for repayment plan only for payments received, deposited, and cleared.
- 1.27.6. In the event of settlement of claims during the appeal process, where the settlement amount is less than the full findings amount, the State will pay Contractor the contingency fee associated with the full findings unless it is determined that settlement occurred due to invalid findings by Contractor.

1.28. INFORMATION TECHNOLOGY

1.28.1. Data Security

- 1.28.1.1. Contractor shall have and maintain contingency plans and a disaster recovery plan designed to restore any loss of protected information and to enable continuation of critical business processes for protection of the security of electronic PHI while operating in emergency mode.
- 1.28.1.2. Contractor shall ensure that all electronic mail communications that contain PHI are either sent securely, sent encrypted, or both.
- 1.28.1.3. Contractor shall encrypt PHI on removable media.
- 1.28.1.4. If Contractor uses encryption software that the Department does not possess or license, Contractor shall pay all costs associated with acquiring and maintaining the software for the Department.
- 1.28.1.5. Contractor shall not send passwords to open encrypted files via the same media or transmission method as was used to send the original files.

- 1.28.1.6. When Contractor submits data to the Department in electronic format, Contractor shall securely send that data. Contractor's systems shall contain control to maintain information integrity and security.
- 1.28.1.7. Contractor's systems shall contain controls to maintain information integrity and security.
- 1.28.2. Cyber Security and Technical Safeguards
 - 1.28.2.1. Contractor shall observe the State of Colorado Information Security Policies, as published and updated by the Office of Cyber Security.
 - 1.28.2.2. Contractor shall notify the Department within twenty-four (24) hours of discovery of:
 - 1.28.2.2.1. Unauthorized systems access.
 - 1.28.2.2.2. Compromised data.
 - 1.28.2.2.3. Loss of data integrity.
 - 1.28.2.2.4. Inability to transmit or process data.
 - 1.28.2.3. In event of a breach of the security of sensitive data, including PHI, Contractor shall immediately notify the Department to report all suspected loss or compromise of sensitive data within twenty-four (24) hours of the suspected loss or compromise and shall work with the Department regarding recovery and remediation. Contractor shall be responsible for notifying all Colorado residents whose sensitive data may have been compromised as a result of a breach of security caused by Contractor.
 - 1.28.2.4. Contractor shall meet the same personnel security standards as State employees as outlined in the Colorado Information Security Policies, Personnel Security, P-CCSP-012.
 - 1.28.2.5. Contractor shall establish appropriate restrictions and safeguards against unauthorized access to all non-public data.
 - 1.28.2.6. Contractor shall secure background checks on any employees with access to Department data to ensure that they have not been convicted of any program-related felonies and that they are not excluded from federal participation.
 - 1.28.2.7. Contractor shall ensure that staff with access to PHI are trained regarding their obligations under HIPAA and the Health Information Technology Portability and Clinical Health (HITECH) Act.
 - 1.28.2.8. Contractor shall implement all other necessary technical safeguards required by 45 CFR Sections 160 and 164.
- 1.29. **DEPARTMENT PRIOR APPROVAL**
 - 1.29.1. Contractor shall not initiate any kind of correspondence, send notice of adverse action letters or begin recovery activities without the prior review and approval of the Department.
 - 1.29.2. Contractor shall not compromise or waive any claims without the Department's prior written approval.
 - 1.29.3. Contractor shall not alter, change, forgive or excuse any written delivered demand for overpayment without the prior approval of the Department.
 - 1.29.4. Contractor shall not compromise, release and/or settle an identified or possible overpayment without the prior approval of the Department.

- 1.29.5. Contractor shall obtain Department approval before giving any response, whether written or oral, to Providers regarding the outcomes of audits or final overpayment determinations.
- 1.29.6. Contractor shall not arrange a repayment plan with a Provider.
- 1.29.7. Contractor shall suspend any work or activities under this Scope of Work upon request of the Department.

1.30. PROHIBITED ACTIVITIES

- 1.30.1. Contractor shall not develop or market products to Providers which inform them how to and/or assist them in circumventing the audits and reviews within the Work under this Contract.
- 1.30.2. Contractor shall not use, advertise, or promote information for commercial benefit concerning this Contract without the Department's prior written approval.
- 1.30.3. Contractor shall not use the Department's name or logo in any widely distributed materials, or in any mass media, without the prior written permission of the Department.

1.31. CORRECTIVE ACTION PLAN

- 1.31.1. In the event that the Department identifies a violation of this Contract, or other non-compliance with this Contract, the Department will notify Contractor of the occurrence in writing.
- 1.31.2. In response to the written request from the Department, Contractor shall investigate any Contract compliance issues and submit to the Department a written response within ten (10) calendar days. Upon request, the Department may allow additional time to Contractor to investigate and report.
- 1.31.3. Contractor's written response shall include, at a minimum, all of the following:
 - 1.31.3.1. The efforts that Contractor took to investigate the issue.
 - 1.31.3.2. The outcome of Contractor's review.
 - 1.31.3.3. The corrective action taken.
- 1.31.4. At the Department's request Contractor shall draft and provide a corrective action plan ("CAP") detailing Contractor's steps necessary to come into contractual compliance. The CAP shall include implementation steps and deadlines to fully implement the CAP.
- 1.31.5. Upon receipt of Contractor's written response, the Department may accept, modify or reject the proposed CAP. Modifications and rejections will be accompanied by a written explanation from the Department.
- 1.31.6. Contractor shall make all changes to the CAP as directed by the Department. Unless otherwise agreed to by the Department in writing, Contractor shall submit replacement portions or a complete revised version of the CAP within five (5) Business Days following receipt of Department comments.
- 1.31.7. Contractor shall implement the CAP after receiving the Department's approval.

1.32. PERFORMANCE STANDARDS

- 1.32.1. Baseline Performance Standards
 - 1.32.1.1. Contractor shall meet or exceed all Baseline Performance Standards at all times during the term of this Contract. The "Baseline Performance Standards" under this Contract are as follows:

- 1.32.1.1.1. Respond to all Providers' requests for informal reconsiderations within thirty-five (35) days of receipt of the request.
- 1.32.1.1.2. Regarding formal appeals and litigation, deliver all necessary documentation to satisfy requests from an Administrative Law Judge (ALJ), the Colorado Attorney General's Office, and the Department within Department-specified timelines.
- 1.32.1.1.3. Maintain, at a minimum, ninety-five percent (95%) accuracy in its audit test work and results, defined by the appeal overturn rate, not including settlement negotiations.
- 1.32.1.1.4. Not exceed twenty percent (20%) turnover rate of the total adverse determinations within a batch mailing cycle, either at the point of informal reconsideration or formal appeal. Turnovers resulting from circumstances beyond the control of Contractor shall not be included in this calculation, for instance, in the event a Provider submits additional documentation that caused a turnover and such additional documentation was not available to Contractor during the audit.
- 1.32.1.1.5. For Automated Audits, send notice of adverse action letters within sixty (60) days of the start of the audit.
- 1.32.1.1.6. For Complex Reviews, send notice of adverse action letters within ten (10) calendar days following Contractor's review of the medical record if the Provider waives an in-person or telephone exit interview, or thirty-five (35) calendar days following Contractor's review of the medical record if an in-person or telephone exit interview is conducted.
- 1.32.1.1.7. Provide copies of all notice of adverse action letters sent to Providers to the Department within one (1) Business Day of dispatch.
- 1.32.1.1.8. Provide copies of all informal reconsideration letters sent to Providers to the Department within one (1) Business Day of dispatch.
- 1.32.1.1.9. Contractor shall be subject to correction action plan requirements outlined in Section 1.31 above if the Department determines that Contractor is not meeting any Baseline Performance Standards.

1.33. REPORTING REQUIREMENTS

1.33.1. General Reporting Information

- 1.33.1.1. Contractor shall provide all reports listed in this section in the format directed by the Department and containing the information requested by the Department.
- 1.33.1.2. All reports are subject to the Department's review and approval. Contractor shall make all corrections to the reports as requested by the Department within five (5) Business Days of the Department's request. When needed, Contractor may request an extension prior to the end of the five (5) business days given for the initial request.
- 1.33.1.3. Contractor shall verify the accuracy and timeliness of reports, letters and data, screen them for completeness, logic, and consistency, and proof the contents for spelling, grammatical, and mathematical errors so that any such errors may be corrected before submission to the Department.

1.33.2. Monthly Status Report of Review Projects

- 1.33.2.1. Contractor shall submit a “Monthly Status Report” to the Department, within five (5) Business Days after the end of each month.
- 1.33.2.2. Contractor’s Monthly Status Report shall have a section describing the current status of all open Review Projects, including, but not limited to, the following information:
 - 1.33.2.2.1. Review Project name, number and date span.
 - 1.33.2.2.2. Providers associated with each Review Project (by name and Medicaid ID number).
 - 1.33.2.2.3. Means by which improper payments were identified, or the project’s particular methodology or purpose.
 - 1.33.2.2.4. Possible fraud identified reported to the Department.
 - 1.33.2.2.5. Number of medical records requested from each Provider and the date span of the review.
 - 1.33.2.2.6. Type and date of correspondence mailed to Providers.
 - 1.33.2.2.7. Date of exit interviews, and for which Providers.
 - 1.33.2.2.8. Initial sum total overpayment recoupment amount identified for the entire Review Project, the amount recovered and the amount outstanding.
- 1.33.2.3. Contractor’s Monthly Status Report shall have a section describing the current known status of prior Review Projects that are in formal appeal or active litigation. The section shall contain, but not be limited to:
 - 1.33.2.3.1. Review Project name, number and date span.
 - 1.33.2.3.2. Providers associated with the Review Project (by name and Medicaid Provider ID number).
 - 1.33.2.3.3. Dollar amount on appeal.
 - 1.33.2.3.4. Reason for the appeal.
 - 1.33.2.3.5. Case developments in the preceding month.
- 1.33.2.4. Contractor’s Monthly Status Report shall have a section describing all of the following summary data for all Review Projects active in the preceding month:
 - 1.33.2.4.1. Sum total of all initial overpayments identified in the prior month.
 - 1.33.2.4.2. Sum total of all overpayments still in queue for all open Review Projects (including those on appeal) as of the last day of the month.
 - 1.33.2.4.3. Appeal statistics.
 - 1.33.2.4.4. Call center statistics.
- 1.33.2.5. Contractor’s Monthly Status Report shall have a section describing Contractor’s Provider education and outreach activities accomplished during the previous month, and upcoming activities planned.
 - 1.33.2.5.1. Update of Audit Project Plan.
 - 1.33.2.5.2. Contractor’s monthly status report shall include an update to the audit project plan.
 - 1.33.2.5.3. Action Items.

