



**COLORADO**  
Division of Homeland Security  
& Emergency Management  
Department of Public Safety

Office of Grants Management  
8000 South Chester Street, Suite 575  
Centennial, CO 80112

Matthew Mueller  
Executive Director  
The City and County of Denver  
101 West Colfax Avenue, 7<sup>th</sup> Floor  
Denver, CO 80202

September 26, 2024

24UASI-25-DEN

Dear Executive Director **Mueller**:

We are pleased to inform you that the Colorado Department of Public Safety, Division of Homeland Security and Emergency Management (DHSEM) has approved the City and County of Denver's application for funding pursuant to the Urban Area Security Initiative (UASI or "Program") in the amount of \$2,800,387.00 from Federal funds. This letter authorizes you to proceed with the approved application projects ("Project") in accordance with the terms of this Grant Award Letter.

Attached to this letter are the terms and conditions of your Grant. Please review these terms and conditions as they are requirements of this Grant to which you Grantee agree by accepting the Grant Funds.

If you have questions regarding this Grant, please contact: Jerry Maestas at either [Jerry.Maestas@state.co.us](mailto:Jerry.Maestas@state.co.us) or (303) 565-0049.

Sincerely,

**Gerald J. Maestas**  
Grant Specialist  
Colorado Department of Public Safety  
Division of Homeland Security and Emergency Management

CC: Grant File



**COLORADO**  
Department of Public Safety

700 Kipling Street, Lakewood, CO 80215 | [www.colorado.gov/publicsafety](http://www.colorado.gov/publicsafety)

Jared Polis, Governor | Stan Hilkey, Executive Director

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# GRANT AWARD LETTER

## SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

**State Agency**

Department of Public Safety, Division of Homeland Security and Emergency Management

**Grantee**

The City and County of Denver

**Grantee UEI**

JPKVFSLKLVJ5

**Agreement Number**

24UASI-25-DEN

**Agreement Performance Beginning Date**

September 1, 2024

**Current Agreement Expiration Date**

August 31, 2027

**Current Agreement Maximum Amount**

\$2,800,387.00

**Current Agreement Match Amount**

\$0.00

**FEDERAL AWARD INFORMATION****Federal Award ID # (FAIN)**

EMW-2024-SS-05074

**Federal Award Date**

September 20, 2024

**Federal Awarding Agency**

DHS / FEMA

**Assistance Listing (CFDA)**

97.067

Homeland Security Grant Program

**Identification if the Award is for R&D:**

No

**GRANT AUTHORITY**

- A. Federal Authority to enter into this Grant exists in Section 2002 of the Homeland Security Act of 2002 (Pub. L. No. 107-296, as amended) (6 U.S.C. § 603);
- B. State Authority: to enter this Grant exists in CRS §24-1-128.6.

**GRANT PURPOSE**

The State Homeland Security Program (SHSP) assists state, local, tribal, and territorial (SLTT) efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.

**EXHIBITS AND ORDER OF PRECEDENCE**

1. Exhibit A, Statement of Work.
2. Exhibit B, Budget.
3. Exhibit C, Federal Provisions.
4. Exhibit D, PII Certification.
5. Exhibit E, HIPAA BAA.
6. Exhibit F, Sample Option Letter.
7. Exhibit G, FEMA Project Worksheet.

In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Exhibit E, HIPAA BAA.
2. Exhibit C, Federal Provisions
3. Colorado Special Provisions in §17 of the main body of this Grant
4. The provisions of the other sections of the main body of this Grant
5. Exhibit A, Statement of Work
6. Exhibit D, PII Certification
7. Exhibit B, Budget

# SIGNATURE PAGE

THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

## STATE OF COLORADO

Jared S. Polis, Governor  
Department of Public Safety,  
Division of Homeland Security and Emergency  
Management Stan Hilkey, Executive Director

Michael  
Haney

Digitally signed by Michael  
Haney  
Date: 2024.10.23 12:42:30  
-06'00'

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By: Kevin R. Klein, Director , DHSEM,  
or DHSEM Director Delegate

Date: 10.23.2024

## STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

Laura Dehart

Digitally signed by Laura  
Dehart  
Date: 2024.10.24 13:31:15  
-06'00'

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By: Robert Jaros, CPA, MBA, JD  
or State Controller Delegate

Option Effective Date: 10/24/2024

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

## 1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the “State”) hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the “Grantee”) an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

## 2. TERM

### A. Initial Grant Term and Extension

The Parties’ respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter showing the new Grant Expiration Date. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Exhibit F.

