AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Agreement between Montrose County, Gunnison County

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Jail Based Behavioral Services Contract with Sheriff's Office Detention Center

Term Begins: approx. Dec 15, 2020 **Term Ends:** **Grant Contract #:**

Summary:

Receive jail based behavioral services for inmates

Fiscal Impact:

Submitted by: John Gallowich **Submitter's Email Address:** jgallowich@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, Montrose County is fiscal agent.

Reviewed by: GUNCOUNTY1\kweak Discharge Date: 12/4/2020

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reveiwed by: Discharge Date: 12/3/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/4/2020

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 12/8/2020

Revised April 2015

AGREEMENT BETWEEN MONTROSE COUNTY, GUNNISON COUNTY, AND ADVANTAGE TREATMENT CENTERS (Montrose)

Jail Based Behavioral Services Program

Agreement

RECITALS:

WHEREAS

WHEREAS

WHEREAS

WHEREAS

WHEREAS

WHEREAS

THEREFORE, c

Contractor **Fiscal Agent** **Member County** **Mental Health Services**

[illegible]

I. Fiscal Agent and Member County [illegible]

[illegible]

[illegible]

[illegible]

[illegible] **Agreement** [illegible]

[illegible] **Contractor** [illegible] **June 30th, 2021,** [illegible] **Contractor** [illegible] **Contractor** [illegible] **Contractor** [illegible] **Fiscal Agent** [illegible] **Contractor** [illegible] **County** [illegible]

[illegible]

[illegible]

[illegible]

II. Contractor [illegible]

[illegible] **Fiscal Agent and Member County** [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] **Fiscal Agent and Member County** [illegible]

[illegible]

[illegible] **Agreement** [illegible]

[illegible]

[illegible]

[illegible]

[illegible] **Fiscal Agent and Member County.**

[illegible]

III. PAYMENT:

[illegible] **Contractor's** [illegible] **Contractor** [illegible] **Agreement** [illegible]

[illegible] **Agreement** [illegible]

[illegible] **Contractor** [illegible] **Contractor** [illegible]

[illegible]

IV. INSURANCE

1. [illegible] **Contractor** [illegible]

V. COMPLIANCE:

[illegible] **Contractor** [illegible] **Agreement** [illegible]

[illegible] **Contractor** [illegible] **Agreement** [illegible]

[illegible] **Contractor** [illegible] *et. seq.* [illegible] **CERTIFIES** [illegible]

[illegible] **Contractor** [illegible]

VI. INDEPENDENT CONTRACTOR

[illegible] **Contractor** [illegible] **County** [illegible] **County** **Contractor** [illegible] **County** [illegible]

VII. LIABILITY:

[illegible] **Agreement** [illegible] **Contractor** [illegible] **Contractor** [illegible] **Contractor** [illegible] **Fiscal Agent** [illegible] **Member County** [illegible] **Agreement** [illegible]

VIII. DEFAULT:

[illegible]

[illegible] **Agreement** [illegible]

IX. DURATION:

[illegible] **Agreement** [illegible] **Agreement** [illegible] **Agreement** [illegible] **Agreement** [illegible] **Agreement** [illegible] **June 30th, 2021** [illegible]

X. OVERALL SUPERVISION:

[illegible] M[illegible] **Contractor** [illegible] **Fiscal Agent** [illegible] **Member County** [illegible] **Contractor** [illegible] **Fiscal Agent** [illegible] **Fiscal Agent** [illegible] **Member County** [illegible] **Fiscal Agent** [illegible] **Member County** [illegible] **Fiscal Agent** [illegible] **Member County** [illegible]

[illegible] **Contractor** [illegible] **Fiscal Agent** [illegible] **Member County** [illegible] **Agreement** [illegible] **Contractor** [illegible] **Agreement** [illegible]

[illegible] **Contractor** [illegible]

XI. GOVERNING AUTHORITY:

[illegible] **Agreement** [illegible]

[illegible] **Agreement** [illegible]

XII. AMENDMENTS:

[illegible]

XIII. NOTICE:

[illegible]

XIV. CONFLICT OF INTEREST:

[illegible]

IN WITNESS WHEREFORE [illegible]

[illegible]

B MM

B

r B rd

B

r

CONTRACTOR- ADVANTAGE TREATMENT CENTERS

Signature:_____

Print Name: _____

r d

M r

EXHIBIT A
C.R.S. § 8-17.5 -101, *et. seq.*

COMPLIANCE ACKNOWLEDGEMENT

Contractor

Contractor

Contractor

Contractor

Contractor

Contractor

Contractor

Contractor

Contractor

Member County

Contractor

Member County

Member County

[illegible]

[illegible]

[illegible]

STATE OF COLORADO
DEPARTMENT OF HUMAN SERVICES CONTRACT

SIGNATURE AND COVER PAGES

State Agency Colorado Department of Human Services Office of Behavioral Health Community Behavioral Health	**Contractor** Montrose County Colorado for the use and benefit of Montrose County Sheriff's Department. Contractor's State of Incorporation: Colorado
Contract Maximum Amount Initial Term State Fiscal Year 2021 $371,635.00 Extension Terms Maximum Amount for All Fiscal Years $371,635.00	**Contract Performance Beginning Date** The later of the Effective Date or July 1, 2020 **Initial Contract Expiration Date** June 30, 2021 Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 Years from its Performance Beginning Date.
Pricing/Funding Price Structure: Cost Reimbursement Contractor shall invoice: Monthly Fund Source: 100% State Funded	**Options** The State shall have the following options if indicated with "Yes," as further described in §2.C and §5.B.v: Option to Extend Term per §2.C: Yes Option to Increase or Decrease Maximum Amount per §5.B.v: Yes
Insurance Contractor shall maintain the following insurance if indicated with "Yes," as further described in **§**10: Worker's Compensation: Yes General Liability: Yes Automobile Liability: **Yes** Protected Information: **Yes** Professional Liability Insurance: **No** Crime Insurance: **No**	**Miscellaneous** Authority to enter into this Contract exists in: C.R.S. § 27-80-106. Law-Specified Vendor Statute (if any): NA Procurement Method: Exempt Solicitation Number (if any): NA
State Representative Carie Gaytan, Director of Finance Office of Behavioral Health 3824 West Princeton Circle Denver, CO 80236 303-866-7944 / carie.gaytan@state.co.us	**Contractor Representative** Mr. Gene Lillard, Sheriff Montrose County Sheriff's Office 1200 N. Grand Ave. Montrose, Colorado 81401 970-249-6606 / glillard@montrosecounty.net

Exhibits

The following Exhibits are attached and incorporated into this Contract:
Exhibit A - Statement of Work
Exhibit B - Budget
Exhibit C - Miscellaneous Provisions
Exhibit D - HIPAA BAA/QSOA

Contract Purpose

In accordance with the provisions of this Contract and its exhibits and attachments, the Contractor shall provide substance abuse and mental health treatment in the Montrose County jail.

Signature Page begins on next page →

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

CONTRACTOR Montrose County Colorado for the use and benefit of Montrose County Sheriff's Office _____ By: Mr. Gene Lillard, Sheriff Date: _____	**STATE OF COLORADO** Jared S. Polis, Governor Department of Human Services Michelle Barnes, Executive Director _____ By: Carie Gaytan, Director of Finance, Office of Behavioral Health Date: _____
2nd State or Contractor Signature if Needed _____ By: Name & Title of Person Signing for Signatory Date: _____	**LEGAL REVIEW** Philip J. Weiser, Attorney General By:_____ Assistant Attorney General Date: _____

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Andrea Eurich / Janet Miks / Toni Williamson

Effective Date:_____

-- Signature and Cover Pages End --

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1. PARTIES

This Contract is entered into by and between Contractor named on the Signature and Cover Pages for this Contract (the "Contractor"), and the STATE OF COLORADO acting by and through the Department of Human Services (the "State" or "CDHS"). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

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

C. Extension Terms - State's Option

If the Signature and Cover Pages for this Contract shows that the State has the Option to Extend Term, then the State, at its discretion, shall have the option to extend the

performance under this Contract beyond the Initial Term for a period, or for successive periods, at the same rates and under the same terms specified in the Contract (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to **§21** "Sample Option Letter." The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date, or the number of years specified on the Signature and Cover Pages if such number is less than 5 years, absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§15,** may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

attributable to the uncompleted portion of Contractor's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**Breach of Contract**" means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.

B. "**Business Day**" means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1) C.R.S.

C. "**Chief Procurement Officer**" means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.

D. "**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.

E. "**Contract**" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto. For purposes of clarification and the removal of any doubt, subject to any future modifications thereto, the Signature and Cover Pages and Sections 1 through 21, as identified in the Table of Contents herein above, shall constitute the "main body" of this Contract exclusively.

F. "**Contract Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.

G. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

H. **"End of Term Extension"** means the time period defined in **§2.D**.

I. **"Effective Date"** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State's Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature and Cover Page for this Contract.

J. "**Exhibits**" means the exhibits and attachments included with this Contract as shown on the Signature and Cover Pages for this Contract..

K. **"Extension Term"** means the time period defined in **§2.C.**

L. "**Goods**" means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.

M. **"Incident"** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

N. **"Initial Term"** means the time period defined in **§2.B**.

O. "**Party**" means the State or Contractor, and "Parties" means both the State and Contractor.

P. "**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.

Q. "**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 C.R.S.

R. "**PHI**" means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

S. "**Services**" means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.

T. **"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.

U. **"State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

V. **"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.

W. **"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.

X. "**Subcontractor**" means third-parties, if any, engaged by Contractor to aid in performance of the Work.

Y. "**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.

Z. "**Work**" means the Goods delivered and Services performed pursuant to this Contract.

AA. "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

4. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of the Exhibits. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

5. PAYMENTS TO CONTRACTOR

A. Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

a. The State shall pay Contractor in the amounts and in accordance with the Exhibits.

b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Option to Increase Maximum Amount

If the Signature and Cover Pages for this Contract show that the State has the Option to Increase or Decrease Maximum Amount, then the State, at its discretion, shall have the option to increase or decrease the statewide quantity of Goods and Services based upon the rates established in this Contract, and increase the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to **§21** "Sample Option Letter." Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to **§17** or pursuant to any other Exhibit, for any contract having a term longer than 3 months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State at the time or times specified by the State in this Contract, or, if no time is specified in this Contract, not later than 5 Business Days following the end of each calendar quarter.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 5 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Signature and Cover Pages as provided in **§15**.

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

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

7. CONTRACTOR RECORDS

A. Maintenance

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

Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 3 years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

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

D. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

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

E. Data Protection and Handling

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

F. Safeguarding PII

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

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

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

D. Contractor shall maintain a written conflict of interest policy. Contractor shall provide the written conflict of interest policy to the State upon request.