- 1.33.2.5.4. Contractor's monthly status report shall have a section describing Contractor and Department "to do" and action items.
- 1.33.2.5.5. DELIVERABLE: Monthly Status Report of Review Projects
- 1.33.2.5.6. DUE: Within five (5) Business Days after the end of each month.
- 1.33.3. Completed Review Project Addendum
 - 1.33.3.1. When a Review Project is complete through the informal reconsideration phase, Contractor shall prepare a separate addendum to the monthly status report (of no more than two (2) pages in length) describing its activities, findings, results and lessons learned through informal reconsideration (e.g., problems encountered, Provider education performed, Provider stories and complaints, Provider rationale when disputing Contractor findings, roadblocks, process improvements and recommendations for administrative, systems or regulatory changes).
 - 1.33.3.2. Contractor's summary report shall contain all of the following:
 - 1.33.3.2.1. Wrap-up of the total amount recovered.
 - 1.33.3.2.2. Recovery ratio (sum of all initial notice of adverse action letter amounts divided by the total sum of actual recoveries associated with them).
 - 1.33.3.2.3. Informal reconsideration request rate (number of claims with requests for informal reconsideration divided by the total number of claims with initial notice of adverse action letters).
 - 1.33.3.2.4. Informal reconsideration reversal rate (number of claims reversed on reconsideration divided by the number requested for informal reconsideration);
 - 1.33.3.2.5. Contractor shall describe the reason for each informal reconsideration reversal, if any.
 - 1.33.3.2.6. Number and dollar amount of claims appealed to formal hearing.
 - 1.33.4. Annual Report
 - 1.33.4.1. Contractor shall submit to the Department, within twenty (20) Business Days after the end of the State's fiscal year, June 30th:
 - 1.33.4.1.1. An Executive Summary Report of all Contractor activities, global recovery by year since Contract inception, significant lessons learned, recommendations and conclusions on all projects for the preceding State Fiscal Year.
 - 1.33.4.1.2. An annual Provider report for distribution to Provider organizations and associations containing:
 - 1.33.4.1.3. Common review findings.
 - 1.33.4.1.4. Information on how to prevent similar findings in future reviews.
 - 1.33.4.1.5. Resource information.
 - 1.33.4.1.6. Information and results of quality control efforts and how Contractor is improving those review standards.
 - 1.33.4.1.7. Report of post audit activities conducted, as outline in Section 1.20.
 - 1.33.4.1.8. Other information as directed by the Department.
 - 1.33.4.1.8.1. DELIVERABLE: Annual Report

1.33.4.1.8.2. DUE: Within twenty (20) Business Days after the end of the State's fiscal year.

1.33.5. Ad Hoc Reports

1.33.5.1. Contractor shall produce ad hoc written and electronic reports, as requested by the Department. Ad hoc reports include but are not limited to:

1.33.5.1.1. Issues identified and discussed in meetings.

1.33.5.1.2. Issues regarding all of the reviews for one Provider type.

1.33.5.1.3. Legislative or auditor's inquiry.

1.33.5.1.4. Requests made by CMS for reports regarding audit activities and recoveries.

1.33.5.1.5. Work matters identified by the Department.

1.33.5.2. Contractor shall respond to ad hoc requests made by the Department within three (3) Business Days of the request. The ad hoc requests may include, but are not limited to correspondence, reports, data, or other information related to this Statement of Work. When needed, Contractor may request an extension prior to the end of the three (3) business days given for the initial request.

1.33.6. Peer Reports

1.33.6.1. Contractor shall produce graphical representations of a Provider's billing activity and the billing activity of that Provider's peers, and deliver the report to the Provider, when requested by the Department.

2. COMPENSATION AND INVOICING

2.1 COMPENSATION

2.1.1 The compensation under the Contract shall consist of the following:

2.1.1.1. Contractor's sole compensation for the Work in this Contract are the contingency fees below.

2.1.1.2. Contractor will be paid monthly, in arrears, a contingency fee of the total dollar amount of overpayments recovered and received through Contractor's audits during the full Contract period.

2.1.1.3. Contractor shall not receive a contingency fee for any amounts of underpayments discovered.

2.1.1.4. Contingency fees are based upon the recovery principal amounts only. Contractor will not receive a contingency fee on interest or penalty recoveries.

2.1.1.5. In some cases, the MFCU may need to proceed with a criminal investigation of Provider(s) before a recovery can be pursued. The State may also file cases to add penalties to recoveries under the Federal False Claims Act, 31 U.S.C. § 3729, et seq. the State False Medicaid Claims Act, CRS 25.5-4-304 through 25.5-4-306, or any Colorado False Claims Act. In the event that a recovery case is referred for fraud investigation or action, Contractor will not receive a percentage of any eventual recovery, unless the case is referred back for administrative recovery action or unless the Department allows, upon the advice and counsel of its attorneys, for concurrent recovery and fraud actions.

2.1.1.6. Reimbursement of Contractor's costs in performing reviews and audits under this Contract shall be deemed included in the contingency fees due Contractor. All costs associated with the Work under this Contract shall be the responsibility of Contractor, including, but not limited to:

2.1.1.6.1. Data storage.

2.1.1.6.2. Audit costs.

2.1.1.6.3. Postage.

2.1.1.6.4. Travel.

2.1.1.6.5. Copying.

2.1.1.6.6. Reporting.

2.1.1.6.7. Communications.

2.1.1.6.8. Insurance.

2.1.1.6.9. Retrieving INTERCHANGE data from the Department.

2.1.1.6.9. Work for litigation and ALJ Hearings.

2.1.2. Contingency Fees

2.1.2.1. The contingency fees to be paid by the Department to Contractor for the Work are: (1) Contingency Fee Percentage Rate of 18% of recovered overpayments for Automated Reviews, and (2) Contingency Fee Percentage Rate of 18% of recovered overpayments for Complex Reviews, subject to adjustment in accordance with Section 2.1.2.3 below.

2.1.2.2. Contingency fees will be calculated based on when recovery payments are received by the Department from the Provider through Contactor's audits during the full Contract period and invoiced in accordance with Section 2.3.1 below.

2.1.2.3. The total Contingency Fee Percentage Rate in the Contract shall not exceed the percentage set forth in CRS §25.5-4-301(3)(VIII)(b) and 42 CFR 455.510 and shall be in compliance with Federal regulations.

2.1.2.3.1. In the event that the Federal government decreases the maximum contingency fee percentage rate such that the total of the Contingency Fee Percentage Rates is greater than the maximum contingency fee percentage rate allowed by the Federal government for a Medicaid RAC, the Department will decrease the Contingency Fee Percentage Rates. The Department will decrease the Contingency Fee Percentage Rates so that the total of the Contingency Fee Percentage Rates is equal to the Federal government's rate for a Medicaid RAC. The Department may make this modification through the use of an option letter.

2.1.2.3.2 If contingency fees are reduced in accordance with the Federal government decrease, the FraudCapture™ Services scope of work will be terminated by Contractor without cause and without liability to Contractor. All Department Data (defined in Exhibit H) captured in the FraudCapture™ Platform (defined in Exhibit H) as part of the Services will be extracted by Contractor and turned over to the Department in accordance with the takeover provisions of the Contract.

2.2. PROVIDER PAYMENTS

2.2.1. Rebilling

- 2.2.1.1. Contractor shall inform the Department within forty-five (45) calendar days following the issuance of a notice of adverse action letter or a notice of adverse action letter on reconsideration if the Provider is electing to rebill. In such a case, Contractor shall obtain from the Provider:
 - 2.2.1.1.1. A new and correct paper billing for the service as it should have been billed.
 - 2.2.1.1.2. A certification signed by the Provider that the new billing is correct.
 - 2.2.1.1.3. A completed INTERCHANGE Adjustment Transmittal form.
- 2.2.1.2. Contractor shall validate the correctness of the rebilling, the completeness of all required fields. Where rebilling is an option, Contractor shall conduct re-pricing calculations for that claim that Contractor is reviewing. When available, Contractor will have access to INTERCHANGE in order to conduct re-pricing calculations.
- 2.2.1.3. The Department will submit the rebilling paperwork to INTERCHANGE and will notify Contractor when the transmittal has been completed.
- 2.2.2. Provider Payment
 - 2.2.2.1. If Contractor receives a Provider refund check directly, Contractor shall forward the check to the Department along with all accompanying documents. Before forwarding the check, Contractor shall make copies of and otherwise document these payments. Contractor shall include a copy in the appropriate case file.
 - 2.2.2.2. The Department will notify Contractor of any payments received.
 - 2.2.2.3. Contractor acknowledges Federal regulations may change and shall cooperate fully with the State to make any necessary changes to the Contract to accommodate new or changed Federal regulations and their requirements.
- 2.2.3. Offset and Repayment Plans
 - 2.2.3.1. Contractor shall notify the Department when a Provider requests to repay the Department though an offset against future Provider payments.
 - 2.2.3.2. The Department will initiate all offset collections. Contractor shall, upon Department request, validate that an offset is appropriate and validate its calculation.
 - 2.2.3.3. If the Provider would like a repayment plan, Contractor shall relay to the Department the request from the Provider. The Department will handle the request and work with the Provider to establish the repayment plan. A repayment plan may be requested in addition to an offset plan.
- 2.3. **INVOICING AND PAYMENT PROCEDURES**
 - 2.3.1. Submittal of Invoices
 - 2.3.1.1. Contractor shall not invoice the Department for any part of a recovery that has not been actually realized.
 - 2.3.1.2. Recoveries by single payment are realized when the full amount of the recovery is received and deposited by the Department.
 - 2.3.1.3. Recoveries by rebilling will be reported to Contractor by the Department when the transmittals are completed.

- 2.3.1.4. Recoveries by offsets plans will be reported to Contractor by the Department when the full amount of the recovery has been offset.
- 2.3.1.5. Recoveries by repayment plans are realized by the amount of each payment received and deposited.
- 2.3.1.6. Contractor shall invoice the Department by the fifteenth (15th) of the following month, for payments received, rebillings completed, or offset plan completed in the prior month. The invoice shall contain:
 - 2.3.1.7. Invoice Number.
 - 2.3.1.8. Invoice Date.
 - 2.3.1.9. Line Item description corresponding to the contingency fees payment owed from the balance tracking report for each Provider and notice of adverse action letter.
 - 2.3.1.10. Adjustments, credits and debits, if any, with explanations and calculations.
 - 2.3.1.11. An attestation by Contractor's Project Manager that the invoice is complete and accurate.
 - 2.3.1.12. The net amount owed to Contractor for the month.
 - 2.3.1.13. Other pertinent information necessary to support the invoice, its attachments, summaries or details.
 - 2.3.1.14. Call log documentation for only the invoice period.
 - 2.3.1.15. Other information, as directed by the Department.
 - 2.3.1.16. Contractor shall include with the invoice statement a Provider balance tracking spreadsheet.
 - 2.3.1.17. The Department will verify the invoice statement. Incomplete invoices will be rejected and unpaid.
 - 2.3.1.18. At the Department's request and using a process approved by the Department, Contractor shall calculate the dollar amounts for federal financial payments (FFP) for all identified overpayments that are successfully recovered. Contractor shall provide the data in a format that is approved by the Department at the time of invoicing.
- 2.3.2. Payment of Invoices
 - 2.3.2.1. The Department shall remit payment to Contractor, for all amounts shown on an invoice, after the Department's acceptance of that invoice. Acceptance of an invoice shall not imply the acceptance or sufficiency of any Work performed or Deliverables submitted to the Department during the month for which the invoice covers or any other month. The Department shall not make any payment on an invoice prior to its acceptance of that invoice.
 - 2.3.2.2. The Department will round all payment amounts to the nearest whole cent.
 - 2.3.2.3. The Department will review the submitted invoice, and compare the information contained in the invoice to the Department's information. The Department will only accept an invoice after it has reviewed the information contained on the invoice and determined that all amounts are correct.
 - 2.3.2.4. In the event that the Department determines that all information on an invoice is correct, the Department shall notify Contractor of its acceptance of the invoice, in writing.