### B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

### C. Grantee’s Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Budget**” means the budget for the Work described in Exhibit B.
- B. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- C. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- D. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- E. “**Exhibits**” exhibits and attachments included with this Grant as shown on the first page of this Grant.
- F. “**Extension Term**” means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter.
- G. “**Federal Award**” means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Regulations by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- H. “**Federal Awarding Agency**” means a Federal agency providing a Federal Award to a Recipient. The Federal Emergency Management Agency (FEMA) is the Federal Awarding Agency for the Federal Award which is the subject of this Grant.
- I. “**Goods**” means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- J. “**Grant Award Letter**” means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- K. “**Grant Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- L. “**Grant Expiration Date**” means the Grant Expiration Date shown on page one (1) of this Grant Award Letter.
- M. “**Grant Issuance Date**” means the Grant Issuance Date shown on page one (1) of this Grant Award Letter.
- N. “**Grantee**” means the entity shown on page one (1) of this Grant Award Letter; an individual or organization that has been awarded this grant. For the purposes of this Grant, Grantee is also referred to as Subrecipient.
- O. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.

- P. **“Initial Term”** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- Q. **“Matching Funds”** means the funds provided by the Grantee as a match required to receive the Grant Funds.
- R. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- S. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- T. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S. **“PII”** shall also mean **“personal identifying information”** as set forth at § 24-74-102, et. seq., C.R.S.
- U. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- V. **“Recipient”** means the State Agency shown on the first page of this Grant Award Letter, for the purposes of the Federal Award.
- W. **“Services”** means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
- X. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- Y. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- Z. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

- AA. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- BB. **“Sub-Award”** means this grant by the State (a Recipient) to Grantee (a Subrecipient) funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- CC. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- DD. **“Subrecipient”** means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization entity that receives a Sub-Award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Grant, Grantee is a Subrecipient.
- EE. **“Tax Information”** means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes, but is not limited to all information defined as Federal tax information in Internal Revenue Service Publication 1075.
- FF. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- GG. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- HH. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

#### 4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

#### 5. PAYMENTS TO GRANTEE

##### A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Amount



shown on page one (1) of this Grant Award Letter. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

- i. The State, in good faith, may unilaterally increase or decrease the total funds available under this Grant during any State Fiscal Year, or the funds available for any specific line item described in this Grant. In Order to Exercise this right, the State shall provide written notice to Grantee in a form substantially equivalent to Exhibit F. The exercise of this right shall not be valid until it has been approved by the State Controller or delegate.

B. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

Grantee shall provide the Local Match Amount shown on page one (1) of this Grant Award Letter and described in Exhibit A (the "Local Match Amount"). Grantee's obligation to pay all or part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purpose of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

D. Reimbursement of Grantee Costs

Upon prior written approval, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Grant Award Letter or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the Federal share of properly documented allowable costs related to the Work after the State's review and approval thereof, subject to the provisions of this Grant. The State shall only reimburse allowable costs if those costs are:

- i. reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- ii. equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Modification of Grant Rates

The rates shown in Exhibit B are determined by the approved applications by the Federal Emergency Management Agency (FEMA). The State, at its discretion, shall have the option to increase or decrease the rates shown in Exhibit B, as the State determines is necessary to account for FEMA updates to current awards issued. In order to exercise this option, the State shall provide written notice to Grantee in a form substantially equivalent to Exhibit F, and any new rates table or exhibit shall be effective as of the effective date of that notice unless the notice provides for a different date.