10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract to the extent that such insurance policies are required as shown on the Signature and Cover Page for this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. General Liability

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

i. $1,000,000 each occurrence;

ii. $1,000,000 general aggregate;

iii. $1,000,000 products and completed operations aggregate; and

iv. $50,000 any 1 fire.

B. Automobile Liability

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

C. Protected Information

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

i. $1,000,000 each occurrence; and

ii. $2,000,000 general aggregate.

iii. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 10 or fewer individuals or revenues of $250,000 or less, Contractor shall maintain limits of not less than $50,000.

iv. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 25 or fewer individuals or revenues of $500,000 or less, Contractor shall maintain limits of not less than $100,000.

D. Professional Liability Insurance

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

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

E. Crime Insurance

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

i. $1,000,000 each occurrence; and

ii. $1,000,000 general aggregate.

F. Additional Insured

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

G. Primacy of Coverage

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

H. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§15** within 7 days of Contractor's receipt of such notice.

I. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of

recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

J. Public Entities

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

K. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF CONTRACT

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

12. REMEDIES

A. State's Remedies

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

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in

accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

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

d. Intellectual Property

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

B. Contractor's Remedies

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

13. STATE'S RIGHT OF REMOVAL

The State retains the right to demand, at any time, regardless of whether Contractor is in breach, the immediate removal of any of Contractor's employees, agents, or subcontractors from the work whom the State, in its sole discretion, deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

14. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in **§14.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDHS as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109 and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate,

under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

15. NOTICES AND REPRESENTATIVES

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

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

i. Copyrights

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

ii. Patents

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

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

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is $100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

18. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

Unless other restrictions are required elsewhere in this Contract, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any Work after that Subcontractor's subcontract has been rejected by the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **§18.A.**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and

approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

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

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

K. Order of Precedence

In the event of a conflict or inconsistency between this Contract and any Exhibits or attachments such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

i. HIPAA Business Associate Agreement (if any).

ii. Colorado Special Provisions in **§19** of the main body of this Contract.

iii. The provisions of the other sections of the main body of this Contract.

iv. Any other Exhibit(s) shall take precedence in alphabetical order.

L. External Terms and Conditions

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

M. Severability

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

N. Survival of Certain Contract Terms

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

O. Taxes

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

P. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§18.A.,** this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

Q. Waiver

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

R. CORA Disclosure

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

S. Standard and Manner of Performance

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

T. Licenses, Permits, and Other Authorizations.

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

U. Indemnification

i. Applicability

This entire **§18.U** does not apply to Contractor if Contractor is a "public entity" within the meaning of the GIA.

ii. General Indemnification

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

iii. Confidential Information Indemnification

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

act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

iv. Intellectual Property Indemnification

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

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

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

to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and CDHS within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to CDHS a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101 *et seq.*, C.R.S., CDHSmay terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

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

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

20. DEPARTMENT OF HUMAN SERVICES PROVISIONS

A. Exclusion, Debarment and/or Suspension

Contractor represents and warrants that Contractor, its employees, agents, assigns, or Subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program by any federal or State of Colorado department or agency. If Contractor, its employees, agents, assigns, or Subcontractors, are excluded from participation, or becomes otherwise ineligible to participate in any such program during the

term of this Contract, Contractor shall notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Contractor, the State may immediately terminate this Contract.

B. Emergency Planning

If Contractor provides Work that is an extension of State work performed as part of the State of Colorado Emergency Operations Plan or for a publicly funded safety net program, as defined by C.R.S. § 24-33.5-701 et seq., Contractor shall perform the Work in accordance with the State's Emergency Operations Plan or continuity of operations plan in the event of an emergency. If requested, Contractor shall provide a plan and reporting information to ensure compliance with the State's Emergency Operations Plan and C.R.S. § 24-33.5-701 et seq.

C. Restrictions on Public Benefits

If applicable, Contractor shall comply with C.R.S. §§ 24-76.5-101 – 103 exactly as the State is required to comply with C.R.S. §§ 24-76.5-101 – 103.

D. Discrimination

Contractor shall not:

i. discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions.

ii. exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability.

Any person who thinks he/she has been discriminated against as related to the performance of this Contract has the right to assert a claim, Colorado Civil Rights Division, C.R.S. §24-34-301, et seq.

E. Criminal Background Check

Pursuant to C.R.S. §27-90-111 and CDHS Policy VI-2.4, any independent contractor, and its agent(s), who is designated by the Executive Director or the Executive Director's designee to be a contracting employee under C.R.S. §27-90-111, who has direct contact with vulnerable persons in a state-operated facility, or who provides state-funded services that involve direct contact with vulnerable persons in the vulnerable person's home or residence, shall:

i. submit to and successfully pass a criminal background check, and

ii. report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. §27-90-111 to the State.

Any Contractor or its agent(s), who does not comply with C.R.S. §27-90-111 and CDHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

F. Fraud Policy

Contractor shall comply with the current CDHS Fraud Policy.

G. C-Stat - Performance Based Program Analysis and Management Strategy (C-Stat Strategy)

Without any additional cost to the State, Contractor shall collect and maintain Contract performance data, as determined solely by the State. Upon request, Contractor shall provide the Contract performance data to the State. This provision does not allow the State to impose unilateral changes to performance requirements.

REST OF PAGE INTENTIONALLY LEFT BLANK

21. SAMPLE OPTION LETTER (IF APPLICABLE)

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

1. OPTIONS:

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

2. REQUIRED PROVISIONS:

A. For use with Option 1(A): In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

B. For use with Options 1(B and C): In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Contract, as amended.

C. For use with Option 1(D): In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.

D. For use with Option 1€: In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.

E. For use with all Options that modify the Contract Maximum Amount: The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

3. Option Effective Date:

The effective date of this Option Letter is upon approval of the State Controller or , whichever is later.

STATE OF COLORADO INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE SAMPLE ONLY – DO NOT SIGN By: Name & Title of Person Signing for Agency or IHE Date: SAMPLE ONLY – DO NOT SIGN	In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. **STATE CONTROLLER** SAMPLE ONLY – DO NOT SIGN Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval Option Effective Date: SAMPLE ONLY – DO NOT SIGN

Exhibit A - Statement of Work

Jail Based Behavioral Health Services

Definitions and Acronyms

Definitions and Acronyms. The following list of terms shall be applied to this Contract and Statement of Work, based on the services that are provided at each jail:

"The ASAM Criteria" is a set of guidelines for placement, continued stay, transfer, or discharge of patients with addiction and co-occurring conditions. It is a standardized tool used to determine the appropriate level of care for an individual.

"Behavioral Health Services" encompasses a broad variety of services for mental health concerns and substance use disorders. These may include psychotherapy, medication, and psychoeducational services.

"Bridges Program/Court Liaison" means an individual employed or contracted with the State Court Administrator's Office (SCAO) to implement and administer a program that identifies and dedicates local behavioral health professionals as court liaisons in each judicial district. These individuals are responsible for facilitating communication and collaboration between judicial and behavioral health systems.

"CAC II", or Certified Addiction Counselor Level II, allows the counselor to practice addiction treatment services independently (with the exception of clinical supervision). The counselor must meet all the requirements for a CAC I, complete the required number of clinically supervised work experience hours, successfully pass the CAC II required training classes, and present proof of passing a national examination. The CAC II applicant should obtain at least 1000 hours of clinically supervised work experience in the practice beyond the hours earned for the CAC I to demonstrate their ability to practice psychotherapy independently as a CAC II.

"CAC III", or Certified Addictions Counselor Level III, is the supervisory level. A clinical Bachelor's degree in the behavioral health sciences is required. The applicant must meet all the requirements for a CAC II. The applicant for a CAC III must complete the required number of clinically supervised work experience hours, successfully pass the CAC III required training classes, and present proof of passing a national examination.

"Catchment" means a county partnership where two or more County Sheriff Departments develop programs together and submit a combined JBBS work plan, with one county operating as the fiscal agent holding the primary contract with OBH, and identifying subcontractors to provide JBBS services.

“Colorado Department of Human Services” (CDHS) is a state-supervised and county-administered human services system. Under this system, county departments are the main provider of direct services to Colorado’s families, children, and adults. The Office of Behavioral Health is an office that administers the two state mental health hospitals, purchases services to prevent and treat mental health and substance use disorders through contracts with behavioral health providers, regulates the public behavioral health system, and provides training, technical assistance, evaluation, data analysis, prevention services and administrative support to behavioral health providers and relevant stakeholders..

“Competency Enhancement Program” means the program funded through SB 19-223 to provide jail-based mental health services to those awaiting an inpatient competency restoration bed.

“Competency Evaluator” means a licensed physician who is a psychiatrist or licensed psychologist, each of whom is trained in forensic competency assessments, or a psychiatrist training and practicing under the supervision of a psychiatrist with expertise in forensic psychiatry, or a psychologist who is in forensic training and is practicing under the supervision of a licensed psychologist with experience in forensic psychology.

“Contractor” refers to the county jail holding this Contract

“Court-Ordered Competency Evaluation” means a court-ordered examination of an individual before, during, or after trial, directed to develop information relevant to a determination of the individual’s competency to proceed at a particular stage of the criminal proceedings that is performed by a Competency Evaluator and includes evaluations concerning restoration to Competency.

“Critical Incidents” means any significant event or condition that must be reported to the Department that is of public concern and/or has jeopardized the health, safety and/or welfare of individuals or staff.

“Department of Regulatory Agencies” (DORA) is the Colorado department which oversees clinical licensure in most fields, including medical and behavioral health providers. They are a useful resource for information on the meaning of a license type, and also maintain a public database of Colorado-licensed providers.

“Forensic Navigator” means social workers working within the Colorado Department of Human Services (CDHS) that provide proper care and coordination of pretrial individuals, which involves working with the courts, court liaisons, service providers, and conducting periodic case management evaluations across the 22 judicial districts.

"Forensic Support Team" means a group of individuals working within the CDHS who provide evaluation and competency restoration education services, case management, and assertive community treatment services to individuals awaiting competency restoration services.

"Grave Disability" is defined in Colorado as referring to an individual who is incapable of making informed decisions about, or providing for, their essential needs without significant assistance or supervision from others. To meet criteria for grave disability, this impairment must put the individual at risk of substantial bodily harm, dangerous worsening of any serious physical illness, significant psychiatric deterioration, or threat of grave bodily harm due to their mismanagement of acts of daily living (ADLs). This does not include those whose limitations stem solely from a developmental disability.