- 2.3.2.5. In the event that the Department determines that any information on an invoice is incorrect, the Department will notify Contractor of this determination and what is incorrect on the invoice. Contractor shall correct any information the Department determined to be incorrect and resubmit that invoice to the Department for review.
- 2.3.2.5.1. The Department will review the invoice to ensure that all corrections have been made.
- 2.3.2.5.2. If all information on the resubmitted invoice is correct, the Department will accept the invoice.
- 2.3.2.5.3. If any information on the resubmitted invoice is still incorrect, then the Department will return the invoice to Contractor for correction and resubmission.
- 2.3.2.6. In the event that Contractor reasonably believes that the calculation or determination of any payment is incorrect, Contractor shall notify the Department of the error immediately upon determination of the error. The Department will review the information presented by Contractor and may make changes based on this review. The determination or calculation that results from the Department's review shall be final. No disputed payment shall be due until after the Department has concluded its review.

EXHIBIT C, RATES

Base Rate

Type of Audit Review	Automated	Complex
Maximum Rate	18.00%	18.00%

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. 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.
- 1.1.2. Child Health Plan Plus (CHP+) – Colorado’s public low-cost health insurance for certain children and pregnant women. It is for people who earn too much to qualify for Health First Colorado (Colorado's Medicaid Program), but not enough to pay for private health insurance.
- 1.1.3. 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.
- 1.1.4. Colorado Revised Statutes (C.R.S.) – The legal code of Colorado; the legal codified general and permanent statutes of the Colorado General Assembly.
- 1.1.5. Contract Funds – The funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- 1.1.6. 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.
- 1.1.7. 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.
- 1.1.8. Deliverable – Any tangible or intangible object produced by Contractor as a result of the Work that is intended to be delivered to the Department, regardless of whether the object is specifically described or called out as a “Deliverable” or not.
- 1.1.9. 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.
- 1.1.10. 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.
- 1.1.11. Full Performance Period - The Contract period during which the contractor may submit new Review Project requests, send out Medical Records requests, and continue audit work.
- 1.1.12. Health First Colorado – Colorado’s Medicaid Program.

- 1.1.13. Health Insurance Portability and Accountability Act (HIPAA) – The Health Insurance Portability and Accountability Act of 1996, as amended.
- 1.1.14. Key Personnel – The position or positions that are specifically designated as such in this Contract.
- 1.1.15. Medical Necessity – As defined in 10 CCR 2505-10 8.076.
- 1.1.16. Member – Any individual enrolled in the Colorado Medicaid program, Colorado’s CHP+ program or the Colorado Indigent Care Program, as determined by the Department.
- 1.1.17. Operational Start Date – When the Department authorizes Contractor to begin fulfilling its obligations under the Contract.
- 1.1.18. Other Personnel – Individuals and Subcontractors, in addition to Key Personnel, assigned to positions to complete tasks associated with the Work.
- 1.1.19. Provider – Any health care professional or entity that has been accepted as a provider in the Colorado Medicaid program, Colorado’s CHP+ program or the Colorado Indigent Care Program, as determined by the Department.
- 1.1.20. Start-Up Period – The period starting on the Effective Date and ending on the Operational Start Date.

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. ADA – Americans with Disabilities Act
- 2.1.2. CFR – Code of Federal Regulations
- 2.1.3. CHP+ – Child Health Plan Plus
- 2.1.4. CMS – Centers for Medicare and Medicaid Services
- 2.1.5. CORA – Colorado Open Records Act, C.R.S. §24–72–200.1, et. seq.
- 2.1.6. C.R.S. – Colorado Revised Statutes
- 2.1.7. CPI – Consumer Price Index
- 2.1.8. CPI-U – CPI for all urban consumers
- 2.1.9. DS – Direct Services
- 2.1.10. EPSDT – Early and Periodic Screening, Diagnosis and Treatment
- 2.1.11. HIPAA – Health Insurance Portability and Accountability Act of 1996, as amended
- 2.1.12. ICN – Internal Control Number
- 2.1.13. MAC – Medicaid Administrative Claiming
- 2.1.14. MFCU – The Colorado Medicaid Fraud Control Unit in the Colorado Department of Law
- 2.1.15. INTERCHANGE – Medicaid Management Information System

- 2.1.16. MRR – Medical Records Request
- 2.1.17. OIG – Office of Inspector General
- 2.1.18. PCI – Payment Card Information
- 2.1.19. PHI – Protected Health Information
- 2.1.20. PII – Personally Identifiable Information
- 2.1.21. SFY – State Fiscal Year
- 2.1.22. SPA – State Plan Amendment
- 2.1.23. U.S.C. – United States Code
- 2.1.24. VARA – Visual Rights Act of 1990

EXHIBIT E, CONTRACTOR'S ADMINISTRATIVE REQUIREMENTS

1. CONTRACTOR'S GENERAL REQUIREMENTS

- 1.1. The Department will contract with only one organization, 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, 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 to ensure the completion of the Work. The Department may, in its sole discretion, use other contractors to perform activities related to the Work that are not contained in the Contract or to perform any of the Department's responsibilities. In the event of a conflict between Contractor and any other State contractor, the State will resolve the conflict and Contractor shall abide by the resolution provided by the State.
- 1.4. 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 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 related to the Work described in the Contract. Contractor shall make such records available to the Department upon request throughout the term of the Contract.

1.6. Deliverables

- 1.6.1. All Deliverables shall meet Department-approved format and content requirements. The Department will specify the number of copies and media for each Deliverable.

- 1.6.1.1. Contractor shall submit each Deliverable to the Department for review and approval and shall adhere to the following Deliverable process such for any documentation creation, review, and acceptable cycle, Contractor shall:

- 1.6.1.1.1. Gather and document requirements for the Deliverable.

- 1.6.1.1.2. Create a draft in the Department-approved format for the individual Deliverable.

- 1.6.1.1.3. Perform internal quality control review(s) of the Deliverable, 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 and may direct Contractor to make changes to the Deliverable. Contractor shall make all changes within five Business Days following the Department's direction to make the change unless the Department provides a longer period in writing.
 - 1.6.1.2.1. Changes the Department may direct include, but are not limited to, modifying portions of the Deliverable, requiring new pages or portions of the Deliverable, requiring resubmission of the Deliverable or requiring inclusion of information or components that were left out of the Deliverable.
 - 1.6.1.2.2. The Department may also direct Contractor to provide clarification or provide a walkthrough of any Deliverable to assist the Department in its review. Contractor shall provide the clarification or walkthrough as directed by the Department.
- 1.6.1.3. Once the Department has received an acceptable version of the Deliverable, including all changes directed by the Department, the Department will notify Contractor of its acceptance of the Deliverable in writing. A Deliverable shall not be deemed accepted prior to the Department's notice to Contractor of its acceptance of that Deliverable, which acceptance shall not be unreasonably withheld.
- 1.6.2. Contractor shall employ an internal quality control process to ensure that all Deliverables are complete, accurate, easy to understand and of high quality, as described herein. Contractor shall provide Deliverables that, at a minimum, are responsive to the specific requirements for that Deliverable, organized into a logical order, contain accurate spelling and grammar, are formatted uniformly, and contain accurate information and correct calculations. Contractor shall retain all draft and marked-up documents and checklists utilized in reviewing Deliverables for reference as directed by the Department.
- 1.6.3. In the event any due date for a Deliverable falls on a day that is not a Business Day, the due date shall be automatically extended to the next Business Day, unless otherwise directed by the Department.
- 1.6.4. 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, report, data, procedure or system created by Contractor for the Department that is necessary to fulfilling Contractor's responsibilities under the Contract, as determined by the Department, shall be considered proprietary.
- 1.6.6. If any Deliverable contains ongoing responsibilities or requirements for Contractor, such as Deliverables that are plans, policies or procedures, then Contractor shall comply with all requirements of the most recently approved version of that Deliverable. Contractor shall not implement any version of any such Deliverable prior to receipt of the Department's written approval of that version of that Deliverable. Once a version of any Deliverable described in this subsection is approved by the Department, all requirements, milestones and other Deliverables contained within that Deliverable shall

be considered to be requirements, milestones and Deliverables of this Contract.

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

1.7. Stated Deliverables and Performance Standards

1.7.1. Any section within this Statement of Work headed with or including the term "DELIVERABLE" is intended to highlight a Deliverable or performance standard contained in this Statement of Work and provide a clear due date for the Deliverables. The sections with these headings are for ease of reference not intended to expand or limit the requirements or responsibilities related to any Deliverable or performance standard, except to provide the due date for the Deliverables.

1.8. Communication with the Department

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

1.8.2. The Department will use a transmittal process to provide Contractor with official direction within the scope of the Contract. 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 Contractor regarding performance under the Contract.

1.8.2.3. A due date or timeline by which 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 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 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 Contractor through a transmittal.

1.8.3. The Department may deliver a completed transmittal to 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 Contractor receives conflicting transmittals, 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 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 Contractor, and the Department may provide day-to-day communication to Contractor without using a transmittal.
- 1.8.7. Contractor shall retain all transmittals for reference and shall provide copies of any received transmittals upon request by the Department.

1.9. Start-Up Period

- 1.9.1. With input from the Department, Contractor shall complete all of the following during the Start-Up Period:
 - 1.9.1.1. Schedule and facilitate a Kickoff Meeting that includes the following:
 - 1.9.1.1.1. Key Personnel.
 - 1.9.1.1.2. Department Leadership.
 - 1.9.1.1.3. Department Project Team Members.
 - 1.9.1.1.4. Any other relevant and needed persons or organizations.
 - 1.9.1.2. Develop Kickoff Meeting materials and an agenda that contains, at a minimum, the following:
 - 1.9.1.2.1. Initial timelines for starting the Work and creating initial Deliverables.
 - 1.9.1.2.2. Establishment of Communication channels to describe how the Work is to be completed.
 - 1.9.1.2.3. Transmission methods and specific Deliverable templates or requirements.
 - 1.9.1.2.4. Any other item required to initiate and ensure Work is started and completed on time.
 - 1.9.1.3. Prepare Kickoff Meeting Minutes and deliver them to the Department for review and approval.
 - 1.9.1.3.1. DELIVERABLE: Kickoff Meeting Agenda & Materials
 - 1.9.1.3.2. DUE: Within three Business Days after the Kickoff Meeting
 - 1.9.1.4. Create a Policy and Procedures Manual that contains the policies and procedures for all systems and functions necessary for Contractor to complete its obligations under the Contract.
 - 1.9.1.5. Prepare all documents, forms, training materials, and any other documents, information and protocols that require approval by the Department prior to the end of the Start-Up Period and are necessary for Contractor to begin work on the Operational Start Date. Contractor shall deliver all documents, forms, training materials, and any other

documents, information and protocols that require approval by the Department to the Department for review and approval in a timely manner that allows the Department to review and approve those documents prior to end of the Start-Up Period.

1.9.1.5.1. DELIVERABLE: Policies & Procedures Manual

1.9.1.5.2. DUE: No later than the Operational Start Date

1.10. Operations Guide

1.10.1. Contractor shall not engage in any Work under the Contract, other than the Work described in Sections 1.9 and 1.10 of this Exhibit E, prior to the Operational Start Date. The Department shall not be liable to Contractor for, and Contractor shall not receive, any payment for any period prior to the Operational Start Date under this Contract.

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

1.10.2.1. Communication Plan.

1.10.2.2. Business Continuity Plan.

1.10.2.3. Start-Up Plan.

1.10.2.4. Closeout Plan.

1.10.3. Contractor shall submit the Operations Guide to the Department for review and approval.

1.10.3.1. DELIVERABLE: Operations Guide

1.10.3.2. DUE: Within 30 Business Days after the Effective Date

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

1.10.4.1. DELIVERABLE: Annual Operations Guide Update

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

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

1.10.6. Communication with Members, Providers, and Other Entities

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

1.10.6.1.1. A description of how Contractor will communicate to Members any changes to the services those Members will receive or how those Members will receive the services.

