

CONTRACT AMENDMENT #1

SIGNATURE AND COVER PAGE

State Agency Department of Human Services Office of Behavioral Health	Original Contract Number 18 IHJA 107351
Contractor City and County of Denver, Department of Human Services	Amendment Contract Number 20 IHJA 129240
Current Contract Maximum Amount Initial Term State Fiscal Year 2018 \$92,396.00 State Fiscal Year 2019 \$317,469.00 Extension Terms State Fiscal Year 2020 \$369,075.00 Total for All State Fiscal Years \$778,940.00	Contract Performance Beginning Date June 19, 2018 Current Contract Expiration Date June 30, 2020

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

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

CONTRACTOR City and County of Denver Department of Human Services	STATE OF COLORADO Jared Polis, Governor Department of Human Services Michelle Barnes, Executive Director
By: Bob McDonald, Executive Director	By: Carie Gaytan, Director of Finance Office of Behavioral Health
Date: _____	Date: _____

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Clint Woodruff / Andrea Eurich

Amendment Effective Date: _____

1. PARTIES

This Amendment (the "Amendment") to the Original Contract shown on the Signature and Cover Page for this Amendment (the "Contract") is entered into by and between the Contractor, and the State.

2. TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Contract shall be construed and interpreted in accordance with the Contract.

3. AMENDMENT EFFECTIVE DATE AND TERM

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in §3.B of this Amendment.

B. Amendment Term

The Parties' respective performances under this Amendment and the changes to the Contract contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment or July 01, 2019, whichever is later and shall terminate on the termination of the Contract.

4. PURPOSE

The purpose of this contract amendment is to update and replace the following exhibits for FY20 contract extension and renewal: Budget for FY20; Work Plan; Miscellaneous Provisions to include cost of living adjustment language; and HIPAA BAA/QSOA with the most current version.

5. MODIFICATIONS

The Contract and all prior amendments thereto, if any, are modified as follows:

- A.** The Contract Initial Contract Expiration Date on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Expiration Date shown on the Signature and Cover Page for this Amendment.
- B.** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown on the Signature and Cover Page for this Amendment.
- C.** REPLACE Exhibit B., Budget with Exhibit B-1., Budget, attached hereto and incorporated by reference.
- D.** REPLACE Exhibit C., Work Plan with Exhibit C-1., Work Plan, attached hereto and incorporated by reference.
- E.** REPLACE Exhibit D., Miscellaneous Provisions with Exhibit D-1., Miscellaneous Provisions, attached hereto and incorporated by reference.

F. REPLACE Exhibit E., HIPAA BAA/QSOA with Exhibit E-1., HIPAA BAA/QSOA, attached hereto and incorporated by reference.

6. LIMITS OF EFFECT AND ORDER OF PRECEDENCE

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments or other modifications to the Contract, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract or any prior modification to the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Contract to the extent that this Amendment specifically modifies those Special Provisions.



COLORADO
Office of Behavioral Health
Department of Human Services

**Colorado Department of Human Services
Office of Behavioral Health**

FY20 ANNUAL CAPACITY BUDGET

Exhibit B-1., Budget

Program	CRIMINAL JUSTICE DIVERSION Co-Responder
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Agency Name	Office of Behavioral Health Strategies, Community and Behavioral Health Division, DDPHE
Budget Period	July 1, 2019 - June 30, 2020
Project Name	Denver SUN Co-Responder

Program Contact Name, Title	Tien Tong, Program Administrator
Phone	720-768-8391
Email	Viet-Tien.Tong@denvergov.org
Fiscal Contract Name, Title	Tien Tong, Program Administrator
Phone	720-768-8391
Email	Viet-Tien.Tong@denvergov.org
Date Completed	3/22/2019

All budget numbers are estimates. Contract billing will be on a cost reimbursement basis for actual expenses incurred.

