

**STATE OF COLORADO**  
**Department of Health Care Policy and Financing**  
**Contract with**  
**Public Knowledge, LLC**  
**for**  
**Independent Verification and Validation Services for the MMIS Design,**  
**Development and Implementation**

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**1. PARTIES**

This Contract (hereinafter called "Contract") is entered into by and between Public Knowledge, LLC, 1911 S.W. Campus Drive # 457, Federal Way, WA 98023 (hereinafter called "Contractor"), and the STATE OF COLORADO acting by and through the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203 (hereinafter called the "State" or "Department"). Contractor and the State hereby agree to the following terms and conditions.

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. RECITALS**

**A. Authority, Appropriation, and Approval**

Authority to enter into this Contract exists in C.R.S. 25.5-1-101 et. seq. and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

**B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract.

**C. Purpose**

The purpose of this Contract is to perform Independent Verification and Validation Services for the Department. Contractor's offer, submitted in response to Request for Proposal (RFP) Number # HCPFRFPLJ13IV&V was selected by the State.

**D. References**

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.

**4. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

**A. "Closeout Period"** means the period of time defined in Exhibit A, Statement of Work.

**B. "Contract"** means this Contract, its terms and conditions, attached addenda, exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

- C. Exhibits and other Attachments. The following documents are attached hereto and incorporated by reference herein:
  - HIPAA Business Associate Addendum
  - Exhibit A, Statement of Work
  - Exhibit B, Rates
  - Exhibit C, Sample Option Letter
- D. “Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services Contractor renders hereunder.
- E. “Party” means the State or Contractor and Parties means both the State and Contractor.
- F. “Review” means examining Contractor’s Work to ensure that it is adequate, accurate, correct, and in accordance with the standards described in this Contract.
- G. “Services” means the required services to be performed by Contractor pursuant to this Contract.
- H. “State Fiscal Year” or “SFY” means the twelve (12) month period beginning on July 1st of a year and ending on June 30th of the following year.
- I. “Subcontractor” means third-parties, if any, engaged by Contractor to aid in performance of its obligations.
- J. “Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract, including the performance of the Services and delivery of the Goods.
- K. “Work Product” means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

Any terms used herein which are defined in Exhibit A, Statement of Work shall be construed and interpreted as defined therein.

## **5. TERM**

### **A. Initial Term**

The Parties’ respective performances under this Contract shall commence on the Effective Date.. This Contract shall expire on June 30, 2014, unless sooner terminated or further extended as specified elsewhere herein.

### **B. Two Month Extension**

The State, at its sole discretion, upon written notice to Contractor as provided in **§16**, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties desire to continue the services and a replacement Contract has not been fully executed by the expiration of any initial term or renewal term. The provisions of this Contract in effect when such notice is given, including, but not limited to, prices, rates and delivery requirements, shall remain in effect during the two month extension. The two (2) month extension shall immediately terminate when and if a replacement contract is approved and signed by the Colorado State Controller or an authorized designee, or at the end of two (2) months, whichever is earlier.

C. Option to Extend

The State may require continued performance for a period of one (1) year or less at the same rates and same terms specified in the Contract. If the State exercises this option, it shall provide written notice to Contractor at least thirty (30) days prior to the end of the current Contract term in form substantially equivalent to **Exhibit C**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Contract. In no event shall the total duration of this Contract, from the Operational Start Date until termination and including the exercise of any options under this clause, exceed five (5) years, unless the State receives approval from the State Purchasing Director or delegate.

**6. STATEMENT OF WORK**

A. Completion

Contractor shall complete the Work and its other obligations as described in this Contract on or before the end of the term of this Contract. The State shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the expiration or termination of this Contract.

B. Goods and Services

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall not increase the maximum amount payable hereunder by the State.

C. Independent Contractor

All persons employed by Contractor or Subcontractors to perform Work under this Contract shall be Contractor's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Contract.

**7. PAYMENTS TO CONTRACTOR**

The State shall, in accordance with the provisions of this §7 and **Exhibit A**, Statement of Work, pay Contractor in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Contract to Contractor by the Department is shown in the following table, as determined by the Department from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract at the rates set forth in **Exhibit B**. The maximum amount payable by the Department to Contractor is:

<b>Initial Term</b>	
State Fiscal Year 2013-14	\$725,500.00
<b>Option Years</b>	
State Fiscal Year 2014-15	\$1,042,500.00
State Fiscal Year 2015-16	\$990,000.00
State Fiscal Year 2016-17	\$990,000.00
<b>Total for All State Fiscal Years</b>	<b>\$3,748,000.00</b>

**B. Payment**

Payment pursuant to this Contract will be made as earned. Any advance payments allowed under this Contract shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract. Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner prescribed by the State.

**C. Interest**

The State shall fully pay each invoice within forty-five (45) days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within forty-five (45) days shall bear interest on the unpaid balance beginning on the forty-sixth (46th) day at a rate not to exceed one percent (1%) per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days' interest to be paid and the interest rate.

**D. Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the State's current fiscal year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used to fund this Contract, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds and the State's liability for such payments shall be limited to the amount remaining of such available funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability notwithstanding any notice and cure period in **§14.B**.

- E. **Erroneous Payments**  
At the State's sole discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.
- F. **Closeout Payments**  
Notwithstanding anything to the contrary in this Contract, all payments for the final month of the Contract shall be paid to the Contractor no sooner than ten (10) days after the Department has determined that the Contractor has completed all of the requirements of the Closeout Period.
- G. **Option to Increase or Decrease Statewide Quantity of Service**  
The Department may increase or decrease the statewide quantity of services described in the Contract based upon the rates established in the Contract. If the Department exercises the option, it will provide written notice to Contractor in a form substantially equivalent to **Exhibit C**. Delivery/performance of services shall continue at the same rates and terms. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original Contract.

## **8. REPORTING NOTIFICATION**

Reports required under this Contract shall be in accordance with the procedures and in such form as prescribed by the State and as described in **Exhibit A**.

- A. **Litigation Reporting**  
Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the Department.
- B. **Noncompliance**  
Contractor's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Contract.

## **9. CONTRACTOR RECORDS**

- A. **Maintenance**  
Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes, and other written materials, electronic media files and electronic communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of six (6) years after the date this Contract expires or is sooner terminated, or (ii) a period of six (6) years after final payment is made hereunder, or (iii) a period of six (6) years after the resolution of any pending Contract matters, or (iv) if an audit is

occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period"). All such records, documents, communications and other materials shall be the property of the State, and shall be maintained by the Contractor in a central location and the Contractor shall be custodian on behalf of the State.

**B. Inspection**

Contractor shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the State may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

**C. Monitoring**

Contractor shall permit the State, the federal government and any other duly authorized agent of a government agency, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedure. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

**D. Final Audit Report**

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

**10. CONFIDENTIAL INFORMATION**

Contractor shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

**A. Confidentiality**

Contractor shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the

possession of Contractor shall be immediately forwarded to the State's principal representative.

B. Health Insurance Portability & Accountability Act of 1996 ("HIPAA")

i. Federal Law and Regulations

Pursuant to federal law and regulations governing the privacy of certain health information, the Contractor, to the extent applicable, shall comply with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §1320d – 1320d-8 ("HIPAA") and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164 (the "Privacy Rule") and other applicable laws, as amended.

ii. Business Associate Contract

Federal law and regulations governing the privacy of certain health information requires a "Business Associate Contract" between the State and the Contractor, 45 C.F.R. Section 164.504(e). Attached and incorporated herein by reference and agreed to by the parties is a HIPAA Business Associate Addendum ("Addendum") for HIPAA compliance. Terms of the Addendum shall be considered binding upon execution of this Contract and shall remain in effect during the term of the Contract including any extensions.

iii. Confidentiality of Records

Whether or not an Addendum is attached to this Contract, the Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with the Contract and comply with HIPAA rules and regulations. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, or guardian. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information. The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its employees, agents and subcontractors, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted. No confidentiality requirements contained in this Contract shall negate or supersede the provisions of the federal Health Insurance Portability and Accountability Act of 1996.

C. Notification

Contractor shall notify its agents, employees, Subcontractors and assigns who may come into contact with State records or other confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.



- D. Use, Security, and Retention  
Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State.
- E. Disclosure-Liability  
Disclosure of State records or other confidential information by Contractor for any reason 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 State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this §10.

## **11. CONFLICTS OF INTEREST**

- A. Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is 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 to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, 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 apparent conflict constitutes a breach of this Contract.
- B. The Contractor (and Subcontractors or subgrantees permitted under the terms of this Contract) shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent of the Contractor, Subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- i. The employee, officer or agent;
  - ii. Any member of the employee's immediate family;
  - iii. The employee's partner; or
  - iv. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Contractor's, Subcontractor's, or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to subagreements.

**12. REPRESENTATIONS AND WARRANTIES**

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

**A. Standard and Manner of Performance**

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

**B. Legal Authority – Contractor Signatory**

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and bylaws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Contract within five (5) days of receiving such request.

**C. Licenses, Permits, Etc.**

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in the Contract. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

**13. INSURANCE**

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

**A. Contractor**

**i. Public Entities**

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain 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. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

ii. Non-Public Entities

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the requirements set forth in §13.B.

B. Contractors – Subcontractors

Contractor shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this Contract, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor's or Subcontractor's employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

iii. Protected Health Information Insurance

Liability insurance covering all loss of Protected Health Information data and claims based upon alleged violations of privacy rights through improper use or disclosure of Protected Health Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

iv. 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.

- v. Additional Insured  
The State shall be named as additional insured on all Commercial General Liability and protected health information insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any Subcontractors hereunder.
- vi. Primacy of Coverage  
Coverage required of Contractor and Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.
- vii. Cancellation  
The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Contractor's receipt of such notice.
- viii. Subrogation Waiver  
All insurance policies in any way related to this Contract and secured and maintained by Contractor or its Subcontractors as required herein 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.

- C. Certificates  
Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven (7) Business Days of the Effective Date of this Contract. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any subcontract, Contractor and each Subcontractor shall, within ten (10) days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

#### **14. BREACH**

- A. Defined  
In addition to any breaches specified in other sections of this Contract, the failure of the Contractor to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. 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 twenty (20) days after the institution or occurrence thereof, shall also constitute a breach.
- B. Notice and Cure Period  
In the event of a breach, the State shall notify the Contractor of such in writing in the manner provided in §16. If such breach is not cured within ten (10) days of receipt of written notice, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole

discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

## **15. REMEDIES**

### **A. Termination for Cause and/or Breach**

If Contractor is in breach under any provision of this Contract, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Contract, and without limiting its remedies otherwise available at law or equity, following the notice and cure period set forth in §14.B. Remedies are cumulative and the State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. The State may terminate this entire Contract or any part of this Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder.

#### **i. Obligations and Rights**

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder 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, Services and Goods not cancelled by the termination notice. Contractor shall continue performance of this Contract up to the effective date of the termination. To the extent the Contract is not terminated, if any, Contractor shall continue performance until the expiration of this Contract. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under 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 in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State's property. The Contractor shall be obligated to return any payment advanced under the provisions of this Contract.

#### **ii. Payments**

The State shall reimburse Contractor only for accepted performance up to the effective date of the termination. If, after termination by the State, it is determined 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 the same as if this Contract had been terminated in the public interest, as described herein.

#### **iii. 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 by virtue of any breach under this Contract by Contractor and the State may withhold any 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 loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination in the Public Interest**

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract, in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by §15.A or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination, which shall be at least twenty (20) days, and whether it affects all or a portion of this Contract.

**ii. Obligations and Rights**

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in §15.A.i.