F. Close-Out

Grantee shall close out this Grant **within 45 days** after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within 1 year and 90 days after the Grant Expiration Date due to Grantee's failure to submit required documentation, then Grantee may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

## 6. REPORTING - NOTIFICATION

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out described in **§5.F**, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

## 7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee. The State shall have the right, in its sole discretion, to change its monitoring

procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work. If Grantee enters into a subcontract or subgrant with an entity that would also be considered a Subrecipient, then the subcontract or subgrant entered into by Grantee shall contain provisions permitting both Grantee and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

## 8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJ, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit D on an annual basis Contractor's duty and obligation to certify as set forth in Exhibit D shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

**9. CONFLICTS OF INTEREST**

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen,

Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.

#### **10. INSURANCE**

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

#### **11. REMEDIES**

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant or any terms of the Federal Award, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

#### **12. DISPUTE RESOLUTION**

Except as herein specifically provided otherwise or as required or permitted by federal regulations related to any Federal Award that provided any of the Grant Funds, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

#### **13. NOTICES AND REPRESENTATIVES**

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

#### **14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

#### **15. GOVERNMENTAL IMMUNITY**

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

## 16. GENERAL PROVISIONS

### A. Assignment

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

### B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter 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.

### C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

### D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

### E. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee 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. Digital Signatures

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

### G. Severability

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

### H. Survival of Certain Grant Award Letter Terms

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

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

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

K. Accessibility

i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

ii. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

L. Federal Provisions

Grantee shall comply with all applicable requirements of Exhibit C at all times during the term of this Grant.

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

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

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

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

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

**C. GOVERNMENTAL IMMUNITY.**

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

**D. INDEPENDENT CONTRACTOR.**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (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 comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

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

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

**G. PROHIBITED TERMS.**

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

**H. SOFTWARE PIRACY PROHIBITION.**

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

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

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



# EXHIBIT A, STATEMENT OF WORK

## 1. GENERAL DESCRIPTION OF THE PROJECT(S).

- 1.1 Project Description.** Support preparedness activities to build and sustain core capabilities across the Prevention, Protection, Mitigation, Response and Recovery mission areas essential to achieving the National Preparedness Goals of a secure and resilient Nation. Grantee will execute and complete the projects as specified and outlined in their approved 2024 application.
- 1.2 Project Expenses.** Project expenses include the costs as described in §1.1 of this Exhibit A. All eligible expenses are listed in the budget table in Exhibit B.
- 1.3 Non-Federal Match:** This non-federal match section does not apply to this Grant. If applicable the match may include in-kind match. Documentation of expenditures for any non-federal match contribution is required with each drawdown request.

## 2. PRINCIPAL REPRESENTATIVES:

### For the State:

Gerald J. Maestas, Grant Specialist  
Department of Public Safety, Division of  
Homeland Security & Emergency Management  
8000 South Chester Street, Suite 575  
Centennial, CO 80112  
Jerry.Maestas@state.co.us

### For Grantee:

Matthew Mueller, Executive Director  
The City and County of Denver  
  
101 West Colfax Avenue, 7<sup>th</sup> Floor  
Denver, CO 80202  
Matthew.Mueller@denvergov.org

## 3. ADMINISTRATIVE REQUIREMENTS:

- 3.1** The Grantee must request approval in advance for any change to this Grant Agreement, using the forms and procedures established by the DHSEM.
- 3.2 Required Documentation:** Grantees shall retain all procurement and payment documentation on site for inspection. This shall include, but not be limited to, purchase orders, receiving documents, invoices, vouchers, equipment/services identification, and time and effort reports.