EXPENDITURE CATEGORIES					
Staff Cost: Salary/Benefits					Annual Budget
Position Title	Description of Work	Gross or Annual Salary	Fringe	Percent of Time on Project	Total Amount Requested from OBH
Program Administrator	Oversee program development and implementation; facilitate partnerships for guiding and improving program activities;	\$ 79,472.00	\$ 20,662.00	50%	\$ 50,067.00
					\$ -
Personnel Services-Hourly Employees					Annual Budget
Position Title	Description of Work	Hourly Wage	Hourly Fringe	Total # of Hours on Project	Total Amount Requested from OBH
					\$ -
Total Personnel Services (including fringe benefits)					\$ 50,067.00
Client Costs					Annual Budget
Item	Description of Item	Rate	Quantity	Total Amount Requested from OBH	
				\$ -	
Total Client Costs					\$ -

Contract/Consultants Services (Subcontracts)				Annual Budget
Name	Description of Work	Rate	Quantity	Total Amount Requested from OBH
Denver Health	Salary and fringe for two licensed Substance Use Navigators: \$182,786;	210,754.00	1	\$ 210,754.00
ARTS	Salary and fringe for one Peer Specialist: \$50,460	73,102.00	1	\$ 73,102.00
Denver Health, ARTS	Indirect costs	28,384.00	1	\$ 28,384.00
Total Contract Services				\$ 312,240.00
Occupancy				Annual Budget
Item	Description of Item	Rate	Quantity	Total Amount Requested from OBH
				\$ -
Total Occupancy				\$ -
Operating				Annual Budget
Item	Description of Item	Rate	Quantity	Total Amount Requested from OBH
Mileage/Travel	Travel for quarterly or other program or grant-related meetings	\$ 259.00	4	\$ 1,036.00
Cell phone	Cell phone for Program Manager	\$ 50.00	12	\$ 600.00
				\$ -
Total Operating				\$ 1,636.00
Depreciation/Amortization				Annual Budget
Item	Description of Item			Total Amount Requested from OBH
				\$ -
Total Depreciation/Amortization				\$ -
Professional Fees				Annual Budget
Item	Description of Item	Rate	Quantity	Total Amount Requested from OBH
				\$ -
Total Professional Fees				\$ -

MSO Provider Fee				Annual Budget
Item	Description of Item	Rate	Quantity	Total Amount Requested from OBH
				\$ -
Total MSO Provider Fee				\$ -
TOTAL DIRECT COSTS (TDC)				\$ 363,943.00
Less: Expenses per OMB 2CFR § 200				
	Subcontracts in excess of \$25,000			\$ -
	Rent			\$ -
	Equipment			\$ -
	Other Unallowable Expenses			\$ -
Total Expenses per OMB 2CFR § 200				\$ -
MODIFIED TOTAL DIRECT COSTS (MTDC)				\$ 363,943.00
Indirect Costs [not to exceed 10% unless Negotiated Federal Indirect Cost rate or Negotiated State Indirect Cost rate is attached]				Annual Budget
Item	Description of Item	Percentage	Total Amount Requested from OBH	
Negotiated Federal Indirect cost rate			\$ -	
Negotiated State Indirect cost rate			\$ -	
or 10% Indirect rate:		1.41%	\$ 5,131.60	
Total Indirect				\$ 5,131.60
Grand Total Expenses				\$ 369,075.00
Revenue Offset				Annual Budget
Client Services				
Medicaid Fee for Service Cash				\$ -
Medicaid Capitation Encounters <i>valued at the Cost Per Unit of Service per unity Cost Report of Negotiated Rates received from Regional Accountable Entity (RAE)*</i>				\$ -
OBH Indigent Encounters**				\$ -
3rd Party Insurance Cash Receipts				\$ -
Medicare Cash				\$ -
Self-Pay/Client Fees				\$ -
Cash from other Sources: (Specify below)				\$ -
				\$ -
				\$ -
Total Client Services				\$ -
*The rate that your entity is receiving must be used to offset costs in this area				
**Encounters valued using the current year's fee for services schedule issued by OBH and not to exceed contract amount				