**iii. Payments**

If this Contract is terminated by the State pursuant to this §15.B, Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed upon the effective date of such termination, the State may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor prior to the effective date of the termination in the public interest which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

**C. Additional Remedies**

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance

schedule. Contractor shall promptly cease performance of such portions of the contract.

ii. Withhold Payment

Withhold payment to Contractor until Contractor's performance or corrections in Contractor's performance are satisfactorily made and completed.

iii. Deny/Reduce Payment

Deny payment for those obligations not performed in conformance with Contract requirements, that are due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial or reduction of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State's best interest.

v. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the State's option:

- a. Obtain for the State or Contractor the right to use such products and services;
- b. Replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or,
- c. If neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

**16. NOTICES AND REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of, a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**For the State:** Robert L. Westphal Jr. Project Manager  
Department of Health Care Policy and Financing  
1570 Grant Street  
Denver, Colorado 80203  
robert.westphal @state.co.us

**For the Contractor:** James Plane, Partner  
Public Knowledge, LLC  
1911 S.W. Campus Drive #457  
Federal Way, WA, 98023  
jplane@pubknow.com  
and  
Jennifer Kraft, Chief Operating Officer and Project Lead  
1580 Logan Street, Suite 745  
Denver, CO 80203  
jkraft@pubknow.com

**17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State, and all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State.

**18. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Colorado Governmental Immunity Act,



CRS §24-10-101, *et seq.*, and the risk management statutes, CRS §24-30-1501, *et seq.*, as now or hereafter amended.

**19. GENERAL PROVISIONS**

**A. Assignment and Subcontracts**

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer or subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by the Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all of the Work performed under this Contract, regardless of whether Subcontractors are used and for all aspects of subcontracting arrangements and performance. Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be in writing and submitted to the State upon request. Any and all subcontracts entered into by Contractor related to its performance hereunder shall require the Subcontractor to perform in accordance with the terms and conditions of this Contract and to comply with all applicable federal and state laws. Any and all subcontracts shall include a provision that such subcontracts are governed by the laws of the State of Colorado.

**B. Binding Effect**

Except as otherwise provided in §19.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

**C. Captions**

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.

**D. Counterparts**

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**E. Entire Understanding**

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

**F. Indemnification**

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

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.

H. Modification

i. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by the Parties in an 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 of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions
- ii. HIPAA Business Associate Addendum
- iii. The provisions of the main body of this Contract
- iv. Exhibit A, Statement of Work
- v. Exhibit B, Rates
- vi. Exhibit C, Sample Option Letter

J. Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

K. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201, *et seq.* Such exemptions apply when materials are purchased

or services are rendered to benefit the State; provided, however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

M. Third Party Beneficiaries

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 the Contract, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

**20. ADDITIONAL GENERAL PROVISIONS**

A. Compliance with Applicable Law

The Contractor shall at all times during the execution of this Contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this Contract. The Contractor shall also require compliance with these statutes and regulations in subcontracts and subgrants permitted under this contract. The federal laws and regulations include:

Age Discrimination Act of 1975, as amended	42 U.S.C. 6101, et seq.
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.
Clean Air Act	42 U.S.C. 7401, et seq.
Equal Employment Opportunity	E.O. 11246, as amended by E.O. 11375, amending E.O. 11246 and as supplemented by 41 C.F.R. Part 60
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
Title VI of the Civil Rights Act of 1964, as amended	42 U.S.C. 2000d, et seq.
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e
Title IX of the Education Amendments of 1972, as amended	20 U.S.C. 1681

State laws include:

Civil Rights Division	Section 24-34-301, CRS, <i>et seq.</i>
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The Contractor also shall comply with any and all laws and regulations prohibiting discrimination in the specific program(s) which is/are the subject of this Contract. In consideration of and for the purpose of obtaining any and all federal and/or state financial assistance, the Contractor makes the following assurances, upon which the State relies.

- i. The Contractor will not discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of Work under this Contract.
- ii. At all times during the performance of this Contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor.

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

**B. Federal Audit Provisions**

Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations, defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156). All state and local governments and non-profit organizations expending \$500,000.00 or more from all sources (direct or from pass-through entities) are required to comply with the provisions of Circular No. A-133. The Circular also requires pass-through entities to monitor the activities of subrecipients and ensure that subrecipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all subrecipients to notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$500,000.00.

**C. Debarment and Suspension**

- i. If this is a covered transaction or the Contract amount exceeds \$100,000.00, the Contractor certifies to the best of its knowledge and belief that it and its principals and Subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.
- ii. This certification is a material representation of fact upon which reliance was placed when the State determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available at law or by contract, the State may terminate this Contract for default.
- iii. The Contractor shall provide immediate written notice to the State if it has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency.
- iv. The terms "covered transaction," "debarment," "suspension," "ineligible," "lower tier covered transaction," "principal," and "voluntarily excluded," as used in this paragraph, have the meanings set out in 2 C.F.R. Parts 180 and 376.
- v. The Contractor agrees that it will include this certification in all lower tier covered transactions and subcontracts that exceed \$100,000.00.

**D. Force Majeure**

Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this Contract, "force majeure" means acts of God; acts of the public enemy; acts of the state and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

E. Disputes

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 designated by the State and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the Executive Director of the State and the Contractor's Chief Executive Officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

F. Lobbying

Contractor certifies, to the best of his or her knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Contracts) and that all subrecipients shall certify and disclose accordingly.
- iv. This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of the certification is a requisite for making or entering into transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

21. **COLORADO SPECIAL PROVISIONS**

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

- A. **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- B. **FUND AVAILABILITY.** CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- C. **GOVERNMENTAL IMMUNITY.** 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, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 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 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. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. 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 shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) 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.** 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. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- G. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

- H. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** 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. CRS §§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. CRS §§24-30-202 (1) and 24-30-202.4.** *[Not Applicable to intergovernmental agreements]* Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
- K. **PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.** *[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 or the Department program established pursuant to CRS §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 (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) 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, (c) 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 (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department 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 Department program. If Contractor fails to comply with any requirement of this provision or CRS §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. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

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**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

**CONTRACTOR**  
Public Knowledge, LLC

  
\_\_\_\_\_  
\*Signature  
Date: 12-3-2013  
By: Jim Plane  
\_\_\_\_\_  
Name of Authorized Individual  
Title: Member Partner  
\_\_\_\_\_  
Official Title of Authorized Individual

**STATE OF COLORADO**  
**John W. Hickenlooper, Governor**  
Department of Health Care Policy and Financing  
  
\_\_\_\_\_  
Susan E. Birch, MBA, BSN, RN  
Executive Director

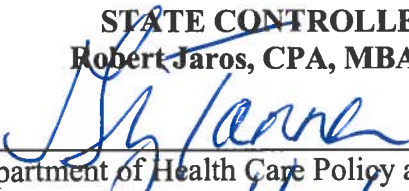
**LEGAL REVIEW**  
**John W. Suthers, Attorney General**

By: 1- N/A  
\_\_\_\_\_  
Signature - Assistant Attorney General

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

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**  
By:   
\_\_\_\_\_  
Department of Health Care Policy and Financing  
Date: 1/10/14

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) is part of the Contract between the State of Colorado, Department of Health Care Policy and Financing and the Contractor. For purposes of this Addendum, the State is referred to as “Department”, “Covered Entity” or “CE” and the Contractor is referred to as “Associate”. Unless the context clearly requires a distinction between the Contract document and this Addendum, all references herein to “the Contract” or “this Contract” include this Addendum.

### RECITALS

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §1320d – 1320d-8 (“HIPAA”) as amended by the American Recovery and Reinvestment Act of 2009 (“ARRA”)/HITECH Act (P.L. 111-005), and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended.
- C. As part of the HIPAA Rules, the CE is required to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, 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 contained in this Addendum.

The parties agree as follows:

#### 1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Rules at 45 C.F.R. Parts 160, 162 and 164, as amended. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the provisions of this Contract, the HIPAA Rules shall control. Where the provisions of this Contract differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Contract shall control.

b. “Protected Health Information” or “PHI” means 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, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.501.

c. “Protected Information” shall mean PHI provided by CE to Associate or created, received, maintained or transmitted by Associate on CE’s behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment and health care operations, Protected Information under this Contract does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access and amendment of Associate’s PHI.

d. “Subcontractor” shall mean a third party to whom Associate delegates a function, activity, or service that involves CE’s Protected Information, in order to carry out the responsibilities of this Agreement.

## 2. Obligations of Associate.

a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate’s obligations under this Contract and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Rules if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A to this Addendum. Associate agrees to defend and indemnify the Department against third party claims arising from Associate’s breach of this addendum.

b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Rules if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Contract; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 C.F.R. Section 164.502(j)(1). To the extent that Associate discloses Protected Information to a third party Subcontractor, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances through execution of a written agreement with such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that such third party will notify Associate within five (5) Business Days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.

c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Contract. Associate shall comply with the requirements of the HIPAA Security Rule, at 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate’s operations and the nature and scope of its activities. Associate shall review, modify, and update documentation of its

safeguards as needed to ensure continued provision of reasonable and appropriate protection of Protected Information.

d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Contract within five (5) Business Days of becoming aware of such use or disclosure.

e. Associate's Agents. If Associate uses one or more Subcontractors or agents to provide services under the Contract, and such Subcontractors or agents receive or have access to Protected Information, each Subcontractor or agent shall sign an agreement with Associate containing substantially the same provisions as this Addendum and further identifying CE as a third party beneficiary with rights of enforcement and indemnification from such Subcontractors or agents in the event of any violation of such Subcontractor or agent agreement. The Agreement between the Associate and Subcontractor or agent shall ensure that the Subcontractor or agent agrees to at least the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate shall make Protected Information maintained by Associate or its agents or Subcontractors in such Designated Record Sets available to CE for inspection and copying within ten (10) Business Days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.524. If such Protected Information is maintained by Associate in an electronic form or format, Associate must make such Protected Information available to CE in a mutually agreed upon electronic form or format.

g. Amendment of PHI. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate or its agents or Subcontractors shall make such Protected Information available to CE for amendment within ten (10) Business Days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, and shall incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or Subcontractors, Associate must notify CE in writing within five (5) Business Days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or Subcontractors shall be the responsibility of CE.

h. Accounting Rights. Associate and its agents or Subcontractors shall make available to CE, within ten (10) Business Days of notice by CE, the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.528. In the event that the request for an accounting is delivered directly to Associate or its agents or Subcontractors, Associate shall within five (5) Business Days of the receipt of the request, forward it to CE in writing. It shall be CE's

responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

i. Governmental Access to Records. Associate shall keep records and make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”), in a time and manner designated by the Secretary, for purposes of determining CE’s or Associate’s compliance with the HIPAA Rules. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary when the Secretary is investigating CE. Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of Associate’s policies, procedures or practices to determine whether Associate is complying with the HIPAA Rules, and permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including Protected Information, that are pertinent to ascertaining compliance.

j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. Sections 164.502(b) and 164.514(d).

k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

l. Retention of Protected Information. Except upon termination of the Contract as provided in Section 4(d) of this Addendum, Associate and its Subcontractors or agents shall retain all Protected Information throughout the term of this Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.

m. Associate’s Insurance. Associate shall maintain insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Contract (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status and notice of cancellation).

n. Notification of Breach. During the term of this Contract, Associate shall notify CE within five (5) Business Days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall not initiate notification to affected individuals per the HIPAA Rules without prior notification and approval of CE. Information provided to CE shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed during the breach. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

o. Audits, Inspection and Enforcement. Within ten (10) Business Days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; and (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract.

p. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity and security of Protected Information transmitted to CE pursuant to the Contract, in accordance with the standards and requirements of the HIPAA Rules.

q. Restrictions and Confidential Communications. Within ten (10) Business Days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 C.F.R. Section 164.522, Associate will restrict the use or disclosure of an individual's Protected Information. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

### 3. Obligations of CE.

a. Safeguards During Transmission. CE shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity and security of Protected Information transmitted pursuant to this Contract, in accordance with the standards and requirements of the HIPAA Rules.

b. Notice of Changes. CE maintains a copy of its Notice of Privacy Practices on its website. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent that it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of Protected Information, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 C.F.R. Section 164.522.