"High Risk for Transfer" means an individual who has been ordered to receive inpatient restorative treatment; for whom an evaluator has determined either that the individual appears to have a mental health disorder and as a result of the mental health disorder, appears to be an imminent danger to others or to himself and/or appears to be gravely disabled.

"HIPAA" means the "Health Information Portability and Accountability Act. It lays out federal regulations for the protection, and disclosure, of protected health information (PHI).

"LAC", or Licensed Addiction Counselor, is a behavioral health clinician who can provide co-occurring services.

"LCSW", or Licensed Clinical Social Worker, is a social worker trained in psychotherapy who helps individuals deal with a variety of mental health and daily living problems to improve overall functioning.

"LPC", or Licensed Professional Counselor, is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of the state of Colorado.

"LSI" is an abbreviation of the Level of Supervision Inventory, which is an assessment tool designed to measure inmates' risk of recidivism and criminogenic needs which could be addressed in order to lower risk.

"Low Risk for Transfer" means an individual who has been ordered to receive inpatient restorative treatment services, and is assessed to need mental health services but does not need a referral to an OBH designated inpatient facility.

"MAT," or Medication Assisted Treatment, refers to using a combination of behavioral therapy and medication to treat substance use disorders.

"Moderate Risk for Transfer" means an individual who has been ordered to receive inpatient

restorative treatment, for whom an evaluator has determined either that the individual appears to have a mental health disorder or appears to be gravely disabled and does not appear to be an imminent danger to others or to himself at that point in time.

"Office of Behavioral Health" (OBH) is a department of the Colorado Department of Human Services. Their responsibilities include: administering the two state mental health hospitals, purchasing services to prevent and treat mental health and substance use disorders through contracts with behavioral health providers, regulating the public behavioral health system, and providing training, technical assistance, evaluation, data analysis, prevention services, and administrative support to behavioral health providers and relevant stakeholders.

"Office of Behavioral Health (OBH) designated inpatient restoration facility" means the facilities that are contracted with OBH to provide inpatient restoration services to individuals.

"Opioid Use Disorder" (OUD) is a substance use disorder specific to misuse of opioid drugs. "Personal Health Information" (PHI) is information which is protected by HIPAA. In general, this refers to any identifying information about an individual, which may include (but is not limited to): name, age, date of birth, initials, and details about health concerns.

"Program Level of Care Type" means the level of care a person receives while in jail awaiting a bed for inpatient restorative treatment.

"Recovery Support Services" refers to wraparound services, and may include (but is not limited to) providing clothes, shoes, transportation, or basic hygiene need purchases that will assist in stabilizing the individual in the community.

"Regional Accountable Entity" (RAE) is responsible for building networks of providers, monitoring data and coordinating members' physical and behavioral health care. RAEs replace and consolidate the administrative functions of Regional Care Collaborative Organizations (RCCOs) and Behavioral Health Organizations (BHOs).

"Risk/Need/Responsivity Model" (RNR) is used to assess the criminogenic risk and needs of an individual, and to determine what kind of environment they should be placed in to reduce recidivism. It encompasses three facets: 1) the risk principle, which asserts that the level of service should be matched to an individual's risk to re-offend; 2) the need principle, which assesses for criminogenic needs in order to target treatment; and 3) the responsivity principle, which tailors the treatment to the learning style, motivation, abilities, and strengths of the individual in order to maximize treatment outcomes.

"Subcontractor" means a business or person that carries out work under this Contract, but not the county jail that holds the Contract (e.g. a substance use treatment provider agency or clinician).

"SUD" is an abbreviation of "substance use disorder."

PART ONE - GENERAL PROVISIONS

Article 1
General Administration

1.1 Participation / Catchments. County Sheriffs may develop programs either individually, or as multiple Sheriff's Departments (otherwise known as a catchment), submitting a combined work plan. If services are provided to a catchment, the fiscal agent county (the county holding this primary Contract with OBH) shall enter into subcontracts with its catchment county Sheriff's Departments. Subcontracts entered into under this provision shall adhere to the requirements of Exhibit C, Miscellaneous Provisions, Section II.

a. This Contract serves Montrose County (fiscal agent county) and Gunnison County.

1.2 Program Coordinator. The Contractor shall select a JBBS Program Coordinator, identify the positions' roles, responsibilities and authority, and develop a management plan that supports the JBBS Program Coordination Group, which will be outlined in detail below. Any changes to the Program Coordinator's contact information shall be communicated via email to OBH within one business day of change to cdhs_jbbs@state.co.us

a. OBH prefers that a staff person from the Sheriff's Department assume the role of Program Coordinator. The Program Coordinator shall be well versed in the JBBS Program, including contractual requirements. The Program Coordinator shall also participate in the JBBS Quarterly Meetings with OBH, and shall oversee the JBBS Program and its operations. The Sheriff's Department is encouraged to account for this administrative position in their budget.

1.3 JBBS Program Coordination Group. The Contractor shall develop a process for implementing a Program Coordination Group to guide and support the JBBS program. The Program Coordination Group shall meet on a regular and continual basis to ensure project implementation and goals are progressing. The OBH Manager, Jail and Criminal Justice Mental Health Programs will be available to attend periodic Program Coordination Group meetings for technical assistance and support based on agency need. The Program Coordination Group shall:

a. Oversee program implementation.
b. Make training recommendations.
c. Measure the program's progress toward achieving stated goals.
d. Resolve ongoing challenges to program effectiveness.
e. Inform agency leaders and other policymakers of program costs, developments, and progress.
f. Develop policies and protocols to ensure clinical staff have the resources and support required for service provision.
g. For JBBS Programs serving a catchment of counties, a sheriff department representative from each county is required to participate in the JBBS Program Coordination Group. This program model approach will require regular meetings to discuss the program implementation and program effectiveness for each jail. The Program Coordination

Group is responsible for ensuring the needs of all the jails in the catchment are being met by the resources and subcontracted service providers.

1.4 Subcontractors. See Exhibit C, Miscellaneous Provisions, Section II for requirements regarding the use of subcontractors.

1.5 The contractor may serve individuals who are awaiting Medicaid approval or other funds to pay for initial treatment services.

1.6 The contractor shall provide services in a manner that respects and protects individual rights. This requirement includes providing the subcontractor with the required space to offer individual and group treatment services described in this Contract.

1.7 Recovery Support Services. Programs may provide for wraparound resources including, but not limited to, clothes, shoes, transportation, or basic hygiene need purchases that will assist in stabilizing the individual in the community.

1.8 The Contractor shall maintain support relationships with local probation and parole departments.

1.9 Cultural Competency. Contractor shall provide culturally competent and appropriate services, per National Standards for Culturally and Linguistically Appropriate Services (CLAS Standards), available at https://thinkculturalhealth.hhs.gov/clas/standards.

1.10 Contractor shall make reasonable accommodations to meet the needs of individuals who are physically challenged, deaf or hearing impaired, or blind.

Article 2
Confidentiality and HIPAA / 42 CFR Part Two

2.1 HIPAA Business Associate Addendum / Qualified Service Organization Addendum

The Contractor shall agree to comply with the terms of the HIPAA Business Associate Addendum / Qualified Service Organization Addendum, Exhibit D of this Contract.

2.2 Third Parties and Business Associate Addendum / Qualified Service Organization Addendum

- **a.** The Contractor shall require that any third parties, including subcontractors or other partner agencies, that it involves for work to be done pursuant to this Contract agree to the most recent CDHS version of the HIPAA Business Associate Addendum / Qualified Service Organization Addendum, found in Exhibit D of this Contract.
- **b.** A HIPAA Business Associate Addendum / Qualified Service Organization Addendum is required between subcontracted treatment provider agencies for any program that has more than one treatment subcontractor agency rendering services in the jail in order to share assessments and screenings between subcontracted treatment provider agencies.

2.3 Additional Measures. The Contractor shall agree to the following additional privacy measures:

- **a.** Safeguards. The Contractor shall take appropriate administrative, technical and physical safeguards to protect the data from any unauthorized use or disclosure not provided for in this agreement.
- **b.** Confidentiality. The Contractor shall protect data and information according to acceptable standards and no less rigorously than they protect their own confidential information. The Contractor shall ensure that individual level identifiable data or Protected Health Information (PHI) shall not be reported or made public. The Contractor shall ensure that all persons (e.g. interns, subcontractors, staff, and consultants) who have access to confidential information sign a confidentiality agreement.

Article 3
Financial Provisions

3.1 Cost Reimbursement / Allowable Expenses. This contract is paid by cost reimbursement. See Exhibit B, Budget and Rate Schedule, for a list of reimbursable expenses. The Rate Schedule is non-exhaustive; other items expensed to this Contract must be reasonable toward completion of the contract terms, are reviewable by OBH, and shall not exceed any detail in the budget in this regard.

3.2 Staff Time Tracking and Invoicing. The Contractor shall ensure expenses and staff are tracked and invoiced separately for each program or funding stream. Any other funding sources or in kind contributions (e.g. charitable donations; unbilled services/contributions of Contractor) supporting the JBBS Program shall be disclosed in the invoice submission.

3.3 General Accounting Encumbrances. Some Parts under this Statement of Work may utilize general accounting encumbrances. Detailed information regarding the general accounting encumbrances can be found in those Parts.

3.4 Other Financial Provisions, including invoicing instructions can be found in Exhibit C, Miscellaneous Provisions.

PART TWO - SUBSTANCE USE DISORDER (SUD) TREATMENT SERVICES

Article 1
Purpose and Target Population

1.1 Purpose. As used in this Statement of Work exhibit, the State and the Contractor together are referred to as the "Parties". The Parties understand and agree that the goal of the Jail Based Behavioral Health Services (JBBS) Program is to support county Sheriffs in providing screening,

assessment and treatment for offenders with substance use disorders (SUD) and co-occurring substance use and mental health disorders, as well as transition case management services. Through funds authorized by the Colorado General Assembly (SB 12-163), the Office of Behavioral Health (OBH) intends to continue funding the Jail Based Behavioral Health Services Programs as set forth in this Contract.

1.2 Target Population. Adults 18 years of age and older that are residing in the county jail with substance use disorder or co-occurring substance use and mental health disorders.

In this regard, the Contractor, in accordance with the terms and conditions of this Contract, shall develop, maintain, and provide behavioral health services in the county jails for individuals highlighted in section 1.2. The Contractor, in providing required services hereunder, shall utilize and maintain a partnership with local community provider(s) that are licensed or credentialed (LAC, LPC, LCSW, LMFT, LP, CAC III) and are in good standing with the Department of Regulatory Agencies (DORA), have the ability to provide services within the jail, and have the capacity to provide free or low-cost services in the community to inmates upon release.