1.10.6.1.2. A description of the communication methods, including things such as email

lists, newsletters and other methods, that Contractor will use to communicate with Providers and Subcontractors.

1.10.6.1.3. The specific means of immediate communication with Members and a method for accelerating the internal approval and communication process to address urgent communications or crisis situations.

1.10.6.1.4. A general plan for how Contractor will address communication deficiencies or crisis situations, including how Contractor will increase staff, contact hours or other steps Contractor will take if existing communication methods for Members or Providers are insufficient.

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

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

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

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

1.10.7. Business Continuity Plan

1.10.7.1. Contractor shall create a Business Continuity Plan that Contractor will follow in order to continue operations after a Disaster or a Business Interruption. The Business Continuity Plan shall include, but is not limited to, all of the following:

1.10.7.1.1. How Contractor will replace staff that are lost or unavailable during or after a Business Interruption so that the Work is performed in accordance with the Contract.

1.10.7.1.2. How Contractor will back-up all information necessary to continue performing the Work, so that no information is lost because of a Business Interruption.

1.10.7.1.2.1. In the event of a Disaster, the plan shall also include how Contractor will make all information available at its back-up facilities.

1.10.7.1.3. How Contractor will maintain complete back-up copies of all data, databases, operating programs, files, systems, and software pertaining to enrollment information at a Department-approved, off-site location.

1.10.7.1.4. How Contractor will comply with the disaster recovery standards described in Exhibit E, Information Technology Provisions.

1.10.7.1.5. How Contractor will minimize the effects on Members of any Business Interruption.

1.10.7.1.6. How Contractor will communicate with the Department during the Business Interruption and points of contact within Contractor's organization the Department can contact in the event of a Business Interruption.

1.10.7.1.7. Planned long-term back-up facilities out of which Contractor can continue operations after a Disaster.

1.10.7.1.8. The time period it will take to transition all activities from Contractor's regular

facilities to the back-up facilities after a Disaster.

1.10.8. Start-Up Plan

1.10.8.1. The Contract shall create a Start-Up Plan that contains, at a minimum, the following:

1.10.8.1.1. A description of all steps, timelines, and milestones necessary to fully transition the services described in the Contract from a prior contractor to Contractor.

1.10.8.1.2. A description of all steps, timelines, milestones, and Deliverables necessary for Contractor to be fully able to perform all Work by the Operational Start Date.

1.10.8.1.3. A listing of all personnel involved in the start-up and what aspect of the start-up they are responsible for.

1.10.8.1.4. An operational readiness review for the Department to determine if Contractor is ready to begin performance of all Work.

1.10.8.1.5. The risks associated with the start-up and a plan to mitigate those risks.

1.10.9. Closeout Plan

1.10.9.1. 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 Contractor after the termination of the Contract.

1.10.9.1.1. 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.

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

1.10.9.2. 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.

1.10.9.3. 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. 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.
- 1.11.1.6. 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. The Department may conduct performance reviews or evaluations of Contractor in relation to the Work performed under the Contract.
- 1.12.2. The Department may work with Contractor in the completion of any performance reviews or evaluations or the Department may complete any or all performance reviews or evaluations independently, at the Department's sole discretion.
- 1.12.3. Contractor shall provide all information necessary for the Department to complete all performance reviews or evaluations, as determined by the Department, upon the Department's request. Contractor shall provide this information regardless of whether the Department decides to work with Contractor on any aspect of the performance review or evaluation.
- 1.12.4. The Department may conduct these performance reviews or evaluations at any point during the term of the Contract, or after termination of the Contract for any reason.
- 1.12.5. The Department may make the results of any performance reviews or evaluations available to the public, or may publicly post the results of any performance reviews or evaluations.

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 may procure 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 annual maximum compensation for the Contract in any of those additional years shall not exceed the

Contract maximum amount for the prior State Fiscal Year (SFY) plus the annual percent increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the Denver-Boulder-Greeley metropolitan area for the calendar year ending during that prior SFY. If the CPI-U for Denver-Boulder-Greeley is for some reason not available as specified in this subsection, the increase shall be equal to the percent increase in the CPI-U (U.S.) for the same period.

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 Contractor requires access to any Department computer system to complete the Work, 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 all Department policies, processes, and procedures necessary to gain access to the Department's systems.

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

1.15. Provider Fraud

1.15.1. Contractor shall notify the Department and the Colorado Medicaid Fraud Control Unit of the Colorado Department of Law (MFCU) if it identifies or suspects possible Provider Fraud as a result of any activities in its performance of this Contract.

1.15.2. Upon identification or suspicion of possible Provider Fraud, Contractor shall complete Contractor Suspected Fraud Written Notice Form provided by the Department.

1.15.2.1. For each incident of identified or suspected Provider Fraud, Contractor shall provide all of the following, at a minimum:

1.15.2.1.1. Written documentation of the findings.

1.15.2.1.2. Information on any verbal or written reports.

1.15.2.1.3. All details of the findings and concerns, including a chronology of Contractor actions which resulted in the reports, in a format agreed to by the Department.

1.15.2.1.4. Information on the identification of any affected claims that have been discovered.

1.15.2.1.5. Any claims data associated with its report (in a mutually agreed upon format, if possible).

1.15.2.1.6. Any additional information as required by the Department.

1.15.3. For each incident of identified or suspected Provider Fraud, Contractor shall deliver the completed Contractor Suspected Fraud Written Notice Form to the Department and the MFCU.

1.15.3.1. **DELIVERABLE:** Completed Contractor Suspected Fraud Written Notice Form

1.15.3.2. DUE: Within three Business Days following the initial discovery of the Fraud or suspected Fraud

1.15.4. Contractor shall revise or provide additional information related to Contractor Suspected Fraud Written Notice Form as requested by the Department or the MFCU.

1.15.4.1. DELIVERABLE: Contractor Suspected Fraud Written Notice Revisions and Additional Information

1.15.4.2. DUE: Within three Business Days following the Department's or the MFCU's request, unless the Department or MFCU provides for a different period in its request.

1.16. Member Fraud

1.16.1. Contractor shall notify the Department if it identifies or suspects possible Member Fraud as a result of any activities in its performance of this Contract.

1.16.2. Upon identification or suspicion of possible Member Fraud, Contractor shall complete Contractor Suspected Fraud Written Notice Form provided by the Department.

1.16.2.1. For each incident of identified or suspected Member Fraud, Contractor shall provide all of the following, at a minimum:

1.16.2.1.1. All verbal and written reports related to the suspected fraud.

1.16.2.1.2. All details of the findings and concerns, including a chronology of Contractor actions which resulted in the reports, and the Member's State ID number, and Member's date of birth if applicable.

1.16.2.1.3. Information on the identification of any affected claims that have been discovered.

1.16.2.1.4. Any claims data associated with its report in a format agreed to by the Department.

1.16.2.1.5. Any additional information as required by the Department.

1.16.3. For each incident of identified or suspected Member Fraud, Contractor shall deliver the completed Contractor Suspected Fraud Written Notice Form to the Department at report.Departmentfraud@state.co.us, or at such other email address as provided by the Department from time to time.

1.16.3.1. DELIVERABLE: Completed Contractor Suspected Fraud Written Notice Form

1.16.3.2. DUE: Within three Business Days following the initial discovery of the Fraud or suspected Fraud

1.16.4. Contractor shall revise or provide additional information related to Contractor Suspected Fraud Written Notice Form as requested by the Department.

1.16.4.1. DELIVERABLE: Contractor Suspected Fraud Written Notice Revisions and Additional Information

1.16.4.2. DUE: Within three Business Days following the Department's request, unless the Department provides for a different period in its request.

2. CONTRACTOR PERSONNEL

2.1. Personnel General Requirements

- 2.1.1. Contractor shall provide qualified Key Personnel and Other Personnel as necessary to perform the Work throughout the term of the Contract.
- 2.1.1.1. Contractor shall provide the Department with a final list of individuals assigned to the Contract and appropriate contact information for those individuals.
 - 2.1.1.1.1. DELIVERABLE: Final list of individuals assigned to the Contract
 - 2.1.1.1.2. DUE: Within five Business Days after the Effective Date
- 2.1.1.2. Contractor shall update this list upon the Department's request to account for changes in the individuals assigned to the Contract.
 - 2.1.1.2.1. DELIVERABLE: Updated list of individuals assigned to the Contract
 - 2.1.1.2.2. DUE: Within five Business Days after the Department's request for an update
- 2.1.2. Contractor shall not permit any individual proposed for assignment to Key Personnel positions to perform any Work prior to the Department's approval of that individual to be assigned as Key Personnel.
- 2.1.3. Contractor shall not voluntarily change individuals in Key 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 Key Personnel. Any individual replacing Key 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.
 - 2.1.3.1. DELIVERABLE: Name(s), resume(s) and references for the person(s) replacing anyone in a Key Personnel position during a voluntary change
 - 2.1.3.2. DUE: At least five Business Days prior to the change in Key Personnel
- 2.1.4. If any individual filling a Key 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.
 - 2.1.4.1. DELIVERABLE: Name(s), resume(s) and references for the person(s) replacing anyone in a Key Personnel position who leaves employment with Contractor
 - 2.1.4.2. 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.
- 2.1.5. Contractor's Key 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.
- 2.1.6. If any of Contractor's Key Personnel or Other Personnel are required to have and maintain any professional licensure or certification issued by any federal, state or local government agency, then Contractor shall submit copies of such current licenses and certifications to the Department.
 - 2.1.6.1. DELIVERABLE: All current professional licensure and certification

documentation as specified for Key Personnel or Other Personnel

2.1.6.2. DUE: Within five Business Days of receipt of updated licensure or upon request by the Department

2.2. Personnel Availability

2.2.1. Contractor shall ensure Key Personnel and Other Personnel assigned to the Contract are available for meetings with the Department during the Department's normal business hours, as determined by the Department. Contractor shall also make these personnel available outside of the Department's normal business hours and on weekends with prior notice from the Department.

2.2.2. Contractor's Key Personnel and Other Personnel shall be available for all regularly scheduled meetings between Contractor and the Department, unless the Department has granted prior written approval otherwise.

2.2.3. Contractor shall ensure that the Key Personnel and Other Personnel attending all meetings between the Department and Contractor have the authority to represent and commit Contractor regarding work planning, problem resolution and program development.

2.2.4. At the Department's direction, Contractor shall make its Key Personnel and Other Personnel available to attend meetings as subject matter experts with stakeholders both within the State government and external private stakeholders.

2.2.5. All of Contractor's Key Personnel and Other Personnel that attend any meeting with the Department or other Department stakeholders shall be physically present at the location of the meeting, unless the Department gives prior, written permission to attend by telephone or video conference. If Contractor has any personnel attend by telephone or video conference, Contractor shall provide all additional equipment necessary for attendance, including any virtual meeting space or telephone conference lines.

2.2.6. Contractor shall respond to all telephone calls, voicemails, and emails from the Department within two Business Days of receipt by Contractor.

2.3. Key Personnel

2.3.1. Contractor shall designate people to hold the following Key Personnel positions:

2.3.1.1. Project Lead

2.3.1.1.1. The Project Lead shall have the following qualifications:

2.3.1.1.1.1. Experience managing reviews of improper post-payment identification.

2.3.1.1.1.2. Experience recovering Improper Payments.

2.3.1.1.1.3. Be a full-time employee of Contractor by the Effective Date.

2.3.1.1.2. The Project Lead shall be responsible for all of the following:

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

2.3.1.1.2.2. 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.