Contracts and Grants	
MSO Revenue	\$ -
Non-Governmental Contracts	\$ -
Other State Revenue/Accrual	\$ -
Federal Grant Funds/Accrual	\$ -
Local Funds/Accrual	\$ -
Private Grant Funds/Accrual	\$ -
Public Support	\$ -
Private Support	\$ -
In-Kind Donations	\$ -
Required Match Funds	\$ -
Other Funds (Specify below)	\$ -
	\$ -
Total Contracts and Grants	\$ -
Grand Total Revenue Offset	\$ -
Net Cost	\$ 369,075.00

The Parties may mutually agree, in writing, to modify the Budget administratively using an OBH Budget Reallocation form

EXHIBIT C-1., WORKPLAN
Denver SUN - Co-Responder Services Program

PROJECT WORK PLAN

(1) Goal:	Prevent unnecessary incarceration and/or hospitalization of persons with substance use and/or co-occurring mental health and substance use disorders.		
Objectives:	1. Outreach and respond to 50 calls for services over a 12 month period. 2. Of persons contacted who are eligible, engage 25% into continued treatment services. 3. Of persons who engage in further treatment, reduce substance-related hospitalizations by 10%. 4. Of persons who engage in further treatment, reduce recidivism by 10%.		
Project activities that support the identified goal and objectives	Responsible staff/ partners	Timeline	
		Start Date	End Date
1. Convene quarterly Program Coordination Group meetings to ensure effective engagement and service delivery	1. Program Administrator with key operational partners: - DPD Sergeant - CIRU Co-responder - Navigators - Peer Support Specialist	September 2018	6/30/2020
2. Convene monthly SUN Steering Committee meetings to review program outcomes and strategies for improvement and foster strategic partnerships	2. Program Administrator with partners (see roster)	September 2018	6/30/2020
3. Deploy SUNs to respond with DPD and other referral agencies including CIRU, Sheriffs, Park Rangers, Colorado State Patrol, and other Outreach workers, to calls identifying participants with potential substance use treatment needs and co-occurring mental health-related needs.	3. SUNs; Administrator help to coordinate between SUNs and referral agencies	December 2018	6/30/2020
4. Deploy a part time Peer Support Specialist to provide additional follow-up services and support to program participants.	4. ARTS subcontractor; Administrator help to coordinate between SUNs and Peer Specialist	April 2019	6/30/2020
5. Provide screening and cross-system navigation for appropriate level of care to 50 participants over 12 months (Monday – Friday)	5. Denver Health SUNs with support of all stakeholders	December 2018	6/30/2020

6. Engage access to appropriate treatment for 25% participants contacted over 12 months, who are eligible and interested in receiving further treatment services, including peer support services, medication assisted treatment and/or case management. Utilize communication, transportation, snacks, basic need items to incentivize and reward clients for participation and ongoing treatment (Monday – Friday)	6. Denver Health and ARTS subcontractors	December 2018	6/30/2020
7. Reduce substance use hospitalizations by 10%, for participants who engage in treatment. Measure substance-related emergency hospitalizations pre- and post-program engagement – based on Denver Health access to medical information.	7. Denver Health	July 2019	6/30/2020
8. Reduce recidivism by 10% for participants who engage in treatment. Track system involvement for those who continue to engage in treatment. Data is tracked based on self-report and knowledge from referring agencies.	8. Denver Health and ARTS subcontractors	July 2019	6/30/2020