Article 2
Activities and Services

2.1. Licensed Substance Use Disorder Treatment Requirements.

- **a.** Eligibility. Per program authorizing legislation, individuals must have a substance use disorder and/or a co-occurring mental health disorder (not requiring previous formal diagnosis) to be eligible to receive services under the JBBS Substance Use Disorder Treatment program.
- **b.** Treatment providers (whether Contractor or subcontractor) must hold a Substance Use Disorder Provider license and be in good standing with the Colorado Department of Regulatory Agencies (DORA).
- **c.** Contractor shall implement policies and procedures on how subcontracted treatment provider(s) will manage and maintain clinical records for the individuals served at the outpatient community location. The providers must follow the same protocols and policies for record management for services offered in the jail.
- **d.** Contractor shall provide appropriate screening(s), assessment(s), brief intervention and linkage to care in the community, based on an individualized treatment and/or transition plan.
    - **i.** Contractor shall utilize evidence-based screening processes and tools, subject to approval by OBH, to screen for mental health disorders, substance use disorders, trauma, and traumatic brain injuries.
- **e.** Each individual’s treatment / transition plan should incorporate:
    - **i.** Summary of the continuum of services offered to individuals based on evidence based curricula.
    - **ii.** Frequency and duration of services offered.

iii. If an individual's treatment will be provided by more than one treatment provider, describe how services are distributed between providers.

iv. Incorporation of criminogenic risk factors in service and transitional case planning as determined from the Level of Supervision Inventory (LSI).

v. The individual's natural communities and pro-social support.

vi. A plan to transition individuals from jail based services to appropriate behavioral health and other needed community services upon release from incarceration.

vii. Contractor shall provide treatment to individuals in need of services in accordance with the treatment and transition plan described above.

Article 3
Standards & Requirements

3.1 Authorizing Legislation and Description of Services. The Jail Based Behavioral Health Services (JBBS) Program is funded through the Correctional Treatment Cash Fund legislated in the passage of Senate Bill 12-163. Section 18-19-103 (c), C.R.S. directs the judicial department, the Department of Corrections, the state board of parole, the Division of Criminal Justice of the Department of Public Safety, and the Department of Human Services to cooperate in the development and implementation of the following:

a. Alcohol and drug screening, assessment, and evaluation.

b. Alcohol and drug testing.

c. An annual statewide conference regarding substance abuse treatment.

d. Treatment for assessed substance abuse and co-occurring disorders.

e. Recovery support services.

The Correctional Treatment Fund Board has determined the Jail Based Behavioral Health Services (JBBS) Program meets the requirements set forth in SB 12-163.

3.2 Level of program care. Services offered by the Contractor hereunder shall meet ASAM Level 1 or 2.1 level of care. Information on the ASAM can be found at https://www.asam.org/Quality-Science/the-asam-criteria/about

Article 4
Data Reporting

4.1 Contractor is required to report information in the OBH Jail Based Behavioral Health Services (JBBS) Civicore database or another database as prescribed by OBH. Data must reflect current individual enrollment and services provided by the 15th day of each calendar month to allow OBH staff to utilize current data. The following data elements will be captured in the Civicore JBBS database or other database as prescribed by OBH:

a. Basic demographic information

b. Numbers of individuals served

c. Number of individuals who screened "Positive" for a mental health disorder or substance use disorder; number of other screenings completed

d. LSI score for each individual admitted into JBBS program

e. The type and quantity of services provided, including the type and quantity of Medication Assisted Treatment services provided

f. Number of individuals who successfully transition to community based services upon release

g. Program discharge outcomes and treatment status in community after discharge

Article 5
Paid Performance Measures

5.1 Paid Performance Measure: Transition Tracking Outcomes. A goal of the JBBS program is to identify treatment service needs and assist with engagement in community based treatment services upon release. Contractor shall make reasonable efforts to contact all JBBS individuals who are successfully discharged from the program and released to the community at 1, 2, 6 and 12 months post release. Reasonable efforts include a minimum of two attempts to reach each individual by in-person, phone, or other electronic communication. Each attempt shall be documented in Civicore. The individual's treatment status shall be recorded in the Civicore JBBS database or another data system as prescribed by OBH. The following are the treatment status options:

a. Deceased – In the event of individual death post-release

b. In Treatment – Individual is engaged in community based treatment services as recommended on the transition plan

c. New Crime/Regressed - Individual returned to jail for violations or committed a new crime

d. Not Applicable - Individual sentenced to Department of Corrections or individual not tracked due to prior tracking status of Deceased, New Crime/Regressed, or Treatment Completed

e. Not in Treatment – Individual is tracked via the community based treatment provider or the individual reports to not be in treatment services as recommended on the transition plan

f. Status Unknown – Individual cannot be located

g. Treatment Completed – Individual completed treatment as recommended at time of release from jail

5.2 Paid Performance Measure Target & Incentives

a. Paid Performance Measure Target. Programs earn their Performance Incentive Payment if a total of 55%[1] or more of individuals who were released from the program are considered "In Treatment" or "Treatment Completed" at the one month transition tracking interval. For JBBS programs designed to have multiple county partnerships (catchments), the performance measure will be based on the average of those counties.

[1] This benchmark was determined based on the statewide average number of successfully discharged individuals identified to be "In Treatment" at the one month tracking interval in FY 17's semiannual data.

b. Performance Incentive Payment

i. A Performance Incentive Payment in the amount indicated in Exhibit B will be disbursed at the close of the fiscal year to programs or catchments that meet or exceed the 55% benchmark.[2]

ii. Programs who do not meet the performance benchmark shall be asked to submit a plan of action to improve program performance for the next fiscal year. The Contractor will not earn the performance payment if the benchmark is not met.

iii. General Accounting Encumbrance: Payment to Contractor is made from available funds encumbered and shared across multiple contractors. The State may increase or decrease the total funds encumbered at its sole discretion and without formal notice to Contractor. No minimum payment is guaranteed to Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.

Article 6
Deliverables

6.1 For Deliverables under this section, please see Part 6 - JBBS Program Deliverables

PART THREE - MENTAL HEALTH TREATMENT (SB 18-250)

Article 1
Purpose & Target Population

1.1 Purpose. The Office of Behavioral Health (OBH) is committed to efforts to provide resources to support County Sheriffs in providing screening, assessment and treatment for mental health and substance use disorders or co-occurring disorders; as well as transition case management services to people who need such services while they are in jail. The Jail Based Behavioral Health Services (JBBS) Program has been operational since October 2011 with funding from the Correctional Treatment Cash Fund pursuant to Section 18-19-103 (5)(c)(V).

The goal of the JBBS Program is to provide appropriate behavioral health services to inmates while supporting continuity of care within the community after release from incarceration. This approach should result in shorter jail sentences and decreased recidivism through better identification and treatment of behavioral health needs.

In May 2018, the Colorado General Assembly passed Senate Bill 18-250, which mandated the JBBS Program under Colorado Revised Statutes 27-60-106. Additional mental health funding, also allocated additional funding to the JBBS program to address gaps in services for mental health disorder screening, assessment, diagnosis and treatment. Additionally, these funds may support psychiatric prescription services and purchase of medications. Sheriff's Departments

[2] The Performance Incentive Payment amount is 10% of the Substance Use Treatment program (or catchment) funding allocated to Contractor in the OBH budget

that currently operate JBBS programs, as well as new applicants, are eligible to apply for these funds. Specifically, Sheriff's Departments may submit an individual application, or they may submit a combined application if they would like to apply in conjunction with other County Sheriff's Departments.

To carry out the JBBS program, Sheriff's Departments may partner with local community provider(s) who can demonstrate the ability to provide services within the jail, and the capacity to provide or link individuals released from jail to free or low cost services in the community.

1.2 Target Population. The program services are intended for individuals at county jails who are in need of behavioral health services. In accordance with the legislation, all funds are to be used to provide behavioral health services for adults (18 years of age and older) with mental health disorders or co-occurring substance use and mental health disorders. The funds from this contract must be used to provide the provisions of mental health services to individuals who are in jail and have been court ordered to the Colorado Department of Human Services to receive competency restoration services. The funds are not limited to this population; however, this population must be prioritized among the individuals receiving services funded by this contract.

Article 2
Activities & Services

2.1 Services. The Contractor shall:

- **a.** The Contractor shall develop eligibility criteria and program policies to identify individuals who will be referred to the program services. The Contractors may expand eligibility criteria to meet specific community needs.
- **b.** Provide adequate staff to complete behavioral health screenings, prescribe psychiatric medications as necessary; and provide mental health counseling, substance use disorder treatment and transitional care coordination.
- **c.** Perform brief screening of all individuals booked in the jail facility for mental health and substance use disorders and suicide risk within 48 hours of booking/intake at the facility, utilizing the following evidence-based standardized tools:
  - **i.** Brief Jail Mental Health Screen: https://www.prainc.com/wp-content/uploads/2015/10/bjmhsform.pdf
  - **ii.** Screening Instrument for Substance Use: www.bhevolution.org/public/document/ssi-aod.pdf
  - **iii.** Training guide link for Simple Screening Instrument: https://www.ncjrs.gov/pdffiles1/Digitization/152987NCJRS.pdf
  - **iv.** Columbia Suicide Severity Rating Scale: https://docs.google.com/document/d/13W_tIOPbio08TwpckQt6SjzWE3B8L3ugAVJEXveM8bM/edit?usp=sharing
  - **v.** Training and resource link for Columbia Suicide Severity Rating Scale: http://cssrs.columbia.edu/the-columbia-scale-c-ssrs/cssrs-for-communities-and-healthcare/#filter=.general-use.english
  - **vi.** Individuals who are in jail for more than 30 days and are admitted to the JBBS program will require a Level of Supervision Inventory- LSI risk assessment. The service plan shall incorporate the findings from the risk assessment.

- **d.** Assess all individuals booked into the jail facility for substance use withdrawal symptoms and develop protocols for medical detoxification monitoring procedures
- **e.** Assess all individuals booked into the jail facility for psychiatric medication needs by requesting and reviewing medical and prescription history.
- **f.** Have access to all psychiatric medications, as defined by the medication formulary established pursuant to C.R.S. 27-70-103.
- **g.** Assist in the provision of coordinated services for individuals in jail custody who may require competency restoration services.
- **h.** Coordinate services with local community behavioral health providers prior to the release of an inmate to ensure continuity of care following his or her release from the jail.
- **i.** Determine the most effective process to partner with community based clinical providers to ensure the following services are available to individuals in jail custody.

2.2 Training and Meetings. The Contractor shall provide training to improve correctional staff responses to people with mental illness. The Contractor shall determine the amount of training necessary to ensure, at a minimum, a group of trained staff is able to cover all time shifts. The training should provide sufficient opportunities for hands-on experiential learning, such as role play and group problem solving exercises. Cross-training opportunities shall be provided to behavioral health personnel and other stakeholders to help improve cross-system understanding. OBH is able to provide assistance with training the Medical Team staff regarding the MAT services and resources across the state.