2.3.1.1.2.3. Overseeing all other Key Personnel and Other Personnel and ensuring

proper staffing levels throughout the term of the Contract.

2.3.1.2. Additional Key Personnel

2.3.1.2.1. Medical Director.

2.3.1.2.1.1. Contractor's Medical Director shall meet all requirements listed in 42 CFR § 455.508 (b). These requirements include all of the following:

2.3.1.2.1.1.1. Be a Doctor of Medicine or Doctor of Osteopathy in good standing with a licensing authority in any state in the United States.

2.3.1.2.1.1.2. At least five (5) years of related medical experience and educational experience.

2.3.1.2.1.1.3. The Medical Director shall have overall responsibility for Contractor's clinical review policies and decisions.

2.3.1.2.1.1.4. By the Operational Start Date, the Medical Director shall be a 0.10 full-time employee of Contractor. The Department has received a waiver from CMS in regard to the Medical director's full-time employment and only requires a 0.10 full-time employee.

2.3.1.2.1.2. The Medical Director's requirements and responsibilities include, but are not limited to, the following:

2.3.1.2.1.2.1. Provide oversight and direction to reviewers.

2.3.1.2.1.2.2. Recruiting and maintaining the physician reviewer panel.

2.3.1.2.1.2.3. Assisting in litigation and providing expert testimony as requested by the Department.

2.3.1.2.2. Data/Business Analyst and Information Systems Manager.

2.3.1.2.2.1. Contractor's Data/Business Analyst and Information Systems Manager shall:

2.3.1.2.2.1.1. Be a full-time employee of Contractor by the Effective Date.

2.3.1.2.2.1.2. Have knowledge of INTERCHANGE and any related program information.

2.3.1.2.2.1.3. Have knowledge related to hardware, software, algorithms, data collection, information management, file transfers and data coordination.

2.3.1.2.2.2. The Data/Business Analyst and Information Systems Manager shall develop and implement all requirements related to hardware, software, data collection, information management, file transfers and data coordination with the Department's fiscal agent.

2.3.1.2.2.3. The Data/Business Analyst and Information Systems Manager shall oversee and manage system-related audit methodologies, algorithms and edit parameters used to identify improper payments for accuracy, efficiency and reliability.

2.3.2. Disclosures by Personnel

2.3.2.1. Contractor shall have and enforce policies and procedures that allow Contractor's personnel to report fraud, or violations of this Contract, without punishment, detriment or retribution.

2.3.3. Prohibited Incentives

2.3.3.1. Contractor shall not include as part of an employee or subcontractor incentive or evaluation program, or as part of a performance metric, any of the following measures, whether based on an individual's performance, or on the performance of the Work as a whole:

2.3.3.1.1. Number of fraud referrals or outcome of such referrals.

2.3.3.1.2. Number of potential overpayments identified.

2.3.3.1.3. Return on investment or the amount of overpayments identified and/or recovered.

2.3.3.2. Contractor shall not allow for any individual to fill more than one of the roles defined as Key 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 Department determines that Contractor has not provided sufficient Other Personnel to perform the Work in accordance with the requirements of this Contract, Contractor shall provide all additional Other Personnel necessary to perform the Work in accordance with the requirements of this Contract at no additional cost to the Department.

2.4.2. 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).

2.4.3.4. Contractor shall obtain prior consent and written approval for any change in the use of Subcontractor(s).

- 2.4.3.5. Contractor shall ensure that the Other Personnel have previous experience, education and/or training that demonstrate that they are qualified for the positions on this project to which they will be assigned.
- 2.4.3.6. Contractor shall provide the following Other Personnel:
 - 2.4.3.6.1. Review Personnel.
 - 2.4.3.6.2. Security Officer.
- 2.4.3.7. Review Personnel
 - 2.4.3.7.1. Contractor shall use appropriately licensed, experienced health care professionals to pre-screen and make initial case review findings. At this stage of review, Contractor may use review personnel located and licensed in any State.
 - 2.4.3.7.2. Contractor shall utilize only Colorado-based, Colorado-licensed and appropriately certified, experienced health professionals to review or support case reviews at the informal reconsideration and appeal levels, unless such personnel are not available, and the Department approves the use of similarly licensed/certified and experienced out-of-state health professionals.
 - 2.4.3.7.3. Contractor shall peer-match case reviewers to the kind of Provider being reviewed (i.e. doctors will review doctors; dentists will review dentists, etc.). At a minimum, Contractor shall have case reviewers of the following Provider types:
 - 2.4.3.7.3.1. Nurses.
 - 2.4.3.7.3.2. Dentists.
 - 2.4.3.7.3.3. Dental hygienists.
 - 2.4.3.7.3.4. Pharmacists.
 - 2.4.3.7.3.5. Physicians.
 - 2.4.3.7.3.6. Physical therapists.
 - 2.4.3.7.4. Contractor shall peer-match case reviewers to the same or similar specialty or subspecialties as the case type being reviewed (i.e. urologists will review urologists; cardiologists will review cardiologists, etc.).
 - 2.4.3.7.5. Case reviewers shall be familiar with Colorado laws and variations of community practice standards specific to city, rural, mountain and remote geographical regions of Colorado.
 - 2.4.3.7.6. Contractor shall only use experienced and appropriately certified professional claims coding specialists to review Provider coding.
 - 2.4.3.7.7. Contractor's physicians and case reviewers shall not review cases in any of the following circumstances:
 - 2.4.3.7.7.1. Where the recipient is one for whom the reviewer has provided case or consultation services.
 - 2.4.3.7.7.2. Where the facility or entity under review is one in which the reviewer has admitting privileges, current employment or any financial interest.

2.4.3.7.7.3. Where the Provider involved in the care under review has a relationship with the reviewer or any conflict of interest with the reviewer.

2.4.3.8. Security Officer

2.4.3.8.1. By thirty (30) days after the Effective Date, Contractor shall have employed or contracted with a Security Officer who shall serve as the primary contact for privacy, security and cyber security policies and procedures for enforcement of the requirements of the HIPAA Business Associate Addendum and Colorado Cyber Security Policies.

2.4.3.8.2. Contractor shall use its discretion to determine the experience and training necessary for Security Officer to complete the Work assigned.

2.5. Non-Solicitation of Department Employees

2.5.1. Contractor shall not recruit any employee of the Department for employment with Contractor during the term of this Contract, except that Contractor may accept applications from Department employees that are submitted independently by the employee.

2.5.2. Contractor shall notify the Department if it hires any former employee of the State of Colorado to perform any Work under this Contract. Contractor shall not permit former State of Colorado employees to perform the same work under the Contract that they performed for the State of Colorado, regardless of length of time former employee has been separated from the State of Colorado.

2.5.3. Contractor shall not hire any of the Department's Senior Executive Team, Office Directors, Division Directors, or Section Managers for a period of six months following that individual's termination of employment from the Department without the express, written consent of the Department's Executive Director. In accordance with §24-18-201, C.R.S., Contractor shall also not hire any employee of the Department, regardless of position, who was directly involved with this Contract or the Work for a period of six months following that individual's termination of employment from the Department.

2.5.4. If Contractor hires an employee or former employee of the Department in violation of this section, Contractor shall pay the Department an amount equal to 12 times the employee's monthly salary at the time of termination of their employment with the Department as liquidated damages. The Parties agree that quantifying losses arising from Contractor's breach of this section is inherently difficult because they represent the direct and indirect costs of recruitment, training, and lost productivity related to replacing personnel, and further stipulate that the agreed upon sum is not a penalty, but rather a reasonable measure of damages, given the nature of the losses that may result from employee replacement.

3. ADMINISTRATIVE REPORTING REQUIREMENTS

3.1. Contractor shall provide all reports listed in this section in the format directed by the Department and containing the information requested by the Department.

3.2. Administrative Reporting

- 3.2.1. Contractor shall provide an Administrative Report to the Department, upon the Department's request, covering the period directed by the Department.
- 3.2.1.1. The Administrative Report shall contain all reasonably available information regarding Contractor's staffing, expenses and revenues relating to the Work, as directed by the Department for the period that the report covers. This information may include, but is not limited to, all of the following:
 - 3.2.1.1.1. Number of Full Time Equivalent per position category, as determined by the Department, and total salary expenditure for that position category.
 - 3.2.1.1.2. Operating expenses broken out by category, as determined by the Department.
 - 3.2.1.1.3. Number of staff that were newly hired and separated and number of vacant positions, broken out by position category, as determined by the Department.
 - 3.2.1.1.4. Administrative revenues, such as payments by debt and interest revenues, broken out by source as directed by the Department.
 - 3.2.1.1.5. Administrative expenditures, such as payments to Subcontractors and Providers, broken out by source as directed by the Department.
 - 3.2.1.1.6. Remaining cash-on-hand at the end of the period.
- 3.2.1.2. Contractor shall deliver the Administrative Report to the Department within 10 Business Days following the request by the Department for that report. The Department may create a fixed schedule for Contractor's submission of the Administrative Report by delivering the schedule to Contractor in writing. The Department may change or terminate any fixed schedule it creates by notifying Contractor in writing of the change or termination.
 - 3.2.1.2.1. DELIVERABLE: Administrative Report
 - 3.2.1.2.2. DUE: Within 10 Business Days after the Department's request. If the Department has delivered a fixed schedule to Contractor, then Contractor shall deliver the report as described in the most recent version of that schedule.

4. INFORMATION TECHNOLOGY RELATED REQUIREMENTS

4.1. Protection of System Data

- 4.1.1. 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.
- 4.1.2. 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:
 - 4.1.2.1. Contractor provides physical or logical storage of State Records;
 - 4.1.2.2. Contractor creates, uses, processes, discloses, transmits, or disposes of State Records;

- 4.1.2.3. Contractor is otherwise given physical or logical access to State Records in order to perform Contractor's obligations under this Contract.
- 4.1.3. Contractor shall, and shall cause its Subcontractors, to do all of the following:
- 4.1.3.1. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
- 4.1.3.2. 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.
- 4.1.3.3. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
- 4.1.3.4. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
- 4.1.3.5. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State's Office of Information Security ("OIS").
- 4.1.3.6. Comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology ("OIT"), including project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at www.oit.state.co.us/about/policies.
- 4.1.4. Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
- 4.1.5. Contractor shall perform background checks in a form reasonably acceptable to the State on all of its new or current employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors.
- 4.1.5.1. Contractor will provide notice to the Security and Compliance Representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
- 4.1.5.2. If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

4.2.Data Handling

- 4.2.1. The State, in its sole discretion, may securely deliver State Records directly to the facility where such data is used to perform the Work. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data

center or other storage location outside the United States for any purpose without the prior express written consent of OIS.