Sufficient detail shall be provided with reimbursement requests to demonstrate that expenses are allowable and appropriate as detailed below:

- 3.2.1 Equipment or tangible goods.** When requesting reimbursement for equipment items with a purchase price of or exceeding \$5,000, and a useful life of more than one year, the Grantee shall provide a unique identifying number for the equipment, with a copy of the Grantee's invoice and proof of payment. The unique identifying number can be the manufacturer's serial number or, if the Grantee has its own existing inventory numbering system, that number may be used. The location of the equipment shall also be provided. In addition to ongoing tracking requirements, Grantee shall ensure that equipment items with per unit cost of \$5,000 or more are prominently marked in a manner similar to the following:

***Purchased with funds provided by the U.S. Department of Homeland Security.***

## EXHIBIT A, SCOPE OF WORK (CONT.)

- 3.2.2 Services.** Grantees shall include contract/purchase order number(s) or employee names, the date(s) the services were provided and the nature of the services.
- 3.3 Non-Supplanting Requirement:** Grantees receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.
- 3.4 Procurement:** A Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantees should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:
- 3.4.1** Any sole source transaction in excess of \$100,000 shall be approved in advance by the DHSEM.
- 3.4.2** Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee shall be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection shall be submitted in writing to, and be approved by the authorized Grantee official.
- 3.4.3** Grantee shall verify Contractor(s) is/are not debarred from participation in state and federal programs by reviewing contractor debarment information on <http://www.sam.gov>.
- 3.4.4** When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subgrantees shall use the following phrase in the request listing:
- “This project was supported by grant #24UASI-25-DEN, issued by the Colorado Division of Homeland Security and Emergency Management.”*
- 3.4.5** Grantee shall ensure that no rights or duties exercised under this grant, or equipment purchased with Grant Funds having a purchase value of \$5,000 or more, are assigned without the prior written consent of the DHSEM.
- 3.5 Additional Administrative Requirements:**
- 3.5.1** All of the instructions, guidance, limitations, terms and conditions, scope of work, and other conditions set forth in the [Notice of Funding Opportunity \(NOFO\)](#), the [FEMA Preparedness Manual](#), and the Notice of Award (NOA) issued to the State Administrative Agency (SAA) for this federal award are incorporated by reference. See also [DHS Standard Terms and Conditions](#).
- 3.5.2** Grantees of FEMA financial assistance for programs that are subject to the [Build America, Buy America Act \(BABAA\)](#) must include a Buy America preference contract

## EXHIBIT A, SCOPE OF WORK (CONT.)

provision as noted in 2 C.F.R. § 184.4 and a and self-certification as required by the FEMA Buy America Preference in FEMA Financial Assistance Programs for Infrastructure (FEMA Interim Policy #207-22-0001). This requirement applies to all subawards, contracts, and purchase orders for work performed or products supplied under the FEMA award subject to BABAA.

**3.5.3** Grantee shall ensure all purchases are listed or referenced in **§1 or §3** of this Exhibit A. Equipment purchases, if any, shall be for items listed in the [Approved Equipment List \(A.E.L\)](#) during the grant period. Additionally, any funds used to support emergency communications activities should comply with the [FY SAFECOM Guidance on Emergency Communication Grants](#).

**3.5.4 Environmental Planning and Historic Preservation (EHP) Review:** DHS/FEMA funded activities that may require an EHP review are subject to the FEMA Environmental Planning and Historic Preservation (EHP) review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state, and local laws.

DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP Review process, as mandated by the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and, any other applicable laws and Executive Orders. Grantees can use this link to access the [FEMA EHP screening form](#) and instructions.

In order to initiate EHP review of the project(s) requires completion of all relevant sections of the EHP form and submit it to DHSEM, along with all other pertinent project information. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA and DHSEM may not be able to fund the project due to noncompliance with EHP laws, executive order, regulations, and policies.

If ground disturbing activities occur during construction, Grantee will monitor ground disturbance, and if any potential archeological resources are discovered, Grantee will immediately cease work in that area and notify DHSEM, which will immediately notify DHS/FEMA for further action.

**3.5.5** All applicant agencies that own resources currently covered by the Colorado Resource Typing Standards must agree to participate in the State's Emergency Resource Inventory Report and update their information on a quarterly basis.

**3.5.6** Regardless of exercise type or scope, After Action Reports/Improvement Plans are due to the State Training and Exercise Program Manager within 45 days of the exercise. All funding related to exercises must be managed and executed in accordance with the Homeland Security Exercise and Evaluation Program (HSEEP), and must be National Incident Management System (NIMS) compliant.