### 4. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall



constitute a material breach of this Contract and shall provide grounds for immediate termination of this Contract by CE pursuant to the provisions of the Contract covering termination for cause, if any. If the Contract contains no express provisions regarding termination for cause, the following terms and conditions shall apply:

(1) Default. If Associate refuses or fails to timely perform any of the provisions of this Contract, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Contract. Associate shall continue performance of this Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

(2) Associate's Duties. Notwithstanding termination of this Contract, and subject to any directions from CE, Associate shall take timely, reasonable and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.

b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement, then CE shall take reasonable steps to cure such breach or end such violation. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall terminate the Contract, if feasible. If Associate knows of a pattern of activity or practice of a Subcontractor or agent that constitutes a material breach or violation of the Subcontractor's or agent's obligations under the written agreement between Associate and the Subcontractor or agent, Associate shall take reasonable steps to cure such breach or end such violation, if feasible.

c. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Contract, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d) and 2(e) of this Addendum to such Protected Information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Injunctive Relief. CE shall have the right to injunctive and other equitable and legal relief against Associate or any of its Subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this Contract or applicable law.

6. No Waiver of Immunity. 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, protection, or other provisions of the Colorado Governmental Immunity Act, CRS 24-10-101 *et seq.* or the

Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* as applicable, as now in effect or hereafter amended.

7. Limitation of Liability. Any limitation of Associate's liability in the Contract shall be inapplicable to the terms and conditions of this Addendum.

8. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Contract or the HIPAA Rules will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of Protected Information.

9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to the HIPAA Rules relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with the HIPAA Rules or this Addendum.

10. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules and other applicable laws relating to the confidentiality, integrity, availability and security of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information and that it is Associate's responsibility to receive satisfactory written assurances from Associate's Subcontractors and agents. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Rules or other applicable laws. CE may terminate this Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section, or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any Subcontractors, employees or agents assisting Associate in the performance of its obligations under the Contract, available to CE, at no cost to CE, up to a maximum of thirty (30) hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being

commenced against CE, its directors, officers or employees based upon a claimed violation of the HIPAA Rules or other laws relating to security and privacy or PHI, in which the actions of Associate are at issue, except where Associate or its Subcontractor, employee or agent is a named adverse party.

12. No Third Party Beneficiaries. Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. Together, the Contract and this Addendum shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules. The parties agree that any ambiguity in this Contract shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. This Contract supersedes and replaces any previous separately executed HIPAA addendum between the parties.

14. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 4(d) ("Effect of Termination") and Section 12 ("No Third Party Beneficiaries") shall survive termination of this Contract and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate. This Addendum shall remain in effect during the term of the Contract including any extensions.

## ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the Contract between the State of Colorado, Department of Health Care Policy and Financing and the Contractor and is effective as of the date of the Contract (the "Attachment Effective Date"). This Attachment may be amended from time to time as provided in Section 10(b) of the Addendum.

1. **Additional Permitted Uses.** In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows:

No Additional Permitted Uses.

2. **Additional Permitted Disclosures.** In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows:

No additional permitted disclosures.

3. **Subcontractor(s).** The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract:

No subcontractors.

4. **Receipt.** Associate's receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows and Associate's obligations under the Addendum shall commence with respect to such PHI upon such receipt:

Upon receipt of PHI from the Department.

5. **Additional Restrictions on Use of Data.** CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information:

No additional restrictions on Use of Data.

6. **Additional Terms.** This may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security or privacy specifications, de-identification/re-identification of data, etc.

No additional terms.

## EXHIBIT A, STATEMENT OF WORK

### SECTION 1.0 TERMINOLOGY

#### 1.1. ACRONYMS, ABBREVIATIONS AND OTHER TERMINOLOGY

- 1.1.1. Acronyms, abbreviations and other terminology are defined at their first occurrence in this Contract. The following list is provided to assist the reader in understanding acronyms, abbreviations and terminology used throughout this document.
  - 1.1.1.1. BIDM - Business Intelligence and Data Management services.
  - 1.1.1.2. Business Day - Any day in which the Department is open and conducting business, but shall not include weekend days or any day on which one of the Department's holidays are observed. The Department observes all holidays listed in the Colorado Revised Statutes (C.R.S.) §24-11-101(1).
  - 1.1.1.3. Business Interruption - Any event that disrupts the 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.
  - 1.1.1.4. CFR - The Code of Federal Regulations.
  - 1.1.1.5. CHP+ - The Colorado Child Health Plan *Plus*.
  - 1.1.1.6. Client - Any individual enrolled in the Colorado Medicaid program, Colorado's CHP+ program or the Colorado Indigent Care Program, as determined by the Department.
  - 1.1.1.7. Closeout Period - The period from on the earlier of ninety (90) days prior to the end of the last renewal year of the Contract or notice of by the Department of non-renewal until the day that the Department has accepted the final deliverable for the Closeout Period and has determined that the final transition is complete.
  - 1.1.1.8. CMS – The Centers for Medicare and Medicaid Services, an agency of the federal Department of Health and Human Services.
  - 1.1.1.9. Critical Incident - Any event that has the potential to delay or stop the Design, Development of Implementation of any MMIS Component for seventy-two (72) hours or more.
  - 1.1.1.10. C.R.S - Colorado Revised Statutes.
  - 1.1.1.11. Disaster - An event that makes it impossible for the Contractor to perform the Work out of its regular facility, and may include, but is not limited to, natural disasters, fire or terrorist attacks.
  - 1.1.1.12. Evaluate - Review an item to determine the progress or current state of that item in relation to specifications, standards or guidelines.
  - 1.1.1.13. HIPAA - The Health Insurance Portability and Accountability Act of 1996.
  - 1.1.1.14. IV&V - Independent Verification and Validation.

- 1.1.1.15. Key Personnel - The position or positions that are specifically designated as such in the Contract.
- 1.1.1.16. MITA – CMS’s Medicaid Information Technology Architecture.
- 1.1.1.17. MMIS - The Department’s Medicaid Management Information System.
- 1.1.1.18. MMIS Component - Any of the following:
  - 1.1.1.18.1. The Core MMIS and Supporting Services, solicitation number HCPFRFPKC13COREMMIS, posted to Colorado Bid Information and Distribution System, January 18, 2013.
  - 1.1.1.18.2. The Pharmacy Benefits Management System (PBMS), solicitation number HCPFRFPKC13PBMS, posted to Colorado Bid Information and Distribution System, May 3, 2013.
  - 1.1.1.18.3. Business Intelligence and Data Management services (BIDM). This solicitation was posted to the Colorado Bid Information and Distribution System October 25, 2013.
  - 1.1.1.18.4. MMIS Component, for the purposes of the IV&V Contract, does not include COTS products or similarly packaged products that are not specifically developed for MMIS.
- 1.1.1.19. MMIS Vendor - an entity selected to be the contractor for any of the MMIS Components. Any subcontractor, selected by a MMIS Vendor, with responsibilities relating to any MMIS Component shall be treated as a single entity with that MMIS Vendor for the purposes of the Contract.
- 1.1.1.20. Operational Start Date - The date when the Department authorizes the Contractor to begin fulfilling its obligations under the Contract. The Department will give the Contractor at least 30 days notice for the Operational Start Date.
- 1.1.1.21. Other Personnel - Individuals and Subcontractors, in addition to Key Personnel, assigned to positions to complete tasks associated with the Work outlined in this solicitation.
- 1.1.1.22. PBMS - the Department’s Pharmacy Benefits Management System.
- 1.1.1.23. PHI - Protected Health Information.
- 1.1.1.24. Start-Up Period - The period from the execution of the Contract, until the Operational Start Date.
- 1.1.1.25. U.S.C. - The United States Code.
- 1.1.1.26. Validate - Reviewing any data, information or result to determine if it is accurate and if it meets or complies with certain specifications or requirements.
- 1.1.1.27. Verify - Reviewing any process or procedure, or the functionality of any system or interface to determine if it meets or complies with certain specifications or requirements.

## **SECTION 2.0**

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

- 2.1.1. The Department will contract with only one (1) organization, the Contractor, and will work solely with that organization with respect to all tasks and deliverables to be completed, services to be rendered and performance standards to be met.
- 2.1.2. The Contractor may not subcontract to complete any portion of the Work.
- 2.1.3. The Contractor may be privy to internal policy discussions; contractual issues; price negotiations; confidential medical information; Department financial information; and advance knowledge of legislation. The Contractor shall consider and treat any such information as confidential and shall not disclose it to any third party without the written consent of the Department.
- 2.1.4. The Contractor shall work cooperatively with key Department staff and, if applicable, the staff of other contractors in the course of the Contract period to ensure the success 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.
- 2.1.5. The Contractor shall inform Department management staff on current trends and issues in the healthcare marketplace and provide information on new technologies in use that may impact the Contractor's responsibilities under this Contract.
- 2.1.6. The Contractor shall maintain complete and detailed records of all meetings, system development life cycle documents, presentations, project artifacts and any other interactions or deliverables related only to the Work performed under the IV&V Contract. The Contractor shall make such records available to the Department upon request, throughout the term of the Contract.
- 2.1.7. Project Personnel
  - 2.1.7.1. Personnel General Requirements
    - 2.1.7.1.1. The Contractor shall provide qualified Key Personnel and Other Personnel to perform the Work. The Contractor shall provide the Department with a final list of individuals assigned to the Contract. The Key Personnel identified for this contract are: Project Lead. Offeror shall use its discretion to determine all Other Personnel it will require to complete the Work.
    - 2.1.7.1.2. The Contractor's estimated percent full time equivalent that each position will be dedicated to this Project over the entire project schedule is shown in the table below. The actual number of staff at any given time will fluctuate by project phase and activity.

<b>IV&amp;V PROJECT TITLES AND FTE</b>		
<b>Quantity of Individuals</b>	<b>Title</b>	<b>Percent of FTE</b>
1	Engagement Partner	20%
1	Project Lead (Contract Key Personnel)	100%
1	Deputy Project Lead	70%
1	IV&V Consultant	10%
1	IV&V Consultant	40%
1	IV&V Consultant	50%
1	IV&V Consultant/Project Controller	50%
1	IV&V Consultant/Technical Analyst	10%
1	IV&V Consultant/Technical Analyst	10%
1	IV&V Consultant/Medicaid SME	25%

- 2.1.7.1.2.1. DELIVERABLE: Final list of names of the individuals assigned to the Contract.
- 2.1.7.1.2.2. DUE: Within five (5) Business Days after the Effective Date or January 17, 2014 whichever is later.
- 2.1.7.1.3. The Contractor shall obtain written approval from the Department for individuals proposed for assignment to Key Personnel positions.
- 2.1.7.2. The Contractor shall not change individuals in Key Personnel positions without prior written approval of the Department. The Contractor shall supply the Department with the name(s), 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 stated qualifications for the position, unless otherwise approved, in writing by the Department.
- 2.1.7.2.1.1. DELIVERABLE: Name(s), resume(s) and references for the person(s) replacing anyone in a Key Personnel position.
- 2.1.7.2.1.2. DUE: At least five (5) Business Days prior to the change in Key Personnel.
- 2.1.7.2.2. The Contractor's personnel assigned to the Contract 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.