(2) Goal:	Prevent duplication of mental health services		
Objectives:	1. Track data and measures for 100% of individuals referred that enroll in SUN program. 2. Analyze participant data between all stakeholders to examine program completion and utilization of other mental/behavioral health services. 3. Coordinate with other existing programs operating in the catchment area. 4. Relieve 25% of law enforcement calls to SUN to return to patrol duty where they were not necessary.		
Project activities that support the identified goal and objectives	Responsible staff/ partners	Timeline	
		Start Date	End Date
1. Collect data weekly or more/less often depending on occurrence. Update based on changes or additional services received.	1. Subcontractors in coordination with Program Administrator	December 2018	6/30/2020
2. Align data collection and sharing with SUN stakeholders. (Monthly)	2. PCG members, coordination by Administrator	September 2018	6/30/2020
3. Meet and coordinate with other stakeholder groups doing related work in the catchment area including Civic Center Conservancy, State Troopers, Park Rangers, Denver Public Library, business improvement districts, as appropriate. (Quarterly)	3. Steering Committee members, coordination by Administrator	September 2018	6/30/2020
4. Coordinate cross-training within and between partners to ensure updated awareness on related programs and practices. 2 to 4 trainings per year	4. PCG members	April/May 2019	6/30/2020
5. Communicate a plan for warm hand-off for each contact, or as appropriate	5. SUNs with referral agencies	December 2018	6/30/2020

EXHIBIT D-1., MISCELLANEOUS PROVISIONS

Co-Responder Program

I. General Provisions and Requirements

A. Finance and Data Protocols

The Contractor shall comply with the Office of Behavioral Health's (OBH) most current Finance and Data Protocols and the Behavioral Health Accounting and Auditing Guidelines, made a part of this Contract by reference.

B. Print and Marketing Materials

When the Contractor publishes newsletters, consumer pamphlets, or other publications where financial contributors/funders are noted, the State shall be listed as funder. Contractor shall include the current Colorado Department of Human Services logo on any visual marketing materials that advertise programs funded by this Contract.

C. Option Letter

For contracts using State funding: The State may increase or decrease the rates established in the Contract in **Exhibit B-1, "Budget,"** based upon a County-initiated cost of living adjustment through an option letter. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Contract Section 23, **"Sample Option Letter."** Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract.

Start-up Costs

If the State reimburses the Contractor for any start-up costs and the Contractor closes the program or facility within three years of receipt of the start-up costs, the Contractor shall reimburse the State for said start-up costs within sixty (60) days of the closure. The Contractor is not required to reimburse the State for start-up costs if the facility or program closure is due to OBH eliminating funding to that specific program and/or budget line item.

D. Immediate Notification of Closures / Reductions in Force

If the Contractor intends to close a facility or program, it shall notify the OBH Contracts Unit at least five business days prior to the closure. Similarly, if the Contractor, or any sub-contractor provider, intends to conduct a reduction in force which affects a program funded through this contract, the Contractor shall notify the OBH Contracts Unit at least five business days prior to the layoffs.

E. Licensing and Designation Database Electronic Record System (LADDERS)

The Contractor shall use LADDERS (<http://www.colorado.gov/ladders>) as needed and/or as required by rule to submit applications for OBH licensing and designation, keep current all provider directory details, update daily bed counts (as applicable), and submit policies and procedures.

F. Contract Contact Procedure

The Contractor shall submit all requests for OBH interpretation of this Contract or for amendments to this Contract to the OBH Contract Manager.

G. The Contractor shall comply with all the provisions and requirements of RFP # 2018000065.

II. Additional Remedies

A. Duty to Act in Good Faith

The Contractor shall comply with all the provisions of this contract and its amendments, if any, and shall act in good faith in the performance of the requirements of said contract. The Contractor agrees that failure to act in good faith in the performance with said requirements may result in the assessment of remedial actions, liquidated damages and/or termination of the contract in whole or in part and/or other actions by the State as allowed by law as set forth in this contract.