- 4.2.2. 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.
- 4.2.3. 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.
- 4.2.4. 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

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

1. Options

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

2. Required Provisions

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

3. Option Effective Date

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

STATE OF COLORADO
John W. Hickenlooper, Governor
Department of Health Care Policy and Financing
Kim Bimestefer, Executive Director

By: Kim Bimestefer, Executive Director

Date: _____

In accordance with C.R.S. §24-30-202, this Option is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Greg Tanner, Controller; Department of Health Care Policy and Financing

Option Effective Date: _____

EXHIBIT G, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

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

2. FFATA AND UNIFORM GUIDANCE REQUIREMENTS

2.1. Definitions.

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

- 2.1.1.1. “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

2.1.1.1.1. Awards may be in the form of:

- 2.1.1.1.1.1. Grants;
- 2.1.1.1.1.2. Contracts;
- 2.1.1.1.1.3. Cooperative Contracts, which do not include cooperative research and development Contracts (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 2.1.1.1.1.4. Loans;
- 2.1.1.1.1.5. Loan Guarantees;
- 2.1.1.1.1.6. Subsidies;
- 2.1.1.1.1.7. Insurance;
- 2.1.1.1.1.8. Food commodities;
- 2.1.1.1.1.9. Direct appropriations;
- 2.1.1.1.1.10. Assessed and voluntary contributions; and
- 2.1.1.1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 2.1.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

2.1.1.1.2. Award *does not* include:

- 2.1.1.1.2.1. Technical assistance, which provides services in lieu of money;
- 2.1.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 2.1.1.1.2.3. Any award classified for security purposes; or

- 2.1.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.1.2. “Contract” means the Contract to which these Federal Provisions are attached and includes all Award types in §2.1.1.1.1 of this Exhibit.
- 2.1.1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;
- 2.1.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 2.1.1.5.2. A foreign public entity;
 - 2.1.1.5.3. A domestic or foreign non-profit organization;
 - 2.1.1.5.4. A domestic or foreign for-profit organization; and
 - 2.1.1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 2.1.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.1.10. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.

- 2.1.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.1.15. “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 2.1.1.17.1. Salary and bonus;
 - 2.1.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

- 2.1.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2.2.Compliance.

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

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

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

2.4.Total Compensation.

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

- 2.4.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 2.4.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 2.4.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

2.5.Reporting.

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

2.6.Effective Date and Dollar Threshold for Reporting.

- 2.6.1. Reporting requirements in §2.7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 2.6.2. The procurement standards in §2.8 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §2.10 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

2.7.Subrecipient Reporting Requirements.

- 2.7.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 2.7.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
 - 2.7.1.1.1. Subrecipient DUNS Number;
 - 2.7.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 2.7.1.1.3. Subrecipient Parent DUNS Number;

- 2.7.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 2.7.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 2.7.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 2.7.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
 - 2.7.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 2.7.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

2.8. Procurement Standards.

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

2.9. Access to Records

- 2.9.1. A Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

2.10. Single Audit Requirements

- 2.10.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions

of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

2.10.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

2.10.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

2.10.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

2.11. Contract Provisions for Subrecipient Contracts

2.11.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Contract.

2.11.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

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

2.11.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national

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

- 2.11.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 2.11.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining Contract or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 2.11.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 2.11.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 2.11.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 2.11.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor

will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.”

- 2.11.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 2.11.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.
- 2.11.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the

Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- 2.11.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
 - 2.11.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 2.12. Certifications.
- 2.12.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.
- 2.13. Exemptions.
- 2.13.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization the individual may own or operate in their name.
 - 2.13.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
 - 2.13.3. There are no Transparency Act reporting requirements for Vendors.
- 2.14. Event of Default.
- 2.14.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract

upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

3. NONDISCRIMINATION UNDER FEDERAL AND STATE AUTHORITY

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

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

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

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

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

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

3.3. Procurement Provisions

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

4. FEDERAL FINANCIAL PARTICIPATION RELATED INTELLECTUAL PROPERTY OWNERSHIP

4.1. In addition to the intellectual property ownership rights specified in the Contract, the following subsections enumerate the intellectual property ownership requirements Contractor shall meet during the term of the Contract in relation to federal financial participation under 42 CFR §433.112 and 45 CFR §95.617.

4.1.1. Contractor shall notify the State before designing, developing, creating or installing any new data, new software or modification of a software using Contract Funds. Contractor shall not proceed with such designing, development, creation or installation of data or software without express written approval from the State.

4.1.2. If Contractor uses Contract Funds to develop necessary materials, including, but not limited to, programs, products, procedures, data and software to fulfill its obligations under the Contract, Contractor shall document all Contract Funds used in the development of the Work Product, including, but not limited to the materials, programs, procedures, and any data, software or software modifications.

4.1.2.1. The terms of this Contract will encompass sole payment for any and all Work Product and intellectual property produced by Contractor for the State. Contractor shall not receive any additional payments for licenses, subscriptions, or to remove a restriction on any intellectual property Work Product related to or developed under the terms of this Contract.

4.1.3. Contractor shall provide the State comprehensive and exclusive access to and disclose all details of the Work Product produced using Contract Funds.

4.1.4. Contractor shall hereby assign to the State, without further consideration, all right, interest, title, ownership and ownership rights in all Work Product and Deliverables prepared and developed by Contractor for the State, either alone or

jointly, under this Contract, including, but not limited to, data, software and software modifications designed, developed, created or installed using Contract Funds, as allowable in the United States under 17 U.S.C.S. §201 and §204 and in any foreign jurisdictions.

- 4.1.4.1. Such assigned rights include, but are not limited to, all rights granted under 17 U.S.C.S §106, the right to use, sell, license or otherwise transfer or exploit the Work Product and the right to make such changes to the Work Product as determined by the State.
- 4.1.4.2. This assignment shall also encompass any and all rights under 17 U.S.C.S §106A, also referred to as the Visual Artists Rights Act of 1990 (VARA), and any and all moral rights to the Work Product.
- 4.1.4.3. Contractor shall require its employees and agents to, promptly sign and deliver any documents and take any action the State reasonably requests to establish and perfect the rights assigned to the State or its designees under these provisions.
- 4.1.4.4. Contractor shall execute the assignment referenced herein immediately upon the creation of the Work Product pursuant to the terms of this Contract.
- 4.1.5. Except for (i) FraudCapture Proprietary Web-based Software, (ii) associated documentation, (iii) any works based on, derived from, or incorporating the FraudCapture Platform or associated documentation, and/or (iv) Contractor Pre-Existing Material, the State claims sole ownership and all ownership rights in all copyrightable software designed, developed, created or installed under this Contract, including, but not limited to:
 - 4.1.5.1. Data and software, or modifications thereof created, designed or developed using Contract Funds.
 - 4.1.5.2. Associated documentation and procedures designed and developed to produce any systems, programs, reports and documentation.
 - 4.1.5.3. All other Work Products or documents created, designed, purchased, or developed by Contractor and funded using Contract Funds.
- 4.1.6. All ownership and ownership rights pertaining to Work Product created in the performance of this Contract will vest with the State, regardless of whether the Work Product was developed by Contractor or any Subcontractor.
- 4.1.7. Contractor shall fully assist in and allow without dispute, both during the term of this Contract and after its expiration, registration by the State of any and all copyrights and other intellectual property protections and registrations in data, software, software modifications or any other Work Product created, designed or developed using Contract Funds.
- 4.1.8. The State reserves a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such software, modifications, documentation and procedures created using Contract Funds on behalf of the State, the Federal Department of Health and Human Services (HHS) and its contractors. Such data and software includes, but is not limited to, the following:

- 4.1.8.1. All computer software and programs, which have been designed or developed for the State, or acquired by Contractor on behalf of the State, which are used in performance of the Contract.
- 4.1.8.2. All internal system software and programs developed by Contractor or subcontractor, including all source codes, which result from the performance of the Contract; excluding commercial software packages purchased under Contractor's own license.
- 4.1.8.3. All necessary data files.
- 4.1.8.4. User and operation manuals and other documentation.
- 4.1.8.5. System and program documentation in the form specified by the State.
- 4.1.8.6. Training materials developed for State staff, agents or designated representatives in the operation and maintenance of this software.

EXHIBIT H, FRAUDCAPTURE™ SERVICES SUPPLEMENTAL TERMS

The supplemental terms included herein (“Terms”) apply to the Department’s (including its Users’) use of Contractor’s FraudCapture Platform in conjunction with certain Services as provided in the Contract. As used herein, “Department” means the State or the Department, and “HMS” means Contractor. Nothing in this Exhibit is intended to change or modify any requirement elsewhere in this Contract or any other Exhibit in this Contract, and any conflict between this Exhibit and any other portion of this Contract shall be resolved in favor of that other portion of the Contract.

1. DEFINITIONS

- 1.1 **Department Data** means provider data, claims data and other member related data provided by Department and used by HMS to populate the FraudCapture Platform.
- 1.2 **Department Data Files** means the files containing Department Data that Department provides to HMS further to this Supplement.
- 1.3 **Documentation** means the user guide and release notes regarding use of the FraudCapture Platform that may be published by HMS from time to time.
- 1.4 **Feedback** means any communication by Department or its Users to HMS regarding the performance of the FraudCapture Platform including issues, suggested changes or modifications concerning the FraudCapture Platform.
- 1.5 **FraudCapture Platform** means HMS’ modular Web-based proprietary analytics platform designed to provide end-to-end support for special investigative unit operations.
- 1.6 **FraudCapture Services** means HMS’ provision of access to and use of the Documentation, the FraudCapture Platform, and the outputs of the FraudCapture Platform.
- 1.7 **Go-Live Date** means the date the FraudCapture Platform is first made available to Department for use in a production environment to process live data.
- 1.8 **Member Eligibility File** means a Department Data File that contains demographic information and other healthcare enrollment information of Department’s active and terminated members.
- 1.9 **Profiles** means the metrics, data, and other information created and displayed in the FraudCapture Platform for each Provider and patient included in the data provided by the Department.
- 1.10 **Provider** means the provider of medical services under contract with Department and whose claims are included for input into the FraudCapture Platform. The term Provider does not include pharmacy benefit managers and retail pharmacies for purposes of this Supplement.
- 1.11 **Provider File** means a Department Data File containing information required by HMS regarding Department’s active and terminated Providers.

- 1.12 **User** means an individual who: (i) is an employee or contractor of Department; (ii) is authorized by Department to access and use the FraudCapture Platform pursuant to these Terms; and (iii) has received User Credentials from Department or HMS.
- 1.13 **User Credentials** means the confidential and unique access details issued to a User to access and use the FraudCapture Platform in accordance with these supplemental terms (“Terms”).

2. [INTENTIONALLY DELETED.]

3. HMS OBLIGATIONS

3.1. General

- 3.1.1. Subject to compliance with these Terms by Department and its Users, HMS agrees to provide Department and its Users access to the FraudCapture Platform via Internet Web-Based Software.

3.2. Implementation

- 3.2.1. HMS will implement access to the FraudCapture Platform for Department and its Users, including setup of User Credentials, in accordance with the Fraud Capture implementation plan which outlines dates, responsibilities, timelines, and any other information needed to set up users to access the FraudCapture software. This plan shall be developed by the Parties following the kick off of this Contract.

3.3. Support

- 3.3.1. HMS will provide support services to Department as specified in **Exhibit H.2** attached.

3.4. Training

- 3.4.1. If requested by Department, HMS will provide training to one member of the Department. This will serve as a train the trainer approach. Department

3.5. Database Population

- 3.5.1. Subject to HMS’ receipt of the Department Data in accordance with this Supplement, HMS will populate the FraudCapture Platform with such data.

3.6. Modifications and Enhancements

- 3.6.1. HMS reserves the right to modify or enhance the FraudCapture Platform provided that no such modification or enhancement affects the functionality of the FraudCapture Platform in a materially adverse manner.
- 3.6.2. HMS agrees to make available to Department any associated updates to the Documentation resulting from such modifications or enhancements.

4. DEPARTMENT OBLIGATIONS

4.1. General.

- 4.1.1. Department is responsible, at its own expense, to procure and operate such hardware, software, equipment and communications services as necessary for Department to access and use the FraudCapture Platform via the Internet. Any software required shall be those generally available to the Department and not in addition to other software(s) which are HMS or FraudCapture specific development.