- **a.** Program Orientation: The Contractor shall attend a mandatory orientation session with the OBH JBBS Program Manager and Fiscal Staff, to be organized by OBH as soon as is practicable execution of the contract.
- **b.** Program Meetings and Required Training: Program meetings and other required training will be scheduled throughout the term of the JBBS Program contract.

2.3 Evidence-Based Practices. The Contractor shall use evidence-based and promising practices within the screening and service delivery structure to support effective outcomes. The use of a risk/need/responsivity (RNR) model is encouraged to assess various factors such as substance use disorders, mental illness, cognitive or physical impairments, financial issues, family dynamics, housing instability, developmental disabilities, low literacy levels, and lack of reliable transportation, all of which may need to be addressed to support success.

2.4 Individualized Service Provision. The Contractor shall link individuals referred to the program to community based behavioral health supports and services, as appropriate based on the specific needs of the individual to ensure wraparound services are in place to reduce the risk of the individual returning into the justice system.

Article 3
Standards and Requirements

3.1 Mental Health Treatment Provider. The subcontracted mental health treatment provider must be licensed and in good standing with the Department of Regulatory Agencies (DORA).

Article 4
Deliverables

4.1 For Deliverables under this section, please see Part 7 - JBBS Program Deliverables

PART FOUR - JAIL MEDICATION ASSISTED TREATMENT (SB 19-008)

Article 1
Purpose & Target Population

1.1 Purpose. Senate Bill 19-008 requires county jails that receive Jail Based Behavioral Health Services (JBBS) program funding to have a policy in place by January 1, 2020, regarding the provision of medication-assisted treatment for opioid use disorder for its inmates. SB 19-008 also establishes funding through the Office of Behavioral Health (OBH) for county jails to provide medication-assisted treatment services in jails.

1.2 Target Population. 18 years of age and older, residing in county jail(s), who have screened positive for opioid use disorder, co-occurring opioid use and mental health disorders.

Article 2
Activities & Services

2.1 Provision of Medication-Assisted Treatment. Contractors engaging 19-008 funding shall expand access to care for persons who are incarcerated with opioid use disorder (OUD) through the following activities:

- **a.** Identify program appropriate individuals via screening
- **b.** Link persons with OUD with a community based clinical care provider
- **c.** Initiate Medication-Assisted Treatment (MAT) for OUD and retain in MAT/optimize retention to MAT while in jail
- **d.** Provide patient education surrounding OUD and the types of treatment available in their community
- **e.** Develop and routinely review individualized treatment plans

2.2 Allowable Expenses. The following are allowable expenses in the provision of the services above specific to this Part, reimbursable in accordance with the OBH-approved rate schedule.

- **a.** Fee for service agreements with contractors for treatment, medical staff, and medications.
- **b.** Required medications, handled subject to Controlled Substance / Medication Assisted Treatment licensing requirements, including medications for overdose reversal such as naloxone.
- **c.** Jail payroll expenses for interventions, medical staff, and medications.
- **d.** Facility upgrades related to MAT.
- **e.** Training and staff development for MAT

Invoice requests are due to OBH as expenses are incurred. Only one month's expenses are allowed per invoice.

Article 3
Standards and Requirements

3.1 General Accounting Encumbrance. This program will be funded by a General Accounting Encumbrance. Payment to Contractor is made from available funds encumbered and shared across multiple contractors. The State may increase or decrease the total funds encumbered at its sole discretion and without formal notice to the Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.

3.2 Program Policies and Plans

a. Contractor shall adhere to the policy or plan for its jail submitted to satisfy the deliverable described in Part Seven, Article 1.5.

b. A sheriff who is the custodian of a county jail or city and county jail may enter into agreements with community agencies, behavioral health organizations, and substance use disorder treatment organizations to assist in the development and administration of medication-assisted treatment in the jail.

3.3 License Requirements.

a. Providers licensed as an opioid medication assisted treatment (OMAT) program shall adhere to 2 CCR 502-1 Behavioral Health Rules regarding 21.320: Opioid Medication Assisted Treatment (OMAT).

b. Providers handling controlled substances shall adhere to 2 CCR 502-1 Behavioral Health Rules regarding 21.300: Controlled Substance License Requirements, which includes direction on the safe storage and handling of controlled substances.

3.4 Level of Program/Care. OMAT provider facilities shall meet ASAM Level 1 Outpatient Treatment or 2.1 Intensive Outpatient level of care.

Article 4
Deliverables

4.1 For Deliverables under this section, please see Part 7 - JBBS Program Deliverables

PART FIVE - COVID-19 EARLY RELEASE COORDINATED SERVICES

Article 1
Purpose & Target Population

1.1 Purpose. Due to the COVID-19 crisis, jails are implementing an early release option for low-risk inmates to help reduce the amount of individuals in County Jails. This new effort shall permit an alternative location and delivery method of services to individuals at county jails who are in need of behavioral health treatment and are on early release status because of COVID constraints.

a. JBBS services will work to enhance and improve care coordination for individuals in County Jails with shorter incarcerations (actual length to be determined by individual jails), which may prevent them from receiving more meaningful interventions by behavioral treatment staff.

b. Contractor shall facilitate communication and collaboration between judicial and behavioral health systems.

1.2 Target Population. Adults 18 years of age and older, that are residing in the jail awaiting release due to the COVID-19 crisis.

Article 2
Activities & Services

2.1 JBBS Coordinated Services. The Contractor shall refer individuals to behavioral health services, once the early release determination process is complete and specific needs of the individual are identified, to ensure wraparound services are in place to reduce the risk of the individual returning into the justice system. Below is a list of services Contractor shall provide:

a. Behavioral Health Screening: The Contractor shall coordinate with the existing jail screening processes, to identify the population that will have an early release determination within the jail and screen positive for a substance use disorders, co-occurring mental health and substance use disorders and/or are identified to be a suicide risk.

b. Brief Intake Assessment. The Contractor shall provide a brief intake to assess immediate behavioral health needs as soon as reasonable following the inmate's early release determination. The Office of Behavioral Health recommends utilizing the SOA-R to assess for needs. SOA-R training is offered periodically through the Colorado Division of Criminal Justice. https://www.colorado.gov/pacific/dcj/training-6

c. Referrals

i. Open Referral Process. The Contractor shall facilitate an open referral process with inmates where transitional resource packets are shared, reviewed and completed. The JBBS staff shall make referrals and coordinate services with licensed (LPC, LAC, LCSW) and/or certified (CAC II, CAC III) behavioral health professionals, prior to the release of an inmate, to ensure continuity of care. The JBBS staff shall make referral appointments based upon need and provide the appointment date to the individual before release.

ii. Wraparound Services. The Contractor shall refer individuals to services in the community, once the booking process is complete and specific needs of the individual are identified, to ensure wraparound services (including, but not limited to, clothing, transportation, emergency housing/motel vouchers, or basic hygiene need purchases that will assist in stabilizing the individual in the community.) are in place prior to release.

iii. Coordinate Referral Information. The Contractor shall coordinate with community entities as applicable (i.e., pre-trial, probation, community corrections, therapeutic communities, regarding referral information), to ensure the supervision entities are made aware of the individual's assessed needs and scheduled appointments.

iv. For clinically appropriate cases, Contractor shall make referrals to the appropriate Regional Accountable Entity to ensure timely connection to community treatment services

v. Make referrals to Medication-Assisted Treatment (MAT) services if possible while in jail, if not, connect them with Opiate Treatment Providers for resources in the community immediately upon release.

vi. Make referrals to the Momentum Program or Transitional Specialist Program operated by OBH and Rocky Mountain Human Services if the individual has a history of mental health issues and could benefit from wrap-around services to help integrate in the community. Direct consultation referrals can be made to Rocky Mountain Human Services to see if the client meets criteria.

vii. Additional JBBS Coordinated Services. The Contractor shall create an individualized transition plan with individuals for the purpose of linking them to community resources upon release. A physical copy of the detailed release plan will be shared with each inmate prior to release. Included with the release plan will be applicable referral contact information (i.e. name of referral organization, organization contract phone number, appointment date and time, identifying a positive family or social support that can assist the individual in making sure they follow the transition plan).

d. **Covered Services**

i. Intervention/Therapy. The Contractor shall offer brief intervention and/or therapy to inmates as necessary and possible. Refer to the following links for appropriate treatment models:

a. https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/results-first-clearinghouse-database

b. https://www.samhsa.gov/ebp-resource-center

ii. Medication-Assisted Treatment (MAT) services to continue in the community immediately upon release.

iii. Recovery Support Services. The Contractor, along with providing an outpatient referral, may offer recovery support services to clients upon their release who are in need of items such as hotel vouchers, grocery store gift cards, bus passes, basic hygiene items, and/or a prepaid cell phone.

e. **Service period.** Services and costs shall be limited to the dates of the clients incarcerated period through the original sentence, which would have otherwise been delivered in the jail, and shall be stated on the transition plan.

Article 3
Billing & Payment

Contractor will submit billing to OBH for reimbursement of costs incurred as described above, as an alternative to JBBS services, against the budgeted value of its current JBBS contract. Invoices must be prepared monthly and include the prior month's expenses. The total value of

the Contractor's invoices shall not exceed the value of the current contract, or last executed amendment.

PART SIX - JBBS PROGRAM DELIVERABLES

Article 1

1.1 Deliverables for All JBBS Programs

a. Annual Work Plan. The Contractor shall submit an Annual Work Plan via email to cdhs_jbbs@state.co.us for approval by the OBH JBBS Program Manager by the end of business of the first working day of June each year, for the following state fiscal year contract period (June 30 - July 1).

i. The Annual Work Plan shall specify the following information for each Part / scope of work in which Contractor will participate:

1. In the first year of service provision under a given scope of work, detail pre-implementation or ramp-up activities that occur in the first four (4) months of the project.
2. Determine and provide an organizational structure designed to facilitate and promote effective administration of the program.
3. Indicate the counties to be served and the Sheriff's Department contact(s) for each jail if there are multiple jails receiving services.
4. Describe the capacity or efforts to screen, using a validated OBH screening tool, all individuals booked into the jail facility for mental health, suicidality and substance use histories and needs.
5. Summarize the continuum of services offered pursuant to this Contract based on evidence based curricula.
6. List of the modality of services based on evidence based curricula.
7. Frequency and duration of services offered.
8. Availability of services during the week and hours of operation.
9. Breakdown of staff time (FTE) allocated to the program, credentials and general duties of each position. For example, Case Manager BA level 0.5 FTE and clinician licensed or CAC III 1.0 FTE.
10. In jails where more than one treatment provider is providing services, describe how individual caseloads are assigned amongst the providers.
    a. A HIPAA Business Associate Addendum / Qualified Service Organization Addendum is required between subcontracted treatment provider agencies for any program that has more than one treatment subcontractor agency rendering services in the jail in order to share assessments and screenings between subcontracted treatment provider agencies.
11. Describe ability to interface with other agencies serving persons

with substance use disorders or co-occurring mental illnesses, i.e., community mental health centers, substance use disorder treatment programs, service programs for Veterans, community service agencies, and other licensed clinicians in private practice, to meet individuals' treatment needs.