## EXHIBIT A, SCOPE OF WORK (CONT.)

### 4. REPORTING REQUIREMENTS:

**4.1 Quarterly Progress Reports.** The project(s) approved in this Grant are to be completed on or before the termination date stated on the agreement's Grant Award Letter of this grant agreement. Grantee shall submit quarterly progress reports for each project identified in this agreement using the format provided by the Department of Public Safety's Division of Homeland Security and Emergency Management (DHSEM) throughout the life of the grant.

Grantee shall submit narrative and financial reports describing project progress and accomplishments, and/or any delays in meeting project objectives and expenditures, to date as described in §4 of this Exhibit A.

Reports shall be submitted in accordance with the schedule table below. The order of the reporting period quarters below is irrelevant to the grant. Reports for the respective period are due on or before the due dates listed below if the grant is open during the "report period" time, and for every quarter that the grant remains open.

Report Period	Due Date
January, February, March	due April 30 <sup>th</sup>
April through June 30 <sup>th</sup>	due July 30 <sup>th</sup>
July through September 30 <sup>th</sup>	due October 30 <sup>th</sup>
October through December 31 <sup>st</sup>	due January 30 <sup>th</sup>

**4.2 Final Reports:** Grantee shall submit final progress reports that provide final financial reconciliation and final cumulative grant/project accomplishments within 45 days of the end of the project/grant period of performance. The final report may not include unliquidated obligations and must indicate the exact balance of unobligated funds. The final reports may substitute for the quarterly reports for the final quarter of the grant period.

If all projects are completed before the end of the grant period, the final report may be submitted at any time during the period of performance. Further reports are not due after the DHSEM has received, and sent notice of acceptance, of the final grant report.

### 5. PAYMENT:

**5.1 Payment Schedule:** Grantee shall submit requests for reimbursement using the DHSEM's provided form, submission preference, and quarterly at minimum. One original or electronically signed/submitted copy of the reimbursement request is due on the same dates as the required progress reports outlined in §4.1 of this Exhibit A.

All requests shall be for eligible actual expenses incurred by Grantee, and as described in detail in the budget table(s) of Exhibit B. Requests shall be accompanied by supporting documentation totaling at least the amount requested for reimbursement and any required non-federal match contribution as outlined in §3.2 of this Exhibit A.

If any progress reports are delinquent at the time of a payment request, the DHSEM may withhold such reimbursement until the required reports have been submitted.

## **EXHIBIT A, SCOPE OF WORK (CONT.)**

**5.2 Payment Amount:** If non-federal match is required, such match shall be documented with every payment request. Excess match documented and submitted with one reimbursement request shall be applied to subsequent requests as necessary to maximize the allowable reimbursement.

### **6. TESTING AND ACCEPTANCE CRITERIA:**

The DHSEM shall evaluate Project(s) through the review of Grantee submitted financial and progress reports, and may also conduct on-site monitoring to determine whether the Grantee is meeting/has met the performance goals, administrative standards, financial management, and other requirements of this grant. The DHSEM will notify Grantee in advance of such on-site monitoring.

## EXHIBIT B, BUDGET

**BUDGET:**

The following budget table contains amounts for the categories and/or project activities for this grant award.

<i>POETE Categories</i>	<i>Total</i>
Planning	\$ 932,961.00
Organization	\$ 0.00
Equipment	\$ 1,577,600.00
Training	\$ 149,807.00
Exercise	\$ 0.00
<b><i>PROJECT ACTIVITY SUBTOTAL</i></b>	<b>\$ 2,660,368.00</b>
Management & Admin	\$ 140,019.00
<b>TOTAL AWARD AMOUNT</b>	<b>\$ 2,800,387.00</b>

<i>National Priorities</i>	<i>Total</i>
Combating Domestic Violent Extremism	\$ 0.00
Community Preparedness & Resilience	\$ 312,950.00
Cybersecurity	\$ 365,650.00
Elections Security	\$ 150,000.00
Information & Intelligence Sharing	\$ 83,175.00
Soft Targets / Crowded Places	\$ 1,181,282.00