- 2.1.7.2.3. The Contractor shall maintain appropriate staffing levels throughout the term of the Contract.
- 2.1.7.3. Personnel Availability
  - 2.1.7.3.1. The Contractor shall ensure Key Personnel and Other Personnel assigned to the Contract are available for meetings with the Department during the Department's normal business hours. The Contractor shall also make these personnel available outside of the Department's normal business hours and on weekends with prior notice from the Department.
  - 2.1.7.3.2. The Contractor's Key Personnel and Other Personnel shall be available for all regularly scheduled meetings between the Contractor and the Department, unless the Department has granted prior, written approval otherwise.
  - 2.1.7.3.3. The Contractor shall ensure that the staff attending all meetings between the Department and the Contractor have the authority to represent and commit the Contractor regarding work planning, problem resolution and program development.
  - 2.1.7.3.4. At the Department's direction, the Contractor shall make its Key Personnel and Other Personnel assigned to the Contract available to attend meetings as subject matter experts with stakeholders both within the State government and external or private stakeholders.
  - 2.1.7.3.5. All of the Contractor's 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. In the event that the Contractor has any personnel attend by telephone or video conference, the Contractor shall be responsible for providing the conference line or virtual meeting place.
  - 2.1.7.3.6. The Contractor shall respond to all telephone calls, voicemails and emails from the Department within one (1) Business Day of receipt by the Contractor.
- 2.1.7.4. Key Personnel Responsibilities
  - 2.1.7.4.1. Project Lead
    - 2.1.7.4.1.1. The Project Lead shall:
      - 2.1.7.4.1.1.1. Oversee all phases of the project in accordance with work plans or timelines or as determined between the Contractor and the Department.
      - 2.1.7.4.1.1.2. Serve as Contractor's primary point of contact for the Department.
      - 2.1.7.4.1.1.3. Be responsible for completion and/or submission of all tasks and deliverables in the Contract.
      - 2.1.7.4.1.1.4. Be present at all scheduled status meetings between the Department and each MMIS Vendor, unless the Department provides permission otherwise.
      - 2.1.7.4.1.1.5. Be present at all other meetings between the Department and each MMIS vendor as requested by the Department.

- 2.1.7.4.1.1.6. Shall be dedicated fulltime to this Contract and will not be a shared resource to other contracts held by or projects performed by the Contractor.
- 2.1.7.5. Other Personnel Responsibilities
- 2.1.7.5.1. The Contractor shall ensure that all Other Personnel have sufficient training and experience to complete all portions of the Work assigned to them.
- 2.1.8. Deliverables
- 2.1.8.1. All deliverables shall meet Department-approved format and content requirements. The Department will specify the number of copies and media for each deliverable.
- 2.1.8.2. Each deliverable will be reviewed by the Department and shall require formal, written approval from the Department before acceptance of the deliverable. The Contractor shall allow for a minimum ten (10) Business Days following receipt, per deliverable, for the Department to review each deliverable and document its findings, except as specified herein. Based on the review findings, the Department may accept the deliverable, reject portions of the deliverable, reject the complete deliverable or require that revisions be made. The Contractor shall make all changes directed by the Department. Unless otherwise agreed to by the Department in writing, the Contractor shall be required to submit replacement portions or a complete revised version of the deliverable within five (5) Business Days following receipt of Department comments. The Department shall have an additional five (5) Business Day review period whenever replacement portions or a complete revised version of a deliverable is resubmitted.
- 2.1.8.3. The Contractor shall employ an internal quality control process to ensure that all deliverables, documents and calculations are complete, accurate, easy to understand and of high quality. The Contractor shall provide deliverables that, at a minimum, are responsive to the specific requirements, organized into a logical order, contain no spelling or grammatical errors, formatted uniformly and contain accurate information and correct calculations. The Contractor shall retain all draft and marked-up documents and checklists utilized in reviewing documents for reference through the duration of the project and project acceptance.
- 2.1.8.4. The Contractor shall document, in writing, and deliver to the Department, its responses to the Department's comments and requests for revisions or clarification of deliverable contents.
- 2.1.8.5. At the Department's request, the Contractor shall be required to conduct a walk-through of Department-selected deliverables to facilitate the Department's review and approval process. The walk-through shall consist of an overview of the deliverable, explanation of the organization of the deliverable, presentation of critical issues related to the deliverable and other information as requested by the Department. It is anticipated that the content of the walk-through may vary with the deliverable presented.
- 2.1.8.6. In the event that any due date for a deliverable falls on a day that is not a Business Day, then the due date shall be automatically extended to the next Business Day, unless otherwise directed by the Department.

- 2.1.8.7. All due dates or timelines that reference a period of days shall be measured in calendar days, months and quarters unless specifically stated as 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.
- 2.1.8.8. No deliverable, report, data, procedure or system created by the Contractor for the Department that is necessary to fulfilling the Contractor's responsibilities under the Contract, as determined by the Department, shall be considered proprietary.
- 2.1.8.9. Any document, deliverable or other item delivered to the Department for review and approval shall require written approval by the Department before the Contractor may consider that document, deliverable or other item approved.
- 2.1.8.10. The Department will designate a primary approver who will provide approval for all deliverables from the Contractor. The Department may change this primary approver from time to time by providing written notice to the Contractor.
- 2.1.9. Stated Deliverables and Performance Standards
  - 2.1.9.1. Any section within this Statement of Work headed with or including the term "DELIVERABLE" or "PERFORMANCE STANDARD" is intended to highlight a deliverable or performance standard contained in this Statement of Work and provide a clear due date for deliverables. The sections with these headings are not intended to expand or limit the requirements or responsibilities related to any deliverable or performance standard.
- 2.1.10. Communication Requirements
  - 2.1.10.1. Communication with the Department
    - 2.1.10.1.1. The Contractor shall enable all Contractor staff to exchange documents and electronic files with the Department staff in compatible formats. The Department currently uses Microsoft Office 2013 for PC. If the Contractor uses a compatible program that is not Microsoft Office 2013 for PC, then the Contractor shall ensure that all documents or files delivered to the Department are completely transferrable and reviewable, without error, on the Department's systems.
  - 2.1.10.2. Communication with Clients, providers and Other Entities
    - 2.1.10.2.1. The Contractor shall not engage in any non-routine communication with any Client, any provider, the media, any other Department contractor or the public without the prior written consent of the Department.
- 2.1.11. Business Continuity
  - 2.1.11.1. The Contractor shall create a Business Continuity Plan that the Contractor will follow in order to continue operations after a Disaster or a Business Interruption. The Business Continuity Plan shall include, but is not limited to, all of the following:
    - 2.1.11.1.1. How the Contractor will replace staff that has been lost or is unavailable during or after a Business Interruption so that the Work is performed in accordance with the Contract.

- 2.1.11.1.2. How the Contractor will back-up all information necessary to continue performing the Work, so that no information is lost because of a Business Interruption.
- 2.1.11.1.2.1. In the event of a Disaster, the plan shall also include how the Contractor will make all information available at its back-up facilities.
- 2.1.11.1.3. How the Contractor will minimize the effects on Clients of any Business Interruption.
- 2.1.11.1.4. How the Contractor will communicate with the Department during the Business Interruption and points of contact within the Contractor's organization the Department can contact in the event of a Business Interruption.
- 2.1.11.1.5. Planned long-term back-up facilities out of which the Contractor can continue operations after a Disaster.
- 2.1.11.1.6. The time period it will take to transition all activities from the Contractor's regular facilities to the back-up facilities after a Disaster.
- 2.1.11.2. The Contractor shall deliver the Business Continuity Plan to the Department for review and approval.
- 2.1.11.2.1. DELIVERABLE: Business Continuity Plan
- 2.1.11.2.2. DUE: Within ten (10) Business Days after the Effective Date or January 24, 2014 whichever is later.
- 2.1.11.3. The Contractor shall review its Business Continuity Plan at least semi-annually and update the plan as appropriate to account for any changes in the Contractor's processes, procedures or circumstances. The Contractor shall submit an Updated Business Continuity Plan that contains all changes from the most recently approved prior Business Continuity Plan or Updated Business Continuity Plan or shall note that there were no changes.
- 2.1.11.3.1. DELIVERABLE: Updated Business Continuity Plan
- 2.1.11.3.2. DUE: Semi-annually, by June 30<sup>th</sup> and December 31<sup>st</sup> of each year.
- 2.1.11.4. In the event of any Business Interruption, the Contractor shall implement its most recently approved Business Continuity Plan or Updated Business Continuity Plan immediately after the Contractor becomes aware of the Business Interruption. In that event, the Contractor shall comply with all requirements, deliverables and milestones contained in the implemented plan.
- 2.1.12. Intellectual Property Ownership
- 2.1.12.1. In addition to the intellectual property ownership rights in the Contract, the following subsections describe the intellectual property ownership requirements that the Contractor shall meet during the term of the Contract in relation to federal financial participation.

- 2.1.12.2. To facilitate obtaining the desired amount of federal financial participation under 42 CFR §433.112, the Department shall have all ownership rights, not superseded by other licensing restrictions, in all materials, programs, procedures, etc., designed, purchased, or developed by the Contractor and funded by the Department. The Contractor shall use contract funds to develop all necessary materials, programs, products, procedures, etc., and data and software to fulfill its obligations under the Contract. Department funding used in the development of these materials, programs, procedures, etc. shall be documented by the Contractor. The Department shall have all ownership rights in data and software, or modifications thereof and associated documentation and procedures designed and developed to produce any systems, programs reports and documentation and all other work products or documents created under the Contract. The Department shall have these ownership rights, regardless of whether the work product was developed by the Contractor or any Subcontractor for work product created in the performance of this Contract. The Department reserves, on behalf of itself, the Federal Department of Health and Human Services and its contractors, a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such software, modifications, documentation and procedures. Such data and software includes, but is not limited to, the following:
- 2.1.12.2.1. All computer software and programs, which have been designed or developed for the Department, or acquired by the Contractor on behalf of the Department, which are used in performance of the Contract.
- 2.1.12.2.2. All internal system software and programs developed by the Contractor or subcontractor, including all source codes, which result from the performance of the Contract; excluding commercial software packages purchased under the Contractor's own license.
- 2.1.12.2.3. All necessary data files.
- 2.1.12.2.4. User and operation manuals and other documentation.
- 2.1.12.2.5. System and program documentation in the form specified by the Department.
- 2.1.12.2.6. Training materials developed for Department staff, agents or designated representatives in the operation and maintenance of this software.
- 2.1.13. Performance Reviews
- 2.1.13.1. The Department may conduct performance reviews or evaluations of the Contractor in relation to the Work performed under the Contract.
- 2.1.13.2. The Department may work with the Contractor in the completion of any performance reviews or evaluations or the Department may complete any or all performance reviews or evaluations independently, at the Department's sole discretion.
- 2.1.13.3. The Contractor shall provide all information necessary for the Department to complete all performance reviews or evaluations, as determined by the Department, upon the Department's request. The Contractor shall provide this information regardless of whether the Department decides to work with the Contractor on any aspect of the performance review or evaluation.

- 2.1.13.4. 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.
- 2.1.13.5. 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.
- 2.1.14. Conflict of Interest
  - 2.1.14.1. Throughout the term of the Contract, the Contractor shall not have a conflict of interest. A conflict of interest may occur in, but is not limited to, any of the following circumstances:
    - 2.1.14.1.1. Contractor is or becomes a parent or subsidiary of any MMIS Vendor.
    - 2.1.14.1.2. Contractor shares a parent entity with or has a majority of the same ownership as any MMIS Vendor.
    - 2.1.14.1.3. Offeror is an affiliate of any MMIS Vendor.
  - 2.1.14.2. If the Contractor becomes aware of a conflict of interest relating to this Contract, the Contractor shall inform the Department within one (1) Business Day.
  - 2.1.14.3. If the Contractor has a conflict of interest at any point during the term of the Contract, the Department may, in its sole discretion, terminate the Contract for cause.