12. Describe the service array available within the community to program participants upon their release from jail, including behavioral health services. Where possible, individuals should be able to continue services with the same provider. Detail existing programs available to individuals upon release at the provider's agency locations in the community.

13. Describe which Recovery Support Services are most needed in the community and/or catchment area and how the provider or Sheriff's Department will use a portion of their budget to meet these needs.

14. Detail security protocol and reporting requirements expected from the treatment provider. This includes determining the limits of confidentiality for information disclosed by individuals during the course of treatment as it applies to a jail setting and the safety of the jail.

ii. Activities, services, budgets, plans, timelines, goals, and outcome measures included in the Work Plan shall be interpreted as being material contractual performance requirements, outcomes, measures, and contract deliverables of the Contractor.

iii. The work plan, once approved by OBH, shall be incorporated into this Contract by reference as work requirements of the Contractor supplemental to Contractor work requirements under the current Contract Exhibit A, Statement of Work, as amended.

b. Annual Report. The Contractor shall submit to the State the previous year's Annual Report by EOB July 31, utilizing the JBBS Reporting Template provided by OBH. The Contractor shall submit this report via email to cdhs_jbbs@state.co.us

c. Data Entry.

i. The Contractor shall complete all applicable data fields in the JBBS Civicore Database or another data system as prescribed by OBH on a continual basis throughout the year. All data entry shall be completed on an ongoing basis, and by the 15th of each month for all services provided during the previous month.

ii. The Contractor shall complete Colorado COMPASS or Drug Alcohol Coordinated Data System (DACODS) / Colorado Client Assessment Record (CCARs) or the equivalent information as prescribed by OBH by the last day of each month for all services provided during the previous month. COMPASS or CCAR/DACODS entries should be completed both upon

admission into JBBS services and discharge from JBBS services. A new COMPASS or CCAR / DACODS record or equivalent record as prescribed by OBH should be completed for the individual upon admission to services in the community setting.

d. **Quarterly Meeting Attendance.** OBH facilitates JBBS Program Meetings every quarter. The Contractor shall ensure that a representative from each jail participates in the meetings. The representative(s) who attends the meetings shall be responsible for relaying the information discussed during the meetings to the rest of the Contractor's program organizational structure.

e. **Critical Incidents.** The Contractor shall share the following information with the Office of Behavioral Health via an encrypted email to cdhs_ci_obh@state.co.us if a critical incident occurs during a session or in the presence of clinical staff funded by the JBBS funds within 24 hours of the time the incident occurs:
   - **i.** Date and time of incident;
   - **ii.** Location of the incident;
   - **iii.** The nature of the incident;
   - **iv.** How the incident was resolved;
   - **v.** Name[s] of staff present; and
   - **vi.** Whether the incident resulted in any physical harm to the participant or any staff.

f. **Copy of Proposed Subcontract.** The Contractor shall provide to OBH a copy of any proposed subcontract between the Contractor and any potential provider of services to fulfill any requirements of this Contract, to cdhs_jbbs@state.co.us within 30 days of subcontract execution. The subcontract will be evaluated to ensure it is in compliance with the maximum rates established in the FY20 Annual Budget Exhibit B document provided by OBH.

g. **Site Visits.** The OBH JBBS Program Manager(s) shall conduct site visits for the purpose of providing technical assistance support and quality assurance monitoring of the program on a periodic/as needed basis.

1.2 Additional Deliverables Related to Mental Health Expansion (SB 18-250)

a. **Data Entry.** All agencies are required to input individual information and services data into the Jail-Based Behavioral Health Services database online using the following URL: https://fw.civicore.com/jbbhs or another data system as prescribed by OBH. The Contractor shall complete all applicable data fields in the JBBS Civicore Database or another data system as prescribed by OBH on a continual basis throughout the year. Data must reflect current individual enrollment and services provided, by the 15th day of each calendar month, following the month when the service was provided. The following data should be tracked and provided:
   - **i**. Basic demographic information
   - **ii.** Numbers of individuals served
   - **iii.** Number of individuals who screened "Positive" for a mental health disorder or substance use disorder and number of other screenings completed

vi. LSI score for each individual admitted into JBBS program
v. The type and quantity of services provided, including the type and quantity of Medication Assisted Treatment services provided
vi. Number of individuals who successfully transition to community based services upon release
vii. Program discharge outcomes and treatment status in community after discharge
viii. Number of critical incidents at the jail involving individuals with a behavioral health positive screen

1.3 Additional Deliverables Related to Jail Medication-Assisted Treatment (SB 19-008)

a. **Organizational Structure.** All Contractors participating in JBBS shall determine and provide an organizational structure designed to facilitate and promote effective MAT program administration. This report is due via email to cdhs_jbbs@state.co.us by August 1 annually.

b. **Policies.** Prior to MAT services being delivered, the Contractor shall provide OBH a written policy for their intended Jail MAT service delivery method, via email to cdhs_jbbs@state.co.us. Contact OBH at cdhs_jbbs@state.co.us, for additional information on creating MAT policies.

c. **Barrier Reports.** If Contractor does not yet deliver MAT in its jail, Contractor shall submit a report detailing the barriers Contractor is experiencing that have prevented MAT delivery in the jail. Describe the capacity or efforts needed to get the jail into compliance or ability to provide MAT in the jail, including but not limited to withdrawal management, screening, and coordination of care for inmates identified for MAT. The report is due via email to cdhs_jbbs@state.co.us by August 1 annually.

d. **Start-Up Plans.** In the first year that Contractor will deliver MAT in its jail, Contractor shall submit a report of ramp-up activities that will occur in the first four months of the project via email to cdhs_jbbs@state.co.us by August 1 annually.

e. **Work Plan and Budget Submission/Approval.** In order to access SB19-008 funds, Contractor must submit a work plan as to how the funds will be used along with an initial budget to the OBH JBBS Program Manager within five (5) business days of Contractor's submission of said plan. OBH JBBS Program Manager will respond with an approval, a request for more information, or a rejection with cause within ten business days of receipt. Budgets in excess of $25,000 must be approved in advance in writing by the OBH JBBS Program Manager. Contractor work may not commence for projects with proposed budgets over $25,000 until the work plan and budget are approved by the OBH JBBS Program Manager.

f. **Data Entry.** Data related to Jail Medication-Assisted Treatment services shall be entered into the JBBS Civicore Database. https://fw.civicore.com/jbbhs/index.php?action=userLogin&ret=action%3Duserlogin

by the 15th day of each calendar month following the month when the service was provided, to include:

- **i.** Number of individuals screened for MAT
- **ii.** Number of individuals inducted on MAT and which medication
- **iii.** Number of individuals continued on MAT and which medication

Table 1
Below is the deliverables table required by OBH, for each JBBS related service.

Program	Deliverable	Description	Due Date	Responsible Party	Deliver to
All	Provide annual work plan	See 1.1, a above	By EOB April 1, for the following fiscal year	Contractor	cdhs_jbbs@state.co.us
All	Report critical incidents	See 1.1, e above	Within 24 hours of incident	Contractor / Subcontractor	cdhs_ci_obh@state.co.us
All	Provide JBBS annual report	See 1.1, b above	By EOB July 31 of the current year	Contractor	cdhs_jbbs@state.co.us
All	Quarterly meeting attendance	See 1.1, d above	Quarterly	Contractor	Locations TBD
All	Send OBH copy of proposed subcontract	See 1.1, f above	Within 30 days of contract being signed	Contractor	cdhs_jbbs@state.co.us
All	Site Visits	See 1.1, g above	Ongoing / as needed	OBH	Locations TBD
All	Data Entry	See 1.1, c above	Ongoing, by the 15th of each month for all services provided during the	Contractor	JBBS Civicore Database https://fw.civicore.com/jbbhs/index.php?action=userLogin&ret=action%3Duse

			previous month		rlogin
Mental Health Expansion (SB 18-250)	Data Entry Specific to Mental Health Expansion (SB18-250)	See 1.2, a above	Ongoing, by the 15th of each month for all services provided during the previous month	Contractor	JBBS Civicore Database https://fw.civicore.com/jbbhs/index.php?action=userLogin&ret=action%3Duserlogin
JMAT (SB 19-008)	Organizational Structure	See 1.3, a above	August 1 (annually)	Contractor	cdhs_jbbs@state.co.us
JMAT (SB 19-008)	Policies	See 1.3, b above	Prior to MAT services being delivered	Contractor	cdhs_jbbs@state.co.us
JMAT (SB 19-008)	Barrier Reports	See 1.3, c above	August 1 (annually)	Contractor	cdhs_jbbs@state.co.us
JMAT (SB 19-008)	Start-Up Plans	See 1.3, d above	August 1 (annually)	Contractor	cdhs_jbbs@state.co.us
JMAT (SB 19-008)	Work Plan and Budget Submission /Approval	See 1.3, e above	Within five (5) business days of plan submission	Contractor	cdhs_jbbs@state.co.us
JMAT (SB 19-008)	Data Entry Specific to JMAT (SB-19-008)	See 1.3, f above	Ongoing, by the 15th of each month for all services provided during the previous month	Contractor	JBBS Civicore Database https://fw.civicore.com/jbbhs/index.php?action=userLogin&ret=action%3Duserlogin

COLORADO
Office of Behavioral Health
Department of Human Services

FY21 ANNUAL BUDGET EXHIBIT B

OBH Program	JBBS

Agency Name	Montrose County Sheriff's Office	**Program Contact**	Alma Avery
		Phone	970-252-4073
		Email	aavery@montrosecounty.net
Budget Period	7/1/2020 - 6/30/2021	**Fiscal Contract**	Cindy Dunlap
		Phone	970-252-4070
		Email	cdunlap@montrosecounty.net
Project Name	JBBS	**Date Completed**	6/24/2020

SERVICE CATEGORIES		
Services (Fixed Price per Rate Schedule)	**Funding Source**	**Total**
Substance Use Disorder Treatment	State General Fund	175,511.00
Mental Health Treatment	State General Fund	196,124.00
	Total Contract	**371,635.00**

General Accounting Encumbrance - Medication Assisted Treatment	Total - All Jails
Naloxone	138,434.00
008 MAT Services	735,000.00
Total GAE	**873,434.00**

GAE total for all Contractors is $873,434. No minimum amount is guaranteed to Contractor. Funds are invoiced as earned per the terms of Exhibit A and the following Rate Schedule.