Corrective Action

The State will notify the Contractor of non-compliance and subsequently, after consultation with the Contractor, will establish a schedule for the Contractor to cure non-compliance. The Contractor shall be responsible for the submission of a plan of corrective action in accordance with said schedule. If full compliance is not achieved, or a plan of action for correction is not submitted and approved by the State within the scheduled time frame, the State may exercise remedies specified in the General Provisions "Remedies" section of this Contract. If the State determines that the Contractor continues to be out of compliance with the Contract, the State may exercise liquidated damages herein.

Liquidated Damages.

If an extension of time is not granted by the State, and the required performance associated with this contract is not received from the Contractor then liquidated damages of \$300 a day will be assessed and may be permanently withheld from payments due to the Contractor for each day that performance is late. The parties agree that incomplete or incorrect performance shall also be cause for "late performance." The parties agree that the damages from breach of this contract are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the State from late performance, including costs of additional inspection and oversight, and lost opportunity for additional efficiencies that would have attended on-time completion of performance. Assessment of liquidated damages shall not be exclusive of or in any way limit remedies available to the State at law or equity for Contractor breach.

III. Audit Requirements

A. Independent Audit Requirements

1. "Independent financial audit" shall be defined as follows— a financial audit conducted by a certified public accounting firm or certified public accountant (CPA) in accordance with generally accepted accounting principles and applicable federal regulations. The CPA or firm must be independent of the Contractor. "Independent" means not a regular full-time or part-time employee of the Contractor and not receiving any form of compensation from the Contractor other than compensation that the CPA receives for the conduct of the financial audit.
2. If the Contractor or sub-contractor expends federal awards from all sources (direct or from pass-through entities) in an amount of \$300,000 or more during its fiscal year shall have an independent financial audit performed annually. The audit shall identify, examine, and report the income and expenditures specific to operation of the services described in this contract. The audit will be presented in the format specified in the "Accounting and Auditing Guidelines" for Colorado Department of Human Services, Office of Behavioral Health (OBH), found on the OBH website.

3. The Contractor agrees to comply with the qualified or disclaimer opinion rendered by the independent auditor on financial statements or the negative opinion on peer review reports. Non-compliance with these standards shall result in enforcement of remedies against the Contractor as provided in this Contract.

B. Annual Single Audit

1. If the Contractor or sub-contractor expends federal awards from all sources (direct or from pass-through entities) in an amount of \$750,000 or more during its fiscal year, then the Contractor or sub-contractor shall have an audit of that fiscal year in accordance with the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507).

IV. Financial Requirements

A. Funding Sources

1. The Contractor shall identify all funds delivered to subcontractors as state general fund, state cash funds, or federal grant dollars in **Exhibit B-1, "Budget."**
2. If a Single Audit is performed in accordance with Section III.B. above, the Contractor shall report the amount of the federal grant identified in the budget under the CFDA number identified on the first page of this Contract.
3. The Contractor shall communicate the CFDA number to all sub-contractors in their sub-contracts.

B. Unit Cost Report

1. Contractor and all sub-contractors providing behavioral health treatment and recovery services shall complete and submit a unit cost report in accordance with the accounting and auditing guidelines by November 30th each year.

C. Budget Reallocations

1. The Contractor may reallocate funds between the budget categories of this contract, up to 10% of the total contract amount, upon written approval by OBH, without a contract amendment. Any allowable reallocation is still subject to the limitations of the Not to Exceed and the Maximum Amount Available per Fiscal Year.

D. Payment Terms

1. The Contractor shall invoice monthly for services, no later than the 20th of the month following when services are provided.
2. The Contractor shall utilize the invoice template(s) provided by OBH.
3. All payment requests shall be submitted electronically to OBHpayment@state.co.us
4. Any requests for payment received after September 10th for the prior state fiscal year cannot be processed by OBH.
5. The State will make payment on invoices within 45 days of receipt of a correct and complete invoice to OBHpayment@state.co.us. Consequently, the Contractor must have adequate solvency to pay its expenses up to 45 days after invoice submission to the State.