## **SECTION 3.0 INDEPENDENT VERIFICATION AND VALIDATION SERVICES**

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- 3.1.1. IV&V Management Planning
  - 3.1.1.1. The Contractor shall develop an IV&V Management Plan for the MMIS. The IV&V Management Plan shall include all MMIS Components.
    - 3.1.1.1.1. The IV&V Management Plan for the MMIS shall contain, at a minimum, all of the following:
      - 3.1.1.1.1.1. A description of the activities required to perform an IV&V review on the MMIS.
      - 3.1.1.1.1.2. Personnel dedicated to the IV&V review on the MMIS.
      - 3.1.1.1.1.3. The schedule for performing an IV&V review on the MMIS.
      - 3.1.1.1.1.4. The standards for performing an IV&V review on the MMIS.
      - 3.1.1.1.1.5. The methodology for performing an IV&V review on the MMIS.
    - 3.1.1.1.2. The Contractor shall deliver the IV&V Management plan for the MMIS to the Department for review and approval.
      - 3.1.1.1.2.1. DELIVERABLE: IV&V Management Plan.
      - 3.1.1.1.2.2. DUE: Within ninety (90) days following the MMIS kickoff meeting, scheduled by the Department with all MMIS Vendors.

- 3.1.1.1.3. The Contractor shall update the IV&V Management Plan on at least an annual basis, by the dates included in the most recently approved IV&V Management Plan.
- 3.1.1.1.4. In addition to the annual updates, The Contractor shall modify and update the IV&V Management Plan throughout the term of the Contract at the direction of the Department.
  - 3.1.1.1.4.1. DELIVERABLE: Department-directed IV&V Management Plan Update.
  - 3.1.1.1.4.2. DUE: Within thirty (30) days following the Department's request for the update, unless the Department provides for a longer period in writing.
- 3.1.1.1.5. The Contractor shall implement the most recently approved IV&V Management Plan for each MMIS Component and shall complete all requirements of that plan. The Contractor shall not implement any IV&V Management Plan prior to the Department's approval of that plan unless directed to do so in writing by the Department.
- 3.1.1.2. The Contractor shall review the solicitation and contract for each MMIS Component and MMIS Vendor, as well as the Implementation Advance Planning Document and any associated Advance Planning Document Updates that the Department has submitted to CMS, to gain sufficient understanding of the MMIS project.
- 3.1.2. Initial and Periodic MMIS Vendor Reviews
  - 3.1.2.1. The Contractor shall conduct an initial review for each MMIS Component. For purposes of Contractor reviews, all MMIS Vendors will follow the same format, outline, and development/approval process for their plans and deliverables. Each initial review shall include, at a minimum, all of the following:
    - 3.1.2.1.1. An Initial Performance Standard Planning Document that includes the initial status of each activity shown on the IV&V Management Plan for the Core MMIS Vendor.
      - 3.1.2.1.1.1. DELIVERABLE: Initial Performance Standard Planning Document
      - 3.1.2.1.1.2. DUE: The Initial Performance Standard Planning Document shall be due no later than the end of the Business Process Reengineering (BPR) Contract Stage, as that stage is defined in the contract with the MMIS Vendor for the Core MMIS.
    - 3.1.2.1.2. The Initial Performance Standard Planning Document shall be updated to include the initial status of each activity shown on the IV&V Management Plan for the PBMS and BIDM Vendors.
      - 3.1.2.1.2.1. DELIVERABLE: Updated Performance Standard Planning Document
      - 3.1.2.1.2.2. DUE: The Updated Performance Standard Planning Document shall be due no later than the end of the Initiation and Planning Phase as that phase is defined in the contract with the PBMS and BIDM Vendor services.

- 3.1.2.1.3. A review of each MMIS Vendor's analysis of risk areas of the implementation of each MMIS Component and the risk mitigation plan for those identified risks. The review will be based on each of the MMIS Vendors following the same processes/procedures and reporting formats of Risks. The Contractor shall include recommendations for any deficiencies it finds during its review of the risk mitigation plans.
- 3.1.2.1.3.1. DELIVERABLE: Initial Risk Analysis and Mitigation Plan Review Report
- 3.1.2.1.3.2. DUE: No later than the end of the Initiation and Planning Phase, as that phase is defined in the contract with the MMIS Vendor for the core MMIS and supporting services
- 3.1.2.1.3.3. DELIVERABLE: Updated Risk Analysis and Mitigation Plan Review Report
- 3.1.2.1.3.4. DUE: No later than the end of the Initiation and Planning Phase, as that phase is defined in the contract with the PBMS and BIDM Vendor services.
- 3.1.2.2. The Contractor shall conduct periodic reviews for each MMIS Component on a monthly basis. Each periodic review shall include, at a minimum, all of the following:
- 3.1.2.2.1. Reviewing all deliverables and reports submitted by MMIS Vendors, as directed by the Department, for content, quality and timeliness. The Department will deliver the deliverables to the Contractor for review by giving them to the Contractor or directing the Contractor to review the deliverable stored in the appropriate system. For purposes of Contractor reviews, all MMIS Vendors will follow the same format, outline, and development/approval process for their reports and deliverables.
- 3.1.2.2.1.1. The Contractor shall notify the Department of any MMIS Vendor submitted management reports that do not contain the content required for that report, are of not sufficient quality or were not submitted in a timely manner.
- 3.1.2.2.1.2. The Contractor shall participate in walk-through of MMIS Vendor deliverables as requested by the Department.
- 3.1.2.2.1.3. The Contractor shall Evaluate each reviewed deliverable and provide remediation recommendations for each deliverable that fails to achieve the standards or timelines in that MMIS Vendor's contract with the Department.
- 3.1.2.2.1.3.1. DELIVERABLE: Remediation Recommendations
- 3.1.2.2.1.3.2. DUE: Within ten (10) Business Days following the Department's notification of the unacceptable deliverable to the Contractor.
- 3.1.2.2.2. Notifying the Department immediately when the Contractor discovers any Critical Incident if the discovery occurs during the Department's working hours on a Business Day.



- 3.1.2.2.3. If the Contractor discovers a Critical Incident during a time that is not during the Department's working hours on a Business Day, the Contractor shall notify the Department by 9:00 am Mountain Time of the next Business Day. The Department may determine that any incident that occurs is critical, even if the Contractor does not, and the Contractor shall be deemed to discover the incident and have notified the Department as of the date when the Department notified the Contractor it had determined the incident to be critical.
- 3.1.2.2.4. Providing a MMIS Vendor Critical Incident Report for each Critical Incident that summarizes the incident, how it notes how it may affect the project, notes any discrepancies found by the Contractor and provides a proposed action plan to resolve the incident and mitigate its impact.
  - 3.1.2.2.4.1. DELIVERABLE: MMIS Vendor Critical Incident Report
  - 3.1.2.2.4.2. DUE: No later than five (5) Business Days following the day that the Critical Incident is discovered
- 3.1.2.3. The Contractor shall monitor the performance of each MMIS Vendor to Verify that the MMIS Vendor is in compliance with its contract with the Department and that the system that MMIS Vendor is developing meets all requirements of its contract with the Department. This shall include, but is not limited to, monitoring all of the following:
  - 3.1.2.3.1. MMIS Vendor work plans.
  - 3.1.2.3.2. MMIS Vendor implementation plans.
  - 3.1.2.3.3. General system design for each MMIS Component.
  - 3.1.2.3.4. Detailed system design for each MMIS Component.
  - 3.1.2.3.5. System security for each MMIS Component.
  - 3.1.2.3.6. System testing for each MMIS Component.
  - 3.1.2.3.7. System interfaces for each MMIS Component and between the MMIS Components and other MMIS Components or external systems.
  - 3.1.2.3.8. MMIS Vendor transition from the contractor for the Department's existing MMIS.
  - 3.1.2.3.9. Acceptance Testing for each MMIS Component.
  - 3.1.2.3.10. Post-implementation activities and CMS certification of each MMIS Component.
- 3.1.2.4. The Contractor shall provide Management Briefings on a monthly basis regarding the performance of each MMIS Vendor and the monitoring performed by the Contractor. The Management Briefings will begin the month of the Operational Start Date.
  - 3.1.2.4.1. This Management Briefing shall include, at a minimum, all of the following:
    - 3.1.2.4.1.1. The Current general status of each MMIS Vendor in relation to that MMIS Vendor's work plans and implementation plans.

- 3.1.2.4.1.2. Any flaws or issues with the system design for each MMIS Component that may negatively impact the implementation of the MMIS or CMS's certification of the MMIS and recommendations to mitigate or eliminate those flaws or issues.
- 3.1.2.4.1.3. Any flaws or issues regarding system security for each MMIS component that may negatively impact the implementation of the MMIS or CMS's certification of the MMIS and recommendations to mitigate or eliminate those flaws or issues.
- 3.1.2.4.1.4. The results of any system testing or retesting performed during the prior month and recommendations on how to resolve any flaws or issues identified as a result of that system testing or retesting.
- 3.1.2.4.1.5. Any flaws or issues with the interfaces within each MMIS Component, between each of the MMIS Components or between the MMIS Components and external systems that may negatively impact the implementation of the MMIS or CMS's certification of the MMIS and recommendations to mitigate or eliminate those flaws or issues.
- 3.1.2.4.1.6. Any delays or issues with the transition from the contractor for the Department's current MMIS to any MMIS Vendor and recommendations to mitigate or eliminate those delays or issues.
- 3.1.2.4.1.7. The results of all acceptance testing performed during the prior month and recommendations on how to resolve any flaws or issues identified as a result of that testing.
- 3.1.2.4.1.8. The status of the overall implementation and operation of each MMIS Component and CMS certification of the MMIS as well as any flaws or issues that are negatively impacting the operation of any MMIS Component or causing a delay in CMS's certification of the system and recommendations on how to resolve those issues or flaws.
- 3.1.2.4.1.9. Any recommendations the Contractor has regarding training provided by the MMIS Vendors to system users.
- 3.1.2.4.1.10. Any recommendations the Contractor has regarding each MMIS Vendors' progress and procedures for managing requirements.
- 3.1.2.4.1.11. Any recommendations the Contractor has regarding each MMIS Vendor's policies and procedures for ensuring that each MMIS Component is secure and that the privacy of Client data is maintained.
- 3.1.2.4.2. The Contractor shall host all Management Briefings at times approved by the Department.
- 3.1.2.4.2.1. DELIVERABLE: Management Briefings
- 3.1.2.4.2.2. DUE: Monthly, as scheduled by the Department.
- 3.1.2.5. Contractor Location

- 3.1.2.5.1. The Contractor shall have an office within one (1) mile of the Department's offices at 1570 Grant Street, Denver CO 80203-1818. The Contractor's personnel assigned to the Contract shall perform the majority of their work and responsibilities on this project in the Denver metropolitan area. Any Contractor personnel conducting product and deliverable reviews may be located at another location at the Contractor's discretion.
- 3.1.2.5.2. The Contractor shall provide a conference room or other location, capable of holding at least ten (10) people, for each Management Briefing. This location shall be at the same location as the Contractor's office that is within one (1) mile of the Department's offices. The Contractor shall be responsible for all costs associated with providing a location for the Management Briefings.
- 3.1.2.6. The Contractor shall attend all status meetings between the Department and the MMIS Vendors, which will occur on at least a monthly basis and may occur more regularly based on the phase and stage of the implementation of the MMIS. The Department will deliver the minutes of each meeting to the Contractor and the Contractor shall review those minutes and provide comments to the Department.
- 3.1.2.6.1. DELIVERABLE: Comments on all status meeting minutes
- 3.1.2.6.2. DUE: Within two (2) Business Days following the Department's delivery of the minutes to the Contractor.
- 3.1.2.7. The Contractor shall Evaluate the methodology for maintaining requirements traceability throughout the transfer and development process beginning with the functional Requirements Documents as a baseline.
- 3.1.3. CMS Guidance Review
- 3.1.3.1. The Contractor shall review all MITA documentation, guidance and rules promulgated by CMS throughout the term of the Contract.
- 3.1.3.1.1. The Contractor shall notify the Department if any MITA documentation, guidance and rules, or any changes to those items, will impact the implementation of any MMIS Component or the work performed by any MMIS Vendor.
- 3.1.3.2. The Contractor shall review the process that CMS uses to certify a MMIS and understand the requirements for a MMIS to become certified.
- 3.1.3.2.1. The Contractor shall notify the Department if the Department's implementation of any MMIS Component will decrease the likelihood that CMS will certify the MMIS or will cause a delay in the MMIS's certification. If the Contractor notifies the Department that the current implementation will impact CMS's certification of the MMIS, the Contractor shall also provide recommendations as to how the Department may mitigate these impacts or how the Department could change its implementation of any MMIS Component to reduce or eliminate the impact.
- 3.1.4. IV&V Project Management
- 3.1.4.1. The Contractor shall create a work breakdown structure for all IV&V activities, and deliver the work breakdown structure to the Department for review and approval.