# EXHIBIT C, FEDERAL PROVISIONS

## 1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

## 2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
  - 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
  - 2.1.2. “Entity” means:
    - 2.1.2.1. a Non-Federal Entity;
    - 2.1.2.2. a foreign public entity;
    - 2.1.2.3. a foreign organization;
    - 2.1.2.4. a non-profit organization;
    - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
    - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
    - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
    - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
  - 2.1.3. “Executive” means an officer, managing partner or any other employee in a management position.
  - 2.1.4. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
  - 2.1.5. “Grant” means the Grant to which these Federal Provisions are attached.
  - 2.1.6. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
  - 2.1.7. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.

## EXHIBIT D, FEDERAL PROVISIONS (CONT.)

- 2.1.8. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.8.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
  - 2.1.8.2. Is not organized primarily for profit; and
  - 2.1.8.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.9. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.10. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.11. “Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.12. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.13. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.14. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.15. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
  - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
  - 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
  - 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;



## **EXHIBIT D, FEDERAL PROVISIONS (CONT.)**

- 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
- 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.
- 2.1.18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Grantees unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

### **3. COMPLIANCE.**

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

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

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

### **5. TOTAL COMPENSATION.**

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
  - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
  - 5.1.2. In the preceding fiscal year, Grantee received:
    - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

## EXHIBIT D, FEDERAL PROVISIONS (CONT.)

- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

### 6. REPORTING.

- 6.1. Pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

### 7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

### 8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
  - 8.1.1. To Recipient. A Subrecipient shall report to its Recipient the following data elements *for each* Federal Award Identification Number (FAIN) assigned by a Federal agency to a Recipient no later than the end of the month following the month in which the Subaward was made:
    - 8.1.1.1. Subrecipient Unique Entity ID;
    - 8.1.1.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
    - 8.1.1.3. Subrecipient parent's organization Unique Entity ID;
    - 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
    - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
    - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.

## EXHIBIT D, FEDERAL PROVISIONS (CONT.)

- 8.1.2. To Recipient. A Grantee shall report to its Recipient, upon the effective date of the Grant, the following data elements:
- 8.1.2.1. Subrecipient's Unique Entity ID as registered in SAM.
  - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

### 9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 9.4. Never contract with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing "Never contract with the enemy" in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 9.5. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Subrecipient is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

### 10. ACCESS TO RECORDS.

- 10.1. A Grantee shall permit Prime Recipient and its auditors to have access to Grantee's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

## EXHIBIT D, FEDERAL PROVISIONS (CONT.)

### 11. SINGLE AUDIT REQUIREMENTS.

11.1. If a Grantee expends \$750,000 or more in Federal Awards during the Grantee's fiscal year, the Grantee shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

11.1.1. Election. A Grantee shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Grantee may elect to have a program-specific audit if Grantee expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

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

11.1.3. Grantee Compliance Responsibility. A Grantee shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Grantee shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

### 12. GRANT PROVISIONS FOR SUBRECEPIENT CONTRACTS.

12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Grantees shall comply with the following provisions. Grantees shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant.

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

## EXHIBIT D, FEDERAL PROVISIONS (CONT.)

- 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).
- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Grantee wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Grantee must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never contract with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never contract with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan

## **EXHIBIT D, FEDERAL PROVISIONS (CONT.)**

or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

### **13. CERTIFICATIONS.**

13.1. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Grantee to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Grantee fails to meet a requirement of the Federal award. Grantee shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

### **14. EXEMPTIONS.**

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

### **15. EVENT OF DEFAULT AND TERMINATION.**

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

15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:

15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;

15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or

15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

# EXHIBIT D, PII CERTIFICATION

## STATE OF COLORADO

### THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

**EXHIBIT D, PII CERTIFICATION**

**STATE OF COLORADO**

**THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO PII  
THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, \_\_\_\_\_, on behalf of \_\_\_\_\_  
(legal name of entity / organization) (the “Organization”), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



# EXHIBIT E, 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.
- ii. To the extent Business Associate carries out one or more of Covered Entity’s obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.