- 4.1.2. Department agrees to comply with all applicable laws and regulations in connection with its access to and use of the FraudCapture Platform.
- 4.2. Use of Documentation.
 - 4.2.1. As reasonably necessary, Department may make and distribute copies of the Documentation in connection with its use of the FraudCapture Platform. However, Department must include on any Documentation copy all copyright and other proprietary notices as presented in the original Documentation.
- 4.3. Department and User Access
 - 4.3.1. Access to and use of the FraudCapture Platform is limited to Department and its Users.
 - 4.3.2. Department is fully responsible for maintaining the confidentiality of the User Credentials and the security of its account(s).
 - 4.3.3. User Credentials cannot be shared or used by more than one individual.
 - 4.3.4. Department agrees to promptly notify HMS regarding any User that no longer needs to access the FraudCapture Platform due to termination of employment or otherwise.
 - 4.3.5. If use of the FraudCapture Platform by Department and/or any User reasonably threatens the security or integrity of the FraudCapture Platform or HMS' information Platforms, HMS (a) may suspend access to the FraudCapture Platform by Department and its Users until such time as the threat is eliminated; and (b) will use commercially reasonable efforts to notify Department promptly before such suspension.
- 4.4. Department and User Use.
 - 4.4.1. Use of the FraudCapture Platform by Department and its Users is limited to Department's internal use only.
 - 4.4.2. Department and its Users shall not (a) use the FraudCapture Platform for any invasive, infringing, defamatory, or fraudulent purpose; (b) use the FraudCapture Platform in a computer service business, third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, or on behalf of any third party; (c) use the FraudCapture Platform in any manner that could damage, disable, overburden, or impair the FraudCapture Platform or interfere with any other party's use of the FraudCapture Platform; (d) alter, disable, interfere with or circumvent any aspect of the FraudCapture Platform; (e) use or permit the use of data mining, robots, scraping, or similar data-gathering and extraction tools, applications or other devices or processes to retrieve, index or data-mine the content and the outputs of the FraudCapture Platform; (f) mirror or frame any part of the FraudCapture Platform or its contents; (g) access the FraudCapture Platform to build a competitive product or service; or (h) use the FraudCapture Platform or any component of the FraudCapture Platform in a manner not authorized by HMS.
 - 4.4.3. Department is responsible and liable for misuse of the FraudCapture Platform by the State and those acting on the State's behalf..
- 4.5. Effect of Termination
 - 4.5.1. Upon termination of Department's receipt of the FraudCapture Services or termination of the contract: (a) all rights granted to Department under these Terms will immediately terminate; (b) Department and its Users must cease access to the FraudCapture Platform; and (c) Department must destroy all copies of the

Documentation in the possession of Department and any User which, unless otherwise required for audit tracking, such as reporting, or by other government entities or as required by the State of Colorado record retention manual.

4.5.1.1. Upon termination the Department will cease use of the software, however any reports made to detect fraud waste and abuse will be the property of the Department pursuant to the Statement of Work and fraud referrals under **Exhibit B**.

4.5.2. HMS will give the Department within sixty (60) days following termination:

4.5.2.1. All data relating to the work performed under the Statement of Work at **Exhibit B**, or MFCU investigation in a format such as spreadsheets, with all fields required to complete any referrals that are ongoing as part of the close-out process.

4.5.2.2. Any information required by any government entity to establish work done under the Contract.

5. INFORMATION SECURITY

5.1. Department The Parties shall maintain and implement commercially reasonable security policies and procedures directed at: (i) detecting, preventing, and containing the infection of their systems by harmful or malicious code; and (ii) preventing improper access to their respective systems and the Department Data.

6. DEPARTMENT DATA

6.1. General

6.1.1. Department agrees to promptly provide HMS with the Department Data so that HMS can implement the FraudCapture Platform in accordance with implementation plan developed by the Parties following the Contract kickoff, unless access to the MMIS claims data is already provided.

6.1.2. Following implementation, and unless otherwise noted below, Department shall timely provide the Department Data to HMS on a monthly basis via Secure File Transfer Protocol (SFTP) pursuant to an agreed upon schedule so that HMS can continue to deliver the FraudCapture Services to Department.

6.1.3. HMS and Department shall confirm agreed upon naming conventions of all Department Data Files prior to the first file transmission. If Department would like any changes to the format and/or layouts of any Department Data File, Department must submit a written request to HMS at least 60 calendar days prior to the desired change date and must include details of the revised format and/or layout, unless agreed to otherwise by the Parties. HMS will evaluate the request and approve or deny in writing within 30 days from the date of request receipt. If approved by HMS, the approval will include a target date for completion. No changes shall be made to the naming conventions for Reports provided to the Department.!

6.1.4. For each of the Department Data Files, Department shall provide the following information: field descriptions, data dictionaries, and look-up tables. Department will identify key links/relationships between tables and identify unique claim identifications, and respond to HMS' questions regarding the tables and/or unique claim identifications or other related items.

6.2. Data File Delivery

6.2.1. Three Year Historical Paid Claims File.

6.2.1.1. Within 60 days after the Effective Date, and in a mutually agreed upon data layout and format, Department will provide HMS with an initial historical paid claims dataset covering the most recent three years (the “Three Year Historical Paid Claims File”), which includes all claim types (i.e., facility, skilled nursing, professional, durable medical equipment, hospice, home health, pharmacy, encounter, etc.).

6.2.1.2. After Department’s initial delivery of the Three Year Historical Paid Claims File, Department will provide HMS with monthly updates to such file(s).

6.2.1.3. Department will include the payment methodology indicator (e.g., per diem, DRG, percentage billed, etc.) for each applicable claim on the claim data file.

6.2.1.4. Pharmacy claims data required under this Supplement are required to provide holistic insight into the Providers and patients as part of the medical claim/Provider analysis conducted in the FraudCapture Platform.

6.2.1.4.1. Per the contracted Statement of Work at **Exhibit B**, the pharmacy claims themselves will not be analyzed by the FraudCapture Platform for fraud, waste and abuse purposes or otherwise.

6.2.2. Department Member Eligibility Data Files.

6.2.2.1. Commencing with the delivery of the Three Year Historical Paid Claims File, and on a monthly basis thereafter (or such other frequency as agreed to in writing by the Parties), Department will deliver a Member Eligibility File to HMS.

6.2.2.1.1. Department will also provide information regarding data elements in the file, including but not limited to member eligibility confirmation, key links to claims data, and member identifier information.

6.2.3. Provider Data Files.

6.2.3.1. Commencing with the delivery of the Three Year Historical Paid Claims File, and on a monthly basis thereafter (or such other frequency as agreed to in writing by the Parties), Department will deliver a Provider File to HMS.

6.2.3.1.1. Department will also provide information regarding data elements in the file, including but not limited to Provider address confirmation, key links to claims data, and Provider identifier information.

6.3. Additional Programming of Department Data.

6.3.1. There will be no initial data programming fees associated with HMS’ receipt and programming of the Data Files specified above in Section 5.2 (Data File Delivery) sourced from Department’s primary/core system.

6.3.2. If Department wishes for HMS to program Department Data into the

FraudCapture Platform from any other system used by Department, a non-recurring data programming fee of \$25,000 shall be payable by Department with respect to Department Data sourced from each such additional system. Such payment shall not be due unless funding for it is added through an Amendment or Option Letter to this Contract and Contractor will not initiate work until Amendment or Option Letter is executed.

6.3.3. Subsequent data programming by HMS attributable to changes to Department's primary/core system are subject to a programming charge of \$175.00 per hour payable by Department. Following Department's written request, HMS will load Department's historical case files into the FraudCapture Platform subject to a charge of \$175.00 per hour payable by Department to HMS. Such payment shall not be due unless funding for it is added through an Amendment or Option Letter to this Contract and Contractor will not initiate work until Amendment or Option Letter is executed.

6.4. Accuracy and Quality of Department Data

6.4.1. HMS is not responsible for the accuracy and quality of the Department Data used to populate the FraudCapture Platform.

6.4.2. Upon Department's receipt of test data and a validation outline from HMS, Department shall validate all data values that are loaded into the FraudCapture Platform against the Department source system(s) where applicable.

6.4.3. If after Department's approval of the data values in FraudCapture the Department determines that the Department Data provided to HMS is inaccurate or insufficient in some manner (due to no fault of HMS) and Department requires HMS to re-load the Department Data, Department agrees to pay a fee of \$25,000 for the re-load. Such payment shall not be due unless funding for it is added through an Amendment or Option Letter to this Contract.

6.5. Delay.

6.5.1. Department acknowledges that: (i) delay on Department's part in delivering the accurate Department Data Files specified above in Section 5.2 (Data File Delivery) is detrimental to HMS' ability to perform its obligations under this Supplement; and (ii) repeated processing by HMS without the required and accurate Department Data Files is costly to HMS.

6.5.2. Subject to events beyond the control of Department, HMS will begin charging the monthly subscription fee for the FraudCapture Platform effective one hundred and eighty (180) days from the Supplement Effective Date regardless if implementation is complete unless such implementation delay is attributable to HMS and not due to any act or omission by Department.

6.6. Use of Department Data.

- 6.6.1. The Parties agree that HMS' use of Department Data in accordance with this Supplement shall constitute a permissible use of Department Data under the Contract and the Business Associate Agreement between the Parties. HMS may: (a) Use Department Data to populate the FraudCapture Platform and; (b) use PHI (provided as part of the Department Data) to provide Data Aggregation services relating to, or for the benefit of, the health care operation purposes of the Department as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B); and (c) de-identify such PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and use or aggregate such de-identified information for any purpose not prohibited by HIPAA; and
- 6.6.2. HMS may also use its affiliates and service partners to support the operation and enhancement of the FraudCapture Services (and HMS may provide Department Data to such parties provided that they are bound by use and disclosure restrictions that are substantially similar to the obligations of HMS with respect to its delivery of services to Department).

7. INTELLECTUAL PROPERTY; PROPRIETARY RIGHTS

7.1 While this Supplement is in effect, and subject to Section 4.3 (Department and User Access) above, HMS grants to Department a limited, non-exclusive, non-sublicensable, revocable, and non-transferable license to access the FraudCapture Platform solely for Department's internal use in accordance with these Terms and for use within the scope of the Statement of Work in **Exhibit B to** the Contract, except as required under Federal law or regulation or Exhibit G.

7.2 Department's right to access and use the FraudCapture Platform is a limited access and use right, and not a transfer of ownership, title or other proprietary interest to the FraudCapture Platform. No rights are granted to Department other than as expressly stated in these Terms. HMS and its applicable licensors reserve all rights (including Intellectual Property Rights and trade secret rights) to the FraudCapture Platform, its content (other than Department Data) and the Documentation.

7.3 Department acknowledges the FraudCapture Platform, its content (other than Department Data), and the Documentation (including their copies, improvements, customizations, enhancements, updates, revisions, modifications, and derivative works) are and shall remain the sole and exclusive property of HMS, and, as applicable, its licensors.

7.4 Department and its Users shall not attempt to perform or perform (and Department shall not permit a third party acting for the benefit of Department to perform) the

following acts: (i) reverse-engineer, replicate, de-encrypt, or decompile any of the intellectual property platforms in the FraudCapture Platform or in any related HMS IP; (ii) modify, copy, or create derivative works based on the FraudCapture Platform; (iii) remove, obscure or alter any copyright or proprietary notices associated with the Documentation or the FraudCapture Platform; or (iv) sell or sublicense access to and use of the FraudCapture Platform. For clarity, Department shall neither permit nor engage its agents, consultants, contractors, subcontractors, employees, representatives or others acting for the benefit of Department to perform, or attempt to perform, any of the prohibited acts specified in the preceding sentence.