Potential Performance Payment	Total
Substance Use Disorder Treatment	17,551.00
Potential Payment	**17,551.00**

GAE total for all Contractors is $551,167. No minimum amount is guaranteed to Contractor. Funds are invoiced as earned per the terms of Exhibit A.

JBBS RATE SCHEDULE	
Statewide Maximum Salaries	
Positions should be hired at salary levels indicative of qualifications, experience, and organization pay schedules. This table indicates a maximum salary only. It is understood that many positions will be hired at lower salary levels than the state maximum.	
Licensed Therapist (LPC)*	$65,794/year
Licensed Clinical Social Worker (LCSW) *	$76,648/year
Unlicensed Therapist or Substance Abuse Counselor (CAC II and above) *	$60,500/year
Case Manager (CM) *	$68,415/year
Nurse Practitioner *	$119,353/year
Physician Assistance (PA) *	$119,171/year
MD/DO *	$251,267/year
Administrator (Lieutenant, Sergeant, etc) *	$97,594/year
Pre-sentence Coordinator *	$75,000/year
Registered Nurse *	$68,797/year
***OBH will reimburse salaries up to the state maximum**	
***OBH may consider rates 10% above statewide maximum salaries pending justification from jails and written pre-approval by OBH**	
Travel	
Mileage (IRS rate)	$0.58/mile
Operating Expenses	
Maximum total percentage of contract budget	10%
Any training and continuing education for jail employees may be included in the operating expenses	
OBH may consider operating expenses above 10% of total contract budget pending justification from jails and written pre-approval by OBH	

FY21 ANNUAL BUDGET EXHIBIT B

Indirect Expenses	
Maximum total percentage of contract budget	10%
OBH may consider operating expenses above 10% of total contract budget pending justification from jails and written pre-approval by OBH	
RECOVERY SUPPORT SERVICES	
Allowed Services*	**Additional Notes**
Application Fees ID / Birth Certificates	One time per client
Backpacks	
Basic Hygiene Items	Limit of $15.00 per person
Bicycles	May be provided if client is engaged in treatment services for 2 or more months post release and can prove no other transportation options are available. 1 time per person.
Bus Pass – Daily, Monthly	One time per client for monthly and 3 booklets for one-time passes
Child Care	1 month limit per client
Clothing Vouchers	Limit of $100.00 per person
Educational Costs (books, supplies, and fees)	
Emergency Housing	90 days limit per person
Food Assistance	
Gas Vouchers	Limit of $30.00 per person
GED Program / Testing	
Job Placement Training	
Life Skills Training	
Medical Assistance – copays / infectious disease testing	Limit of $250.00 per person
Medications	30 days limit per person
Personal Hygiene Care (eg. haircuts)	Limit of $20.00 per person
Phone Cards	Limit of $15.00 per person
Pre-paid Cell Phones	*To be paid for upon release and after client attends 2 appointments in the community. Cost of the phone and up to 2 months of bills.
Printed Resources	
Taxi	Only if no public transportation is available in the area
Transportation to Residential Treatment	Limit of $1,200.00 per contract (for the whole catchment area)
UA / BAs	Limit of $100.00 per person
Utilities	1 month limit per client
***OBH may consider other expenses pending justification from jails and written pre-approval by OBH**	
MEDICATIONS	
Medication reimbursement will be based on a) providers established rate or b) jail purchase agreement rate or c) in the absence of an established rate or jail purchase agreement rate the following OBH rate schedule.	
Psychotropic Medication will be reimbursed at rate established on Preferred Drug List (PDL) which can be found at https://www.colorado.gov/hcpf/pharmacy resources	
Medication	**Rate**
Methadone	$18/day. Methodone treatment, including medication and integrated psychosocial and medical support services (assumed daily visit) $126/wk or $6,552/yr
Naltrexone (oral)	Monthly Medication Rate: $85. Monthly Prescriber Rate: $150
Depot-naltrexone (injectable) (Vivitrol)	$1,376/unit; 380mg injection (extended release) per month
Buprenorphine (pregnancy) - 8mg	$41/month
Buprenorphine (pregnancy) - 2mg	$31/month
Buprenorphine/naloxone sublingual film (suboxone) - 12mg/3mg	$275/month
Buprenorphine/naloxone sublingual film (suboxone) - 8mg/2mg	$140/month
Buprenorphine/naloxone sublingual film (suboxone) - 4mg/1mg	$140/month
Buprenorphine/naloxone sublingual film (suboxone) - 2mg/0.5mg	$80/month
Naloxone (Narcan)	Unit Cost: $75. Prescriber Rate: $35
Suboxone and generics	$5.55 / unit @30 days = $166.50 for a 2mg-0.5mg dose; range can increase from 4mg-1mg ($290.75), 8mg-2mg ($290.75), 12mg-3mg ($572.01)
Buprenorphine - 8mg	$41/month
Buprenorphine - 2mg	$31/month
Sublocade (injectable)	$1,376/unit; 380mg injection (extended release) per month

Exhibit C
Miscellaneous Provisions

I. General Provisions and Requirements

A. Finance and Data Protocols

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

B. Print and Marketing Materials

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

C. Option Letter

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

D. Start-up Costs

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

E. Immediate Notification of Closures / Reductions in Force

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

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

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

G. Contract Contact Procedure

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

H. Continuity of Operations Plan

1. In the event of an emergency resulting in a disruption of normal activities, OBH may request that Contractor provide a plan describing how Contractor will ensure the execution of essential functions of the Contract, to the extent possible under the circumstances of the inciting emergency ("Continuity of Operations Plan" or "Plan").
2. OBH will set a deadline and destination email address or other contact information for a draft of the Continuity of Operations Plan at time of request. Deadline will be reasonable under the circumstances of the emergency.
3. The Continuity of Operations Plan must be specific and responsive to the circumstances of the inciting emergency.
4. OBH will provide feedback and edits to the Continuity of Operations Plan within a reasonable time frame following receipt under the circumstances of the emergency (for example, five business days where electronic communications are not disrupted).
5. OBH will present Contractor with a final Continuity of Operations Plan to Contractor for Contractor to approve in writing (hard or electronic formats). Upon Contractor's acceptance of the final Plan, Contractor may begin to operate under the terms of the Continuity of Operations Plan.
6. The Continuity of Operations Plan will not impact or change the budget or any other provisions of the contract, and Contractor's performance of the final Continuity of Operations Plan will be held to the same standards and requirements as the original Contract terms, unless otherwise specified in the Continuity of Operations Plan.
7. OBH will submit the Continuity of Operations Plan as a formal contract amendment to CDHS Contracts Management as soon as is practicable.
8. Contractor shall communicate with OBH a minimum of once weekly, in a format mutually agreed upon by OBH and Contractor staff, to monitor services under the Continuity of Operations Plan. If adjustments are needed to the Plan, Contractor and OBH shall follow the procedures in section I.1-I.5 to make the change.
    a. As part of the weekly OBH/Contractor communication, Contractor and OBH will evaluate whether the emergency situation has resolved such that normal operations may be resumed.
    b. If Contractor and OBH determine that the emergency situation is sufficiently resolved, Contractor will present a 30-day closeout procedure. Contractor and OBH shall follow the procedures in section I.1-I.5 to ratify the closeout procedure. Weekly reporting shall continue throughout the closeout period and for four weeks after termination of the Continuity of Operations Plan.
    c. OBH will submit notice of termination of the Continuity of Operations Plan as a formal contract amendment to CDHS Contracts Management as soon as is practicable.

II. Use of Subcontracts.

A. Services described in this Contract may be performed by Contractor or by a subcontractor, except where this Contract states explicitly that a service must not be subcontracted.

1. To the extent a subcontractor is used, the Contractor shall provide a copy of the subcontract to OBH at cdhs_deliverablesobh@state.co.us.
2. Contractor shall ensure that its subcontractors perform to the terms of this Contract.

B. Any subcontract for services must include, at a minimum, the following:

3. A description of each partner's participation
4. Responsibilities to the program (policy and/or operational)
5. Resources the subcontractor will contribute, reimbursement rates, services to be included and processes in collecting and sharing data and the most recent CDHS version of the HIPAA Business Associates Addendum, if this Contract contains the HIPAA Business Associates Addendum/Qualified Service Organization Addendum as an exhibit.

C. The Contractor shall provide to OBH a copy of any proposed subcontract between the Contractor and any potential provider of services to fulfill any requirements of this Contract, to cdhs_deliverablesobh@state.co.us within 30 days of subcontract execution.

D. OBH reserves the right to require Contractor to renegotiate subcontracts where necessary to adhere to the terms of this Contract.

E. Subcontractor/Partnership Termination. In the event where partnerships with a subcontractor such as a treatment provider is terminated, the Contractor shall transition to a new partnership no later than 30 days from termination to ensure continuity of care for all participants of the program.

III. Additional Remedies

A. Duty to Act in Good Faith

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

B. Corrective Action

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

may exercise liquidated damages herein.

C. Liquidated Damages.

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

IV. Audit Requirements

A. Independent Audit Requirements

6. "Independent financial audit" shall be defined as follows– a financial audit conducted by a certified public accounting firm or certified public accountant (CPA) in accordance with generally accepted accounting principles and applicable federal regulations. The CPA or firm must be independent of the Contractor. "Independent" means not a regular full-time or part-time employee of the Contractor and not receiving any form of compensation from the Contractor other than compensation that the CPA receives for the conduct of the financial audit.

7. If the Contractor or sub-contractor expends federal awards from all sources (direct or from pass-through entities) in an amount of $300,000 or more during its fiscal year shall have an independent financial audit performed annually. The audit shall identify, examine, and report the income and expenditures specific to operation of the services described in this contract. The audit will be presented in the format specified in the "Accounting and Auditing Guidelines" for Colorado Department of Human Services, Office of Behavioral Health (OBH), found on the OBH website.

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

B. Annual Single Audit

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

V. Financial Requirements

A. Funding Sources

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

B. Budget Reallocations

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

C. Payment Terms

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

EXHIBIT D - HIPAA BUSINESS ASSOCIATE AGREEMENT

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

1. PURPOSE

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

2. DEFINITIONS

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

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

a. Business Associate. "Business Associate" shall have the same meaning as the term "business associate" at 45 C.F.R. 160.103, and shall refer to Contractor.

b. Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103, and shall refer to the State.

c. Information Technology and Information Security. "Information Technology" and "Information Security" shall have the same meanings as the terms "information technology" and "information security", respectively, in §24-37.5-102, C.R.S.