EXHIBIT E-1., HIPAA BUSINESS ASSOCIATE AGREEMENT

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

1. PURPOSE

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

2. DEFINITIONS

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

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

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

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

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Permitted Uses and Disclosures.
 - i. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.

- i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
 - ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
 - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
 - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
 - iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
- b. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).
- c. Impermissible Uses and Disclosures.
 - i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
 - ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.
- d. Business Associate's Subcontractors.
 - i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.
 - ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
 - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- e. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available at <http://oit.state.co.us/about/policies>.

- f. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.
- g. Amendment of PHI.
 - i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
 - ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
- h. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
- i. Restrictions and Confidential Communications.
 - i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
 - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
 - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
 - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
 - iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.
- j. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.
- k. Audit, Inspection and Enforcement.
 - i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.
 - ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

l. Appropriate Safeguards.

- i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
- ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
- iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
- iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

m. Safeguard During Transmission.

- i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
- ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

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

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

o. Business Associate's Insurance and Notification Costs.

- i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:
 - A. loss of PHI data;
 - B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.;
 - and

- C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
 - ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
 - iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
 - iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.
 - p. Subcontractors and Breaches.
 - i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
 - ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.
 - q. Data Ownership.
 - i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
 - ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.
 - r. Retention of PHI. Except upon termination of this Agreement as provided in Section 5, below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h, above, for a period of six years.
4. OBLIGATIONS OF COVERED ENTITY
- a. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.
 - b. Notice of Changes.

- i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.
- ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. TERMINATION

a. Breach.

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

b. Effect of Termination.

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

6. INJUNCTIVE RELIEF

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

7. LIMITATION OF LIABILITY

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

8. DISCLAIMER

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

9. CERTIFICATION

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

10. AMENDMENT

- a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
 - i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
 - ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.
 - iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
 - iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
 - A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
 - B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.
- b. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

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

12. INTERPRETATION AND ORDER OF PRECEDENCE

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

13. SURVIVAL

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

APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

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

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

1. PURPOSE

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

2. ADDITIONAL TERMS

- a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
 - i. Reserved.
- b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
 - i. Reserved.
- c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:
 - i. Subcontractors with Patient Consent.
- d. Definition of Receipt of PHI. Business Associate's receipt of PHI under this Contract shall be deemed to occur, and Business Associate's obligations under the Agreement shall commence, as follows:
 - i. Reserved.
- e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate's use and disclosure of PHI under the Contract:
 - i. Covered Entity is a Business Associate of certain other Covered Entities and, pursuant to such obligations of Covered Entity, Associate shall comply with the following restrictions on the use and disclosure of Protected Information:
 - ii. The Associate:
 - A. Acknowledges this agreement qualifies as a Qualified Service Organization Addendum as the agreement is between a Substance Abuse Program ("Program") and a Qualified Service Organization as defined by 42 C.F.R. Part 2.
 - B. Acknowledges that in receiving, transmitting, transporting, storing, processing or otherwise dealing with any information received from the Program identifying or otherwise relating to the patient in the Program ("protected information"), it is

fully bound by the provisions of the federal regulations governing the Confidentiality of Substance Use Disorder Abuse Patient Records, 42 C.F.R. Part 2. Protected information encompasses protected health information ("PHI") and references to PHI shall be understood to include protected information.

- C. Agrees to resist any efforts in judicial proceeding to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Substance Use Disorder patient Records, 42 C.F.R. Part 2.
 - D. Agrees that if the Associate enters into a contract with any agent or subcontractor, the agent or subcontractor will agree to comply with 42 C.F.R Part 2.
 - E. Agrees to ensure that any agent or subcontractor to whom the Associate provides protected information received from the Program, or creates or receives on behalf of the Program, agrees to the same restrictions and conditions that apply through this agreement to the Associate with respect to such information.
 - F. Agrees that redisclosure of protected information is prohibited unless permitted by 42 C.F.R. Part 2.
- f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:
- i. Reserved.