- iii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
  - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
  - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
- iv. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
- b. Minimum Necessary.** Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).
- c. Impermissible Uses and Disclosures.**
  - i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
  - ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.
- d. Business Associate's Subcontractors.**
  - i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.
  - ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
  - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- e. Access to System.** If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available at <http://oit.state.co.us/about/policies>.
- f. Access to PHI.** Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.
- g. Amendment of PHI.**
  - i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

- ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
- h. Accounting Rights.** Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
- i. Restrictions and Confidential Communications.**
  - i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
    - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
    - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
  - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
  - iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.
- j. Governmental Access to Records.** Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.
- k. Audit, Inspection and Enforcement.**
  - i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.
  - ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.
- l. Appropriate Safeguards.**
  - i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
  - ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
  - iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
  - iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

**m. Safeguard During Transmission.**

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

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

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

**o. Business Associate's Insurance and Notification Costs.**

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

**p. Subcontractors and Breaches.**

- i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The

agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.

- ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.

**q. Data Ownership.**

- i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.

- r. Retention of PHI.** Except upon termination of this Agreement as provided in Section 5, below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h, above, for a period of six years.

**4. Obligations of Covered Entity**

- a. Safeguards During Transmission.** Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.

**b. Notice of Changes.**

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

**5. Termination**

**a. Breach.**

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

**b. Effect of Termination.**

- i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.

- ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

## **6. Injunctive Relief**

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

## **7. Limitation of Liability**

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

## **8. Disclaimer**

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

## **9. Certification**

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

## **10. Amendment**

- a. **Amendment to Comply with Law.** The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
  - i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
  - ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.

- iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
  - iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
    - A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
    - B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.
- b. Amendment of Appendix.** The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

#### **11. Assistance in Litigation or Administrative Proceedings**

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

#### **12. Interpretation and Order of Precedence**

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

#### **13. Survival**

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

## APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

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

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

### 1. Purpose

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

### 2. Additional Terms

**a. Additional Permitted Uses.** In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:

**i. Reserved.**

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

**i. Reserved.**

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

**i. Reserved.**

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

**i. Reserved.**

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

**i. Reserved.**

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

**i. Reserved.**



# EXHIBIT F, SAMPLE OPTION LETTER

## STATE OF COLORADO AGREEMENT MODIFICATION OPTION LETTER

**State Agency**

Insert Department's or IHE's Full Legal Name

**Grantee**

Insert Agreementor's Full Legal Name

**Original Agreement Number**

Insert Encumbrance Number

**Option Letter Number**

Insert the Option Number (e.g. "1" for the first option)

**Agreement Performance Beginning Date**

Month Day, Year

**Current Agreement Expiration Date**

Month Day, Year

**Current Agreement Maximum Amount**

\$0.00

**Current Agreement Match Amount**

\$0.00

**1. OPTIONS:**

- A. Option to extend for an Extension Term
- B. Option to modify Agreement rates
- C. Option to initiate next phase of the Agreement

**2. REQUIRED PROVISIONS:**

- A. For use with Option 1(A)

In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.

- B. For use with Option 1(B)

In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.

- C. For use with Option 1(C)

In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc., which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.

- D. For use with all Options that modify the Agreement Maximum Amount

The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

**3. OPTION EFFECTIVE DATE:**

The effective date of this Option Letter is upon approval of the State Controller.

**STATE OF COLORADO**

Jared S. Polis, Governor  
Department of Public Safety, Division of Homeland  
Security and Emergency Management  
Stan Hilkey, Executive Director

**STATE CONTROLLER**

Robert Jaros, CPA, MBA, JD

By: Kevin R. Klein, Director, DHSEM,  
or DHSEM Director Delegate

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

By: Robert Jaros, CPA, MBA, JD  
or State Controller Delegate

Option Effective Date: \_\_\_\_\_

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