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

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Permitted Uses and Disclosures.

i. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.

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

ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:

A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;

B. the person notifies Business Associate of any Breach involving PHI of which it is aware.

iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.

b. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).

c. Impermissible Uses and Disclosures.

i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.

ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.

d. Business Associate's Subcontractors.

i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.

ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.

iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.

e. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such

system including, but not limited to, any policies promulgated by the Office of Information Technology and available at http://oit.state.co.us/about/policies.

f. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.

g. Amendment of PHI.

i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.

ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.

h. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.

i. Restrictions and Confidential Communications.

i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:

A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or

B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.

ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.

iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.

j. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.

k. Audit, Inspection and Enforcement.

i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.

ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

l. Appropriate Safeguards.

i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.

ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.

iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.

iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

m. Safeguard During Transmission.

i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.

ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

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

i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.

ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.

iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.

iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.

o. Business Associate's Insurance and Notification Costs.

i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:

A. loss of PHI data;

B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and

C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.

ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).

iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.

iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

p. Subcontractors and Breaches.

i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.

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

q. Data Ownership.

i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.

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

4. OBLIGATIONS OF COVERED ENTITY

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

b. Notice of Changes.

i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.

ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. TERMINATION

a. Breach.

i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.

ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

b. Effect of Termination.

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

ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of

Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. INJUNCTIVE RELIEF

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

7. LIMITATION OF LIABILITY

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

8. DISCLAIMER

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

9. CERTIFICATION

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

10. AMENDMENT

a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.

i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.

ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain

written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.

iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.

iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:

A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or

B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.

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

11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

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

12. INTERPRETATION AND ORDER OF PRECEDENCE

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

13. SURVIVAL

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

APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

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

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

1. PURPOSE

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

2. ADDITIONAL TERMS

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

i. Reserved.

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

i. Reserved.

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

i. Subcontractors with Patient Consent.

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

i. Reserved.

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

i. Covered Entity is a Business Associate of certain other Covered Entities and, pursuant to such obligations of Covered Entity, Associate shall comply with the following restrictions on the use and disclosure of Protected Information:

ii. The Associate:

A. Acknowledges this agreement qualifies as a Qualified Service Organization Addendum as the agreement is between a Substance Abuse Program ("Program") and a Qualified Service Organization as defined by 42 C.F.R. Part 2.

B. Acknowledges that in receiving, transmitting, transporting, storing, processing or otherwise dealing with any information received from the Program identifying or otherwise relating to the patient in the Program ("protected information"), it is fully bound by the provisions of the federal regulations governing the Confidentiality of Substance Use Disorder Abuse Patient Records, 42 C.F.R. Part 2. Protected information encompasses protected health information ("PHI") and references to PHI shall be understood to include protected information.

C. Agrees to resist any efforts in judicial proceeding to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Substance Use Disorder patient Records, 42 C.F.R. Part 2.

D. Agrees that if the Associate enters into a contract with any agent or subcontractor, the agent or subcontractor will agree to comply with 42 C.F.R Part 2.

E. Agrees to ensure that any agent or subcontractor to whom the Associate provides protected information received from the Program, or creates or receives on behalf of the Program, agrees to the same restrictions and conditions that apply through this agreement to the Associate with respect to such information.

F. Agrees that redisclosure of protected information is prohibited unless permitted by 42 C.F.R. Part 2.

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

i. Reserved.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is effective as of the **____ of _____, 2020**, herein, the ("Agreement Effective Date") by and through its Montrose County Board of County Commissioners ("**Covered Entity**" or "CE"), a body politic and corporate, duly organized and existing with the State, whose address is 317 S. 2nd Street, Montrose, CO, 81401, and Advanced Treatment Centers (Montrose), ("Business Associate" or "BA") a nonprofit organization duly organized and existing pursuant to the laws of the State of Colorado.

RECITALS

WHEREAS, the Covered Entity has engaged the Business Associate to perform services or provide goods, or both; and

WHEREAS, the Covered Entity possesses Protected Health Information that is protected under Health Insurance Portability and Accountability Act of 1996 (as hereinafter referred to as HIPAA), and is permitted to use or disclose such information only in accordance with HIPAA and the HIPAA Regulations; and

WHEREAS, the Parties intend to protect the privacy and security of the disclosed PHI in compliance with HIPAA 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 ("AARA") Pub. L. No. 111-5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 46 C.F.R. Parts 160, 162, 164 (the "HIPAA Rules") and other applicable laws, as amended; and

WHEREAS, 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(c) 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; and

NOW THEREFORE, the Covered Entity and Business Associate agree as follows;

1. **Definitions.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations.

   A. "*Business Associate"* means, with respect to a Covered Entity, a person who:

      (i) on behalf of such Covered Entity or of an organized health care arrangement (as defined under the HIPAA Regulations) in which Covered Entity participates, but other than in the capacity of a member of the workforce of such Covered Entity or arrangement, performs, or assists in the performance of:

         a. a function or activity involving the use or disclosure of Individually Identifiable Health Information, including claims processing or administration, data analysis,

processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

b. any other function or activity regulated by the HIPAA Regulations; or (2) provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an organized health care arrangement in which Covered Entity participates, where the provision of the service involves the disclosure of Individually Identifiable Health Information from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.

B. "*Covered Entity*" means a health plan (as defined by HIPAA and the HIPAA Regulations), a health care clearinghouse (as defined by HIPAA and the HIPAA Regulations), or a health care provided (as defined by HIPAA and the HIPAA Regulations), who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations.

C. "*Data Aggregation*" means the combining, by the Business Associate, of the Covered Entity's PHI with PHI that the Business Associate received from another Covered Entity, to permit data analyses that related to the health care operations of the respective Covered Entities.

D. "*HIPAA*" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

E. "*HIPPA Regulations*" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 60 and 45 C.F.R. Part 64.

F. "*Individually Identifiable Health Information*" means information that is a subset of health information, including demographic information collected from an individual, and;

(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) relates to the past, present, or future physical or mental health or 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

(a) that identifies the individual; or

(b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

G. "*PHI*" means Protected Health Information that: (i) Business Associate receives from Covered Entity; (ii) Business Associate creates for its own purposes from Protected Health Information that Business Associate receives from Covered Entity or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity.

H. *"Protected Health Information"* means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term *electronic media* in the HIPAA Regulations; or transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended 20 U.S.C. § 232g (a)(4)(B)(iv).

I. *"Security Incident"* means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. **Status of Parties.** Business Associate hereby acknowledges and agrees that Covered Entity is a Covered Entity and that Business Associate is a Business Associate of Covered Entity.

3. Permitted Uses and Disclosures.

A. *Performance of Services.* Business Associate may use and disclose PHI in connection with the Professional Service Agreement if such use or disclosure of PHI would not violate HIPAA or the HIPAA Regulations if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b or 3.c. of this Agreement.

B. *Proper Management and Administration*. Business Associate may use PHI for the proper management and administration of BA in connection with the performance of services permitted by this Agreement. Business Associate may disclose Covered Entity's PHI for such proper management and administration of Business Associate only with the prior consent of Covered Entity. Any such disclosure of PHI shall only be made if Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that (1.) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; (2.) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

4. Nondisclosure

A. *As Provided In Agreement*. BA shall not use or further disclose Covered Entity's PHI except as permitted or required by this Agreement

B. *Disclosure Required By Law*. Business Associate shall not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 3.b. hereof that such persons will provide Covered Entity with similar notice an opportunity to object before disclosing PHI on the basis that such disclosure is required by law.

C. A*dditional Restrictions*. If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses of disclosures of Covered Entity's PHI pursuant to HIPAA or the HIPAA Regulations, BA shall be bound by such additional restrictions and shall not disclose Covered Entity's PHI in violation of such additional restrictions.

5. Safeguards, Reporting, Mitigation and Enforcement.

A. *Safeguards.* Business Associate shall use any and all appropriate administrative , physical and technical safeguards to (1) prevent use or disclosure of Covered Entity's PHI otherwise than as provided by this Agreement, and (2) protect the confidentiality, integrity, and availability of any electronic PHI.

B. *BA's Agents.* Business Associate shall not disclose PHI to any agent or subcontractor of Business Associate except with the prior written consent of CE. BA shall ensure that any agents, including subcontractors, to who it provides PHI, agree in writing to be bound by the same restrictions and conditions that apply to BA with respect to such PHI; provided, however, that BA shall not disclose or provide access to CE's PHI to any subcontractor or agent without the prior consent of CE.

C. *Reporting.* BA shall report to CE [as soon as practicable] [within thirty (30) days of BA becoming aware of any use or disclosure of CE's PHI in violation of this Agreement or applicable law. BA shall also report to CE within the dame time-frame any Security Incident of which it becomes aware (OPTIONS INCLUDED) [as soon as reasonably practicable][within thirty (30) days].

D. *Mitigation.* BA shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of CE's PHI in violation of this Agreement or applicable law.

E. *Sanctions.* BA shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses CE's PHI in violation of this Agreement or applicable law.

F. *CE's Rights of Access and Inspection.* From time to time upon reasonable notice, or upon a reasonable determination by CE that BA has breached this Agreement, CE may inspect the facilities systems, books and records of BA to monitor compliance with this Agreement. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems and procedures does not relieve BA of its responsibility to comply with this Agreement, nor does CE's (1) failure to detect or (2) detection of but failure to notify BA or required BA's remediation of any unsatisfactory practices constitute acceptance of such practice or waiver of CE's enforcement or termination rights under this Agreement. The parties' respective rights and obligations under this Section 5.f. shall survive termination of this Agreement.

G. *United States Department of Health and Human Services*. BA shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the

United States Department of Health and Human Services ("HHS") for purposes of determining CE's compliance with HIPAA and the HIPAA Regulations; provided, however, that BA shall immediately notify CE upon receipt by BA of any such request for access by the Secretary of HHS, and shall provide CE with a copy thereof as well as a copy of all materials disclosed pursuant thereto. The parties' respective rights and obligations under Section 5.g. shall survive3 termination of the Agreement.

6. Obligation to Provided Access, Amendment and Accounting of PHI.

A. *Access to PHI.* BA shall make available to CE such information as CE may require to fulfill CE's obligations to provide access to, and copies of PHI in accordance with HIPAA and the HIPAA Regulations.

B. *Amendments of PHI.* BA shall make available to CE such information as CE may require to fulfill CE's obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, BA shall, as directed by CE, incorporate any amendments to CE's PHI into copies of such information maintained by BA.

C. *Accounting of Disclosure