- 3.1.4.1.1. DELIVERABLE: Work Breakdown Structure
- 3.1.4.1.2. DUE: No later than forty-five (45) days following the Operational Start Date.
- 3.1.4.2. The Contractor shall update its Work Breakdown Structure in accordance with the guidelines contained in *A Guide to the Project Management Body of Knowledge, Fourth Edition*.
- 3.1.4.3. The Contractor shall perform project management services for all IV&V related activities for the MMIS. These project management services shall include, at a minimum, all of the following:
  - 3.1.4.3.1. Evaluating the progress of the implementation of the entire MMIS project, and recommending improvements as necessary.
  - 3.1.4.3.2. Verifying that lines of reporting within each MMIS Vendor and responsibility provide adequate technical and managerial oversight of the project.
  - 3.1.4.3.3. Verifying that contractors, agencies and departments are not independently duplicating effort toward the same ends.
  - 3.1.4.3.4. Evaluating project progress, resources, budget, schedules, work flow and reporting.
  - 3.1.4.3.5. Verifying that each MMIS Vendor has created a project management plan and that each MMIS Vendor is following the appropriate project management plan.
  - 3.1.4.3.6. Evaluating the project management plans and procedures to Verify that they are developed, communicated, implemented, monitored and complete.
  - 3.1.4.3.7. Evaluating project reporting plan and actual project reports to Verify project status is accurately traced using project metrics, as approved by the Department.
  - 3.1.4.3.8. Verifying milestones and completion dates contained in any MMIS Vendor's project management plan and contract are planned, monitored and met.
  - 3.1.4.3.9. Verifying that each MMIS Vendor has created and institutionalized an appropriate project issue tracking mechanism that documents issues as they arise, enables communication of issues to proper stakeholders, documents a mitigation strategy as appropriate, and tracks the issue to closure.
  - 3.1.4.3.10. Assisting in the establishment and maintenance of a Master MMIS Issue Tracking mechanism that consolidates issue tracking of all MMIS Vendors. The Department will maintain the document.
  - 3.1.4.3.11. Evaluating each MMIS Vendor's planned life-cycle development methodology or methodologies (e.g. waterfall, evolutionary spiral, rapid prototyping, incremental) to see if they are appropriate for the MMIS Component that MMIS Vendor is developing.
  - 3.1.4.3.12. Verifying that all business process reengineering has strategy, management backing, resources, skills and incentives necessary for effective change.
  - 3.1.4.3.13. Verifying that resistance to change is anticipated and prepared for, by using principles of change management at each step and having the appropriate leadership throughout the business process reengineering process.

- 3.1.4.3.14. Verifying that each MMIS Vendor has a change management plan and that the change management plans and procedures to Verify them are developed, communicated, implemented, monitored and complete.
- 3.1.4.3.15. Providing recommendations and guidance in addressing stakeholder concerns from identification through resolution.
- 3.1.4.3.16. Verifying that each MMIS Vendor has a communication plan and that those plans are being followed.
- 3.1.4.3.17. Evaluating each MMIS Vendor's communication plan and procedures to Verify that they support communications and work product sharing between all project stakeholders and that the communication plans and strategies are effective, implemented, monitored and complete.
- 3.1.4.3.18. Reviewing and Evaluating all configuration management plans and procedures associated with the development of each MMIS Component for all of the following:
  - 3.1.4.3.18.1. Critical development documents, including but not limited to requirements, design, code and job control language are maintained under an appropriate level of control.
  - 3.1.4.3.18.2. The processes and tools are in place to identify code versions and to rebuild system configurations from source code.
  - 3.1.4.3.18.3. Appropriate source and object libraries are maintained for training, test, and production and that formal sign-off procedures are in place for approving deliverables.
  - 3.1.4.3.18.4. Appropriate processes and tools are in place to manage system changes, including formal logging of change requests and the review, prioritization and timely scheduling of maintenance actions.
  - 3.1.4.3.18.5. Mechanisms are in place to prevent unauthorized changes being made to the system and to prevent authorized changes from being made to the wrong version.
- 3.1.4.3.19. Evaluating and making recommendations on the estimating and scheduling process of the project to Verify that the project budget and resources are adequate for the work break-down structure and schedule.
- 3.1.4.3.20. Reviewing schedules to Verify that adequate time and resources are assigned for planning, development, review, testing and rework.
- 3.1.4.3.21. Performing ongoing Evaluations of MMIS Vendor staffing, which include their key and non-key personnel, to Verify adequate staffing for each MMIS Vendor to comply with their contract and maintain service levels defined throughout those contracts.
- 3.1.4.3.22. Examining the job assignments, skills, training and experience of the key personnel of each MMIS Vendor involved in program development to Verify that they are adequate for the development task.

- 3.1.4.3.23. Verifying that each MMIS Vendor's organizational structure supports training, process definition, independent Quality Assurance, Configuration Management, product Evaluation, and any other functions critical for the project's success.
- 3.1.4.3.24. Verifying that State staff has the ultimate responsibility for monitoring project cost and schedule.
- 3.1.5. Quality Assurance
  - 3.1.5.1. The Contractor shall review the quality assurance plans and procedures of each MMIS Vendor for all of the following:
    - 3.1.5.1.1. All quality assurance has an appropriate level of independence from project management.
    - 3.1.5.1.2. The organization responsible for quality assurance monitors the fidelity of all defined processes in all phases of the project.
    - 3.1.5.1.3. The quality of all products produced by the project is monitored by formal reviews and sign-offs.
    - 3.1.5.1.4. Project self-evaluations are performed and that measures are continually taken to improve the process.
    - 3.1.5.1.5. Those responsible for quality assurance provide periodic Evaluation of the activities of the project and that the project takes action to reach industry standards.
    - 3.1.5.1.6. Quality assurance is being conducted and completed for each MMIS Vendors' contract with the Department covering the following areas:
      - 3.1.5.1.6.1. Staffing
      - 3.1.5.1.6.2. Reporting
      - 3.1.5.1.6.3. Processes/Procedures
      - 3.1.5.1.6.4. Adherence to timelines
      - 3.1.5.1.6.5. Risk Analysis
  - 3.1.5.2. The Contractor shall review and make recommendations on all defined processes and product standards associated with the system development.
  - 3.1.5.3. The Contractor shall Verify that all major development processes are defined and that the defined and approved processes and standards are followed in development.
  - 3.1.5.4. The Contractor shall Verify that all process definitions and standards are complete, clear, up-to-date, consistent in format and easily available to project personnel.
  - 3.1.5.5. The Contractor shall review on all training provided by the MMIS Vendors to system users. This shall include Verification of all of the following:
    - 3.1.5.5.1. There is sufficient knowledge transfer for maintenance and operation of the new system.
    - 3.1.5.5.2. Training for users is instructor-led and hands-on and is directly related to the business process and required job skills.

- 3.1.5.5.3. User-friendly training materials and help desk services are easily available to all users.
- 3.1.5.5.4. All necessary policies, processes and documentation is easily available to users.
- 3.1.5.5.5. All training is given on-time and is Evaluated and monitored for effectiveness, with additional training provided as needed.
- 3.1.5.6. The Contractor shall Evaluate on each MMIS Vendor's progress and procedures for managing requirements. This shall include at minimum all of the following:
  - 3.1.5.6.1. Verifying that system requirements are well-defined, understood and documented.
  - 3.1.5.6.2. Evaluating the allocation of system requirements to hardware and software requirements.
  - 3.1.5.6.3. Verifying that software requirements can be traced through design, code and test phases to Verify that the system performs as intended and contains no unnecessary software elements.
  - 3.1.5.6.4. Verifying that requirements are under formal configuration control.
- 3.1.5.7. The Contractor shall Evaluate on the MMIS Vendor's policies and procedures for ensuring that each MMIS Component is secure and that the privacy of Client data is maintained. This shall include all of the following:
  - 3.1.5.7.1. Evaluating the restrictions on system and data access.
  - 3.1.5.7.2. Evaluating the system security plan to Verify that it meets Department standards.
  - 3.1.5.7.3. Verifying that processes and equipment are in place to back up client and project data files and archive them safely at appropriate levels.
- 3.1.5.8. The Contractor shall Verify that each MMIS Vendor has performed an adequate requirements analysis for that MMIS Vendor's MMIS Component. This shall include a Verification of all of the following:
  - 3.1.5.8.1. An analysis of client, State, and Federal needs and objectives has been performed to Verify that requirements of the system are well understood, well defined and satisfy federal regulations.
  - 3.1.5.8.2. All stakeholders have been consulted to the desired functionality of the system, and that users have been involved in prototyping of the user interface.
  - 3.1.5.8.3. All stakeholders have bought-in to all changes with impact project objectives, cost and schedule.
  - 3.1.5.8.4. Performance requirements satisfy user needs.
  - 3.1.5.8.5. User's maintenance requirements for the system are completely specified.

- 3.1.5.9. The Contractor shall Verify that the MMIS Vendors have described all system interfaces for each MMIS Component exactly, by medium and by function, including input/output control codes, data format, polarity, range, units and frequency. The Contractor shall also Verify that all approved interface documents are available and that appropriate relationships are in place with all agencies and organizations supporting the interfaces.
- 3.1.5.10. The Contractor shall Verify that all system requirements have been allocated to either a software or hardware subsystem and that specifications have been developed for all hardware and software subsystems in a sufficient level of detail for successful implementation.
- 3.1.5.11. The Contractor shall Verify that there is a well-defined plan for transferring data from the legacy system to the new MMIS.
- 3.1.6. MMIS Operating Environment
  - 3.1.6.1. The Contractor Evaluate each MMIS Component for all of the following:
    - 3.1.6.1.1. System hardware configurations to determine if their performance is adequate to meet existing and proposed system requirements.
    - 3.1.6.1.2. Compatibility with the State's existing processing environment, if it is maintainable, and if it is easily upgradeable. This Evaluation will include, but is not limited to Central Processing Units (CPUs) and other processors, memory, network connections, and bandwidth, communication controllers, telecommunications systems (Local Area Network/Wide Area Network [LAN/WAN]), terminals, printers, and storage devices.
    - 3.1.6.1.3. System software to determine if its capabilities are adequate to meet existing and proposed system requirements.
    - 3.1.6.1.4. Whether the software is maintainable and easily upgradeable.
    - 3.1.6.1.5. Projected service provider support of the hardware and software.
    - 3.1.6.1.6. Database products to determine if their capabilities are adequate to meet proposed system requirements.
    - 3.1.6.1.7. The database's data format to determine if it is easily convertible to other formats, if it supports the addition of new data items, if it is scalable, if it is easily refreshable and if it is compatible with the State's existing hardware and software, including any on-line transaction processing environment.
    - 3.1.6.1.8. Processing capacity of the system to determine if it is adequate for current statewide needs for both batch and on-line processing.
    - 3.1.6.1.9. The system's capacity to support future growth.
  - 3.1.6.2. The Contractor shall make recommendations on changes in processing hardware, storage, network systems, operating systems, consumer off the shelf software, and software design to meet future growth and improve system performance.
- 3.1.7. MMIS Development Environments
  - 3.1.7.1. The Contractor shall Evaluate the development hardware and software configurations of each MMIS Component to determine all of the following:



- 3.1.7.1.1. If their performance and capabilities are adequate to meet the needs of system development.
- 3.1.7.1.2. If the MMIS Component is maintainable and easily upgradeable. This Evaluation will include, but is not limited to, CPUs and other processors, memory, network connections and bandwidth, communication controllers, telecommunications systems (LAN/WAN), terminals, printers, and storage devices.
- 3.1.7.1.3. If the environment as a whole shows a degree of integration compatible with good development, including operating systems, network software, computer aided software engineering (CASE) tools, project management software, configuration management software, compilers, cross-compilers, linkers, loaders, debuggers, editors and reporting software.
- 3.1.7.1.4. The portability and reusability of programming language and compiler.
- 3.1.7.1.5. The extent of ongoing support of hardware and software.
- 3.1.8. MMIS Software Development
  - 3.1.8.1. The Contractor shall Evaluate both the high level and detailed design of all software developed or used by any MMIS Vendor for any MMIS Component. This shall include at minimum all of the following:
    - 3.1.8.1.1. Evaluating all high level design products to Verify the design is workable, efficient, and satisfies all system and system interface requirements.
    - 3.1.8.1.2. Evaluating all detail design products to Verify that the design is workable, efficient, and satisfies all high level design requirements.
    - 3.1.8.1.3. Evaluating the design products for adherence to the project design methodology and standards.
    - 3.1.8.1.4. Evaluating the design and analysis process used to develop the design and make recommendations for improvements.
    - 3.1.8.1.5. Evaluating design standards, methodology and CASE tools used.
    - 3.1.8.1.6. Verifying that design requirements can be traced back to system requirements.
    - 3.1.8.1.7. Verifying that all design products are under configuration control and formally approved before detailed design begins.
    - 3.1.8.1.8. Verifying that all design products are under configuration control and formally approved before coding begins.
  - 3.1.8.2. The Contractor shall Evaluate the batch jobs for appropriate scheduling, timing, and internal and external dependencies as well as ensuring that division between batch and on-line processing to maintain data integrity. This Evaluation shall also include review of the appropriate use of scheduling software and Verification that job control language scripts are under an appropriate level of configuration control.
  - 3.1.8.3. The Contractor shall review the development process of any software coding used by any MMIS Vendor for any MMIS Component and Evaluate it for all of the following:
    - 3.1.8.3.1. Standards and process for code development.

- 3.1.8.3.2. Quality, completeness, including maintenance history, and accessibility of code documentation.
- 3.1.8.3.3. Coding standards and guidelines and the projects compliance with these standards and guidelines.
- 3.1.8.3.4. Code development is kept under appropriate configuration control and is easily accessible by developers.
- 3.1.8.3.5. The project's use of software metrics in management and quality assurance.
- 3.1.8.4. The Contractor shall Evaluate the plans, requirements, environment, tools, and procedures used for unit testing system modules as well as the level of test automation, interactive testing, and interactive debugging available in the test environment.
- 3.1.8.5. The Contractor shall review all unit testing to Verify that an appropriate level of test coverage was achieved by the test process, that test results were verified, that the correct code configuration was tested, and that the tests were appropriately documented.
- 3.1.8.6. The Contractor is not responsible for reviewing any code of any consumer off-the-shelf product, but the Contractor shall Evaluate all interfaces between any such software and any other software or system to Verify that it will function appropriately and will integrate properly into the MMIS.
- 3.1.9. System Testing
  - 3.1.9.1. The Contractor shall provide independent verification and validation of system readiness testing and a go-live recommendation. The Department will complete the actual testing. Each MMIS Vendor will be responsible for performing System Tests on their systems and work together for integration testing, with the Core MMIS Functions and Fiscal Agent Services contractor being the lead or system integrator (The Core MMIS and Supporting Services contractor shall also be responsible for the integration of all systems related to the COMMIT project.)
  - 3.1.9.2. The Contractor shall review all system testing performed by the Department on each MMIS Component. This review shall include, at a minimum, all of the following:
    - 3.1.9.2.1. Evaluating planned testing activities, results reporting, and error correction/resolution, including an appropriate change control and configuration management process, to Verify all of the following:
      - 3.1.9.2.1.1. Test efforts and schedule are based on defined requirements priorities as well as project risk.
      - 3.1.9.2.1.2. Test scenarios address the testable requirements and the build strategy.
      - 3.1.9.2.1.3. Specific business cases and test Verification efforts for each case has been defined.
    - 3.1.9.2.2. Conducting reviews of testing to Validate that critical elements of each MMIS Component are stable and comply with Department requirements as detailed in the Department's contract with the MMIS Vendor for that MMIS Component.

- 3.1.9.2.3. Evaluating the plans, requirements, environment, tools, and procedures used for system testing.
- 3.1.9.2.4. Evaluating the level of automation and the availability of the system test environment.
- 3.1.9.2.5. Verifying that an appropriate level of test coverage is achieved by the test process, that test results are verified, that the correct code configuration has been tested, and that the tests are appropriately documented, including formal logging of errors found in testing.
- 3.1.9.2.6. Verify that the individuals conducting the test have an appropriate level of independence from those completing the development.
- 3.1.9.2.7. Verifying that a sufficient number and type of case scenarios are used to Verify comprehensive but manageable testing and that tests are run in a realistic, real-time environment.
- 3.1.9.2.8. Verifying that test scripts are complete, with step-by-step procedures, required pre-existing events or triggers and expected results.
- 3.1.9.2.9. Acceptance procedures and acceptance criteria for each MMIS Component are defined, reviewed and approved prior to test and the results of the test are documented, and address the process by which any software product that does not pass acceptance testing will be corrected.
- 3.1.9.2.10. Review user acceptance test Validation procedures and provide recommendations to the Department regarding soundness, thoroughness, and applicability.
- 3.1.9.2.11. Validate all user acceptance test results, in accordance with Department Validation procedures developed in conjunction with each MMIS Vendor, prior to implementation and ongoing as changes are made to the MMIS.
- 3.1.10. Data Management
  - 3.1.10.1. The Contractor shall Evaluate each MMIS Vendor's proposed plans, procedures and software for data conversion. This Evaluation shall include, at a minimum, all of the following:
    - 3.1.10.1.1. Verifying that procedures are in place and are being followed to review the completed data for completeness and accuracy and to perform data clean-up as required.
    - 3.1.10.1.2. Determining conversion error rates and if the error rates are manageable.
    - 3.1.10.1.3. Making recommendations on the conversion process to make it more efficient and on maintaining the integrity of data during the conversion.
  - 3.1.10.2. The Contractor shall Evaluate all MMIS Vendor database designs and system processes/workflows to determine if they meet system requirements contained in the MMIS Vendor's contract with the Department. This shall include an Evaluation of all of the following:
    - 3.1.10.2.1. The design for maintainability, scalability, refresh frequency, concurrence, normalization and any other factors affecting performance and data integrity.

- 3.1.10.2.2. The process for administering the database, including backup, recovery, performance analysis and control of data item creation.

## **3.2. REPORTING REQUIREMENTS**

- 3.2.1. The Contractor shall provide the reports listed in this section in the format directed by the Department and containing the information requested by the Department.

### **3.2.2. Management Briefing Report**

- 3.2.2.1. The Contractor shall create a monthly Management Briefing Report for each Management Briefing that contains, at a minimum, all of the following:

- 3.2.2.1.1. Written support and documentation of all items to be presented during the next Management Briefing.

- 3.2.2.1.2. The results or findings of any Evaluations, reviews, Validations or Verifications completed during the prior month or updates in relation to any of the following areas:

- 3.2.2.1.2.1. CMS guidance.

- 3.2.2.1.2.2. Operational oversight.

- 3.2.2.1.2.3. Overview of IV&V Management Plan Updates.

- 3.2.2.1.2.4. Overview of periodic reviews of MMIS Components.

- 3.2.2.1.2.5. Updates to Risk Analysis and Mitigation Plan Review.

- 3.2.2.1.2.6. Overview of Critical Incident Reports produced during the previous month.

- 3.2.2.1.2.7. Overview MMIS Vendor Critical Incident Reports.

- 3.2.2.1.2.8. Project Management updates.

- 3.2.2.1.2.9. Quality Assurance updates.

- 3.2.2.1.2.10. MMIS Operating Environment updates.

- 3.2.2.1.2.11. MMIS Development Environments updates.

- 3.2.2.1.2.12. MMIS Software Development updates.

- 3.2.2.1.2.13. MMIS System Testing updates.

- 3.2.2.1.2.14. MMIS Data Management updates.

- 3.2.2.1.3. Any recommendations to mitigate any risk, deficiency or issue discovered as a result of any Evaluation, review or Verification completed during the prior month.

- 3.2.2.1.4. A Periodic Performance Standard Planning Document that includes the status of each activity shown on the IV&V Management Plan for that MMIS Component as well as the progress since the prior report.

- 3.2.2.1.5. Any updated Work Breakdown Structure developed during the prior month.

- 3.2.2.2. The Contractor shall deliver the Management Briefing Report to the Department on a monthly basis.

- 3.2.2.2.1. DELIVERABLE: Management Briefing Report

- 3.2.2.2.2. DUE: Monthly, no later than seven (7) Business Days following the end of the month the report covers.
- 3.2.3. Staffing Report
  - 3.2.3.1. The Contractor shall create a monthly Staffing Report that contains, at a minimum, all of the following:
    - 3.2.3.1.1. A listing of each Contractor position that contributed to the Work during the month that the report covers.
    - 3.2.3.1.2. A listing of the number of hours worked for each position that contributed to the Work during the month that the report covers.
  - 3.2.3.2. The Contractor shall deliver the Staffing Report to the Department, on a monthly basis, with the Management Briefing Report.
    - 3.2.3.2.1. DELIVERABLE: Staffing Report
    - 3.2.3.2.2. DUE: Monthly, no later than seven (7) Business Days following the end of the month the report covers.

### **3.3. START-UP AND CLOSEOUT PERIODS**

- 3.3.1. The Contract shall have a Start-Up Period (described in section 3.3.2) and a Closeout Period (described in section 3.3.3).
  - 3.3.1.1. The Start-Up Period shall begin on the Effective Date. The Start-Up Period shall end on the Operational Start Date of the Contract.
    - 3.3.1.1.1. The Operational Start Date shall not occur until the Contractor has completed all requirements of the Start-Up Period.
    - 3.3.1.1.2. The Contractor shall not engage in any Work under the Contract, other than the Work described below in the Start-Up Period, prior to the Operational Start Date. The Department shall not be liable to the Contractor for, and the Contractor shall not receive, any payment for any period prior to the Operational Start Date under the Contract.
  - 3.3.1.2. The Closeout Period shall begin on the earlier of ninety (90) days prior to the end of the last renewal year of the Contract or notice of by the Department of non-renewal. The Closeout Period shall end 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 transition is complete.
    - 3.3.1.2.1. This Closeout Period may extend past the termination of the Contract and the requirements of the Closeout Period shall survive termination of the Contract. Any requirements of the Closeout Period that survive termination of the Contract shall be requirements in addition to the Work, and the term of the Contract shall not include any period of time after the termination of the Contract. The Contractor will not be responsible for the review of any Vendor products or participation in Vendor meetings that are delivered or scheduled during the 30 days prior to the termination of the contract and any period after the termination of the contract.