7.5 Department and HMS agree that Feedback is not Department confidential information or proprietary to Department. Nothing in this Supplement, the Contract or otherwise will: (a) restrict the right of HMS and its affiliates to use or disclose Feedback; (b) obligate HMS to credit Department or a User as the source of the Feedback; or (c) require HMS to provide any compensation to Department or any User with respect to the Feedback.

8. FRAUDCAPTURE PLATFORM END USER ACCESS AND USE LANGUAGE

8.1. If there is a conflict between the online end-user access and use license language that is included as part of the FraudCapture Platform login screen or any content page of the FraudCapture Platform, the language of these Terms shall control.

9. THIRD PARTY TERMS AND CONDITIONS

9.1 Third party mandatory flow-down terms and conditions are specified in Exhibit H.3.

10. DISCLAIMER

10.1 EXCEPT FOR ANY WARRANTY EXPRESSLY STATED ELSEWHERE IN THE CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, HMS EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES. DEPARTMENT IS SOLELY RESPONSIBLE FOR ITS USE OF THE FRAUDCAPTURE SERVICES INCLUDING DECISIONS MADE OR ACTIONS TAKEN BASED ON INFORMATION ACCESSED OR GENERATED BY USE OF THE FRAUDCAPTURE SERVICES.

11. GOVERNMENT RESTRICTIONS

a. The FraudCapture Services consist of “commercial items,” as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be governed solely by the terms and conditions of this Supplement.

EXHIBIT H.1, MODULE SELECTION AND FEES

Each Module selected below will be available for use and access by Department and its Users as part of the FraudCapture Services. Please refer to the product guides for details regarding Module features and functionality.

MODULES	
Guided Analytics	X
Data Query & Extraction	X
Case Tracking	X
Link Analysis	X
Custom Analysis and Reports	X

EXHIBIT H.2, SUPPORT SERVICES

1. DEFINITIONS

- 1.1. Corporate Holidays: means those holidays for which HMS offices are currently scheduled to close for business including New Year's Day, Dr. Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day (and the following work day), and Christmas Day. Holidays that fall on a Saturday are generally observed on the preceding Friday; holidays that fall on a Sunday are generally observed on the following Monday.
- 1.2. Department Contact: means representative of Department who is designated by Department to serve as a primary point of contact for general purposes of Department's receipt of the support services and for purposes of initiating Issue Reports and coordinating with HMS regarding resolution of the related issues.
- 1.3. Issue means: an issue with the FraudCapture Platform functionality or operation.
- 1.4. Issue Report: means a support request initiated by the Department Department Contact that:
 - (i) concerns an Issue; and
 - (ii) provides sufficient written details of the Issue, the circumstances and activities leading up to the Issue, and screen shots or other pertinent information to assist HMS in reproducing and investigating the Issue to solve any FraudCapture Platform functionality or operational errors.

2. SUPPORT SERVICES

2.1. Issue Reports

1. Department Contact will submit an Issue Report to Contractor's Program Manager for resolution.
2. If there are any issues with the Issue report submitted to HMS, HMS will contact the Department Contact and give detailed information on errors with the request, as well as any information that is needed to submit the report properly.

3. RESPONSE AND RESOLUTION

- 3.1. Following HMS' receipt of a submitted Issue Report with no errors, HMS will establish the Issue severity level, assign a tracking id, and proceed in accordance with the following table:

ISSUE SEVERITY LEVEL	RESPONSE TIME AND RESOLUTION TARGETS*
<p>“Severity Level 1 Issue” means a defect or failure that causes the FraudCapture Platform to be inoperable, fail catastrophically or produce incorrect and/or unreliable results.</p>	<p>Severity Level 1 Response and Resolution: Response Time: HMS will use commercially reasonably best efforts to provide a response by telephone within one hour of receipt of a properly submitted Issue Report. Resolution Time: HMS will exercise immediate and continuous efforts to resolve Severity Level 1 problems in less than 48 hours of receipt of a properly submitted Issue Report. Any resolution will be delivered to Department as a work-around or as an emergency software fix. If HMS delivers an acceptable work-around, the severity classification will drop to Severity Level 3.</p>
<p>“Severity Level 2 Issue” means a defect or failure for which the FraudCapture Platform is operable but one or more functions that are frequently used and essential are inoperable without an alternate command or function.</p>	<p>Severity Level 2 Response and Resolution: Response Time: HMS will provide a response by telephone within four hours of receipt of a properly submitted Issue Report. Resolution Time: HMS will exercise immediate and continuous efforts to resolve Severity Level 2 problems within four business days of a properly submitted Issue Report from a Department Contact. If HMS delivers an acceptable work-around, the severity classification will drop to a Severity Level 3.</p>
<p>“Severity Level 3 Issue” means a defect or failure for which the FraudCapture Platform is operable but inconvenient, producing a situation in which the FraudCapture Platform does not provide a function that is infrequently used or not a core function of the FraudCapture Platform.</p>	<p>Severity Level 3 Response and Resolution: Response Time: HMS will provide a response by telephone within eight hours of receipt of a properly submitted Issue Report. Resolution Time: HMS will work to resolve Severity Level 3 problems within seven business days from receipt of a support request from Department.</p>

* For any Issue Report received by HMS on a Corporate Holiday or weekend and for which HMS has no support obligation on such Corporate Holiday or weekend, the receipt of such Issue Report by HMS shall be deemed to occur as of the start of the next HMS working day for the purposes of calculating the response and resolution times noted above.

4. EXCLUSIONS

- 4.1. HMS shall have no obligation to support matters or Issues that result from:
 - 4.1.1 Department’s failure to meet the HMS system requirements;
 - 4.1.2 failure of third party software or telecommunications services; or
 - 4.1.3 use of the FraudCapture Platform with hardware, software and/or technology not provided or supported by HMS.
 - 4.1.3.1 Such technology and software names will be provided to the Department prior to implementation to verify that all Software is

available to the Department.

5. DEPARTMENT OBLIGATIONS

5.1. Department shall:

1. Designate one Department Contact;
2. Submit the Department Contact's name, company email address, work phone number and mobile phone number to HMS at helpdesk@hms.com or such other email address as communicated by HMS to Department; and
3. Provide commercially reasonable cooperation and full information to HMS with respect to HMS' delivery of the support services and assist HMS technical support staff until Issue resolution is attained.

5.2. Failure by Department to perform the preceding obligations may result in delays to audit and reporting activities as needed by both the Department and HMS. The Department and HMS shall work in good faith to complete all obligations needed for use of the software provided by HMS.

EXHIBIT H.3, THIRD PARTY TERMS AND CONDITIONS

A. AMA END USER TERMS AND CONDITIONS

The FraudCapture Platform incorporates the American Medical Association's ("AMA") Current Procedural Technology® (CPT®) codes and descriptions ("Editorial Content") made available to HMS under a license granted by the AMA. HMS is authorized by the AMA to distribute to and sublicense use of the Editorial Content to Department and its Users via use of the FraudCapture Platform subject to Department and its Users being bound by the AMA End User Terms. Department on behalf of itself and its User agrees to the following AMA terms and conditions ("AMA End User Terms"):

1. Department's right to use the Editorial Content contained within the FraudCapture Platform is nontransferable, nonexclusive, and for the sole purpose of internal use by Department, and only within Algeria, Argentina, Australia, Bahamas, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Hong Kong, India, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Republic of Korea (South Korea), Lebanon, Mexico, New Zealand, Norway, Panama, Philippines, Portugal, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States and its territories, and Venezuela.
2. Department is prohibited from publishing, distributing via the Internet or other public computer based information Platform, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party, the Editorial Content, or a copy or portion of the Editorial Content.
3. The provision of an updated version of the Editorial Content in the FraudCapture Platform is dependent upon HMS' continuing contractual relationship with the AMA.
4. Department will inform anyone with authorized access to the Editorial Content of the requirement to comply with these AMA End User Terms.
5. Department will accurately report to HMS the number of Editorial Content Users (via use of the FraudCapture Platform). "Editorial Content User" means an individual who:
 - a) accesses, uses, or manipulates Editorial Content contained in the FraudCapture Platform; or
 - b) accesses, uses, or manipulates the FraudCapture Platform to produce or enable an output (data, reports, or the like), such output could not have been created without the Editorial Content being embedded in the FraudCapture Platform; or
 - c) makes use of an output of the FraudCapture Platform, and such output could not have been created without the Editorial Content being embedded in the

FraudCapture Platform.

6. CPT is copyrighted by the AMA, and CPT® is a registered trademark of the AMA.
7. CPT is commercial technical data developed exclusively at private expense by the American Medical Association, 330 North Wabash Avenue, Chicago, Illinois 60611. The American Medical Association does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights – General) and DFARS 252.227-7015 (Technical Data – Commercial Items) or any other license provision. The American Medical Association reserves all rights to approve any license with any Federal agency.
8. The Editorial Content (provided as part of the FraudCapture Platform) is provided “as is” without any liability to the AMA, including without limitation, liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or that it will meet Department’s requirements. The AMA disclaims any liability for any consequences to due to use, misuse, or interpretation of information contained or not contained in the Editorial Content.
9. Department’s right to use the Editorial Content terminates in the event of Department’s default of these AMA End User Terms. If any of the provision of these AMA End User Terms is determined to violate any law or is unenforceable, the remainder of these AMA End User Terms will remain in full force and effect.
10. AMA is a third party beneficiary under this Supplement solely for purposes of these AMA End User Terms.

B. OPTUM SYMMETRY TERMS AND CONDITIONS

*Note: The following terms only apply if Department chooses to use an aspect of the FraudCapture Services that involves use of the Optum Symmetry content.

Certain content of the Episode Treatment Group/Procedure Quality Measurement report(s) (“ETG/PQM Based Reports”) provided by HMS to Department under this Supplement are sourced from content provided under license to HMS by OptumInsights, Inc. (“Optum”). Optum requires that any Department of HMS receiving such report(s) from HMS be bound by the following Optum terms and conditions:

1. Department shall maintain the confidentiality of the ETG/PQM Based Reports except as required by the Colorado Open Records Act. Department shall not disclose, permit to be disclosed, or otherwise resell or transfer, with or without consideration, all or any portion of the ETG/PQM Based Reports to any third party except that Department may disclose the ETG/PQM Based Reports to its consultants, legal advisors, contractors or agents on a need to know basis (“Authorized Representatives”) for the purpose of assisting, advising or rendering services to Department. Prior to the release of any ETG/PQM Based Reports to an Authorized Representative, the Authorized Representative shall execute a nondisclosure agreement which will prohibit such Authorized Representative from using such ETG/PQM Based Reports other than to assist or advise Department and from

disclosing such information to any third party.

2. Department shall only use the ETG/PQM Based Reports for its own internal business purposes and shall not use the ETG/PQM Based Reports for any purpose outside the scope of this Supplement.
3. Optum disclaims all warranties of any kind relating to the ETG/PQM Based Reports, express or implied.
4. Optum shall not be liable to Department for any indirect, incidental, consequential, special, punitive or exemplary damages. Optum's liability to Department for direct damages relating to HMS' use of the Optum licensed software in generating the ETG/PQM Based Reports shall be limited to the amount Department has paid for use of the ETG/PQM Based Reports in the year in which the cause of action arose.
5. Optum shall be a third party beneficiary under this Supplement for purposes of enforcing its rights pertaining to the ETG/PQM Based Reports. Optum shall be expressly entitled to enforce its rights pursuant to the provisions of these terms as they relate to the ETG/PQM Based Reports, regardless of any alleged or actual breach or default hereunder by HMS, or any expiration or termination of this Supplement.