### **3.3.2. Start-Up Period**

- 3.3.2.1. During the Start-Up Period, the Contractor shall complete all of the following:
  - 3.3.2.1.1. Create a Policy and Procedures Manual that contains the policies and procedures for all systems and functions necessary for the Contractor to complete its obligations under the Contract.
    - 3.3.2.1.1.1. DELIVERABLE: Policies and Procedure Manual
    - 3.3.2.1.1.2. DUE: Within ten (10) Business Days after the Effective Date or January 24, 2014 whichever is later.
  - 3.3.2.1.2. Prepare all documents, forms, and any other documents, information and protocols that require approval by the Department. The Contractor shall deliver all documents, forms, 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.
  - 3.3.2.1.3. Create and implement the Business Continuity Plan described in section 2.1.11.
  - 3.3.2.1.4. Create and implement the Start-Up Plan described in section 3.3.4.1.
  - 3.3.2.1.5. Create a Risk Analysis and Mitigation Plan Review Report as required in section 3.1.2.1.2.1.
  - 3.3.2.1.6. Complete all steps, deliverables and milestones contained in the Department-approved Start-Up Plan.
- 3.3.2.2. The Contractor shall provide weekly updates, to the Department, throughout the Start-Up Period, that show the Contractor's status toward meeting the timelines and milestones described in the Department-approved Start-Up plan.
- 3.3.2.3. The Contractor shall ensure that all requirements of the Start-Up Period are complete by the deadlines contained in the Department-approved Start-Up Plan and that the Contractor is operationally ready by the Operational Start Date.
- 3.3.3. Closeout Period
  - 3.3.3.1. During the Closeout Period, the Contractor shall complete all of the following:
    - 3.3.3.1.1. Implement the most recently updated Closeout Plan that has been approved by the Department, as described in section 3.3.4.2.
    - 3.3.3.1.2. Complete all steps, deliverables and milestones contained in the most recently updated Closeout Plan that has been approved by the Department.
    - 3.3.3.1.3. Notify any Subcontractors of the termination of the Contract, as directed by the Department.
    - 3.3.3.1.4. Continue meeting each requirement of the Contract as described in the Department-approved and updated Closeout Plan, or until the Department determines that specific requirement is being performed by the Department or another contractor, whichever is sooner. The Department will determine when any specific requirement is being performed by the Department or another contractor, and will notify the Contractor of this determination for that requirement.
    - 3.3.3.1.5. In the event of a termination prior to the scheduled end of the Contract:

- 3.3.3.1.5.1. 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 Closeout Plan.
- 3.3.3.1.5.2. 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.
- 3.3.3.1.6. Develop and deliver to the Department a post-implementation Evaluation of the Vendors' written assurance that all MMIS Components meet project requirements and that all projects achieved their planned outcomes.
- 3.3.3.1.7. Document lessons learned.
- 3.3.3.2. The Department will perform a closeout review to ensure that the Contractor has completed all requirements of the Closeout Period. The Contractor shall ensure that all responsibilities of the Closeout Period shall be complete by the termination of the Contract. In the event that the 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.
- 3.3.4. Start-Up and Closeout Planning
  - 3.3.4.1. Start-Up Plan
    - 3.3.4.1.1. During the Start-Up Period, the Contractor shall create a Start-Up Plan that contains, at a minimum, all of the following:
      - 3.3.4.1.1.1. A listing of all personnel involved in the start-up and what aspect of the start-up for which they are responsible.
      - 3.3.4.1.1.2. An operational readiness review for the Department to determine if the Contractor is operationally ready to begin performance under the Contract.
      - 3.3.4.1.1.3. The risks associated with Start-Up of the Contract and a plan to mitigate those risks.
    - 3.3.4.1.2. The Contractor shall not implement this plan until the Department has approved the plan. The Contractor shall begin completing all requirements of the Department-approved Start-Up Plan once the Department has approved the plan.
      - 3.3.4.1.2.1. DELIVERABLE: Start-Up Plan
      - 3.3.4.1.2.2. DUE: Within five (5) Business Days after the Effective Date or January 17, 2014 whichever is later.
  - 3.3.4.2. Closeout Plan

- 3.3.4.2.1. The Contractor shall create a Closeout Plan that describes all steps, timelines and milestones necessary to fully transition the services described in the Contract from the Contractor to the Department to another contractor selected by the Department to be the IV&V contractor after the termination of the Contract, if the Contract is terminated prior to the completion of all Work. The Closeout Plan shall also include all steps to wind down the Contract at the scheduled termination of the Contract and designate an individual to act as a closeout coordinator, who will ensure that all steps, timelines and milestones contained in the Closeout Plan are completed. The Contractor shall deliver the Closeout Plan to the Department for review and approval.
- 3.3.4.2.1.1. DELIVERABLE: Closeout Plan
- 3.3.4.2.1.2. DUE: Thirty (30) days following the Effective Date or January 31, 2014 whichever is later.
- 3.3.4.2.2. The Contractor shall update the Closeout Plan, at least annually, to include any technical, procedural or other changes that impact any steps, timelines or milestones contained in the Closeout Plan, and deliver this Closeout Plan Update to the Department for review and approval.
- 3.3.4.2.2.1. DELIVERABLE: Closeout Plan Update
- 3.3.4.2.2.2. DUE: Annually, by June 30th of each year
- 3.3.4.3. Upon review of the Start-Up or Closeout Plans, or any Closeout Plan update, the Department may require the Contractor to make changes to the plan before the Department will approve the plan. The Contractor shall make all changes to these plans as required by the Department.
- 3.3.4.3.1. DELIVERABLE: Changes to the Start-Up Plan or the Closeout Plan required by the Department
- 3.3.4.3.2. DUE: Within three (3) Business Days of the Department's request for the change, unless the Department allows for a longer time in writing

## **SECTION 4.0 COMPENSATION AND INVOICING**

### **4.1. COMPENSATION**

- 4.1.1. The Department shall pay the Contractor upon the Department's acceptance of each deliverable as described in Exhibit B, Rates.
- 4.1.1.1. The payments for the deliverables in Exhibit B, Rates shall be the sole compensation under the Contract. The Contractor shall not receive separate compensation for any deliverables or Work completed unless that deliverable or Work is specifically identified in Exhibit B, Rates.

### **4.2. INVOICING AND PAYMENT PROCEDURES**

- 4.2.1. The Contractor shall invoice the Department on a monthly basis, by the fifteenth (15th) Business Day of the month following the month for which the invoice covers.
- 4.2.2. The invoice shall contain all of the following for the month for which the invoice covers:



- 4.2.2.1. The cost for each deliverable, described in Exhibit B, Rates if that deliverable was accepted by the Department during the month that the invoice covers and was received by their required due dates for the month that the invoice covers.
- 4.2.3. Payment of Invoices
  - 4.2.3.1. The Department shall remit payment to the Contractor, for all amounts shown on an invoice, within forty-five (45) days of 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.
  - 4.2.3.2. 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.
  - 4.2.3.3. In the event that the Department determines that all information on an invoice is correct, the Department shall notify the Contractor of its acceptance of the invoice, in writing.
  - 4.2.3.4. In the event that the Department determines that any information on an invoice is incorrect, the Department will notify the Contractor of this determination and what is incorrect on the invoice. The Contractor shall correct any information the Department determined to be incorrect and resubmit that invoice to the Department for review.
    - 4.2.3.4.1. The Department will review the invoice to ensure that all corrections have been made.
    - 4.2.3.4.2. If all information on the resubmitted invoice is correct, the Department will accept the invoice.
    - 4.2.3.4.3. If any information on the resubmitted invoice is still incorrect, then the Department will return the invoice to the Contractor for correction and resubmission.
  - 4.2.3.5. In the event that the Contractor believes that the calculation or determination of any payment is incorrect, the Contractor shall notify the Department of the error within thirty (30) days of receipt of the payment or notification of the determination of the payment, as appropriate. The Department will review the information presented by the 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.
  - 4.2.3.6. Notwithstanding section 4.1.1, all payments for the final month of the Contract shall be paid to the Contractor no sooner than ten (10) days after the Department has determined that the Contractor has completed all of the requirements of the Closeout Period.

**EXHIBIT B, RATES****Deliverables in the Initial Contract Year SFY 2013-14**

	<b>Quantity</b>	<b>Compensation Amount</b>
IV&V Management Plan (§3.1.1.1.2.1)	1	\$24,500.00
Initial Risk Analysis and Mitigation Plan Review Report (§3.1.2.1.3.1)	1	\$16,500.00
Work Breakdown Structure (§3.1.4.1.1)	1	\$24,500.00
Each Monthly Management Briefing (§3.1.2.4.2.1) \$39,000.00 each.	Up to 8	\$312,000.00
Monthly Delivery of both the Monthly Management Briefing Report (§3.2.2.2.1) and the Staffing Report (§3.2.3.2.1) \$43,500.00 each month.	Up to 8	\$348,000.00
<b>Total</b>		<b>\$725,500.00</b>

**Deliverables in Contract Year SFY 2014-15**

	<b>Quantity</b>	<b>Compensation Amount</b>
Initial Performance Standard Planning Document (§3.1.2.1.1.1)	1	\$16,500.00
Updated Performance Standard Planning Document (§3.1.2.1.2.1) \$9,000.00 each	2	\$18,000.00
Updated Risk Analysis and Mitigation Plan Review Report (§3.1.2.1.3.3) \$9,000.00 each	2	\$18,000.00
Each Monthly Management Briefing (§3.1.2.4.2.1) \$39,000.00 each.	12	\$468,000.00
Monthly Delivery of both the Monthly Management Briefing Report (§3.2.2.2.1) and the Staffing Report (§3.2.3.2.1) \$43,500.00 each month.	12	\$522,000.00
<b>Total</b>		<b>\$1,042,500.00</b>

**Deliverables in Contract Year SFY 2015-16**

	<b>Quantity</b>	<b>Compensation Amount</b>
Monthly Management Briefing (§3.1.2.4.2.1) \$39,000.00 each.	12	\$468,000.00
Delivery of both the Monthly Management Briefing Report (§3.2.2.2.1) and the Staffing Report (§3.2.3.2.1) \$43,500.00 each month.	12	\$522,000.00
<b>Total</b>		<b>\$990,000.00</b>

**Deliverables in Contract Year SFY 2016-17**

	<b>Quantity</b>	<b>Compensation Amount</b>
Monthly Management Briefing (§3.1.2.4.2.1) \$39,000.00 each.	12	\$468,000.00
Delivery of both the Monthly Management Briefing Report (§3.2.2.2.1) and the Staffing Report (§3.2.3.2.1) \$43,500.00 each month.	12	\$522,000.00
<b>Total</b>		<b>\$990,000.00</b>

**EXHIBIT C, SAMPLE OPTION LETTER**

<b>Date:</b>	<b>Original Contract Routing # CMS #</b>	<b>Option Letter #</b>	<b>Contract Routing #</b>
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1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.

- a. Option to renew only *(for an additional term)*
- b. Change in the amount of goods within current term
- c. Change in amount of goods in conjunction with renewal for additional term
- d. Level of service change within current term
- e. Level of service change in conjunction with renewal for additional term
- f. Option to initiate next phase of a contract

2) **REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:

- a. **For use with Options 1(a-e):** In accordance with Section(s) \_\_\_\_\_ of the Original Contract between the State of Colorado, Department of Health Care Policy and Financing, and Contractor's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at a cost/price specified in Section \_\_\_\_\_, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Identify the Section, Schedule, Attachment, Exhibit etc.
- b. **For use with Option 1(f), please use the following:** In accordance with Section(s) \_\_\_\_\_ of the Original Contract between the State of Colorado, Department of Health Care Policy and Financing, and Contractor's Name, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc for the term beginning Insert start date and ending on Insert ending date at the cost/price specified in Section \_\_\_\_\_.
- a. **For use with all Options 1(a-f):** The amount of the current Fiscal Year contract value is increased/decreased by \$ amount of change to a new contract value of tt to as consideration for services/goods ordered under the contract for the current fiscal year
- t. The first sentence in Section \_\_\_\_\_ is hereby modified accordingly. The total contract value including all previous amendments, \_\_\_\_\_ option \_\_\_\_\_ letters, \_\_\_\_\_ etc. \_\_\_\_\_ is \_\_\_\_\_ tt.

3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

<b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> Department of Health Care Policy and Financing
By: Insert Name & Title of Person Signing for Agency or IHE  Date: _____

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER  
Robert Jaros, CPA, MBA, JD

By: \_\_\_\_\_

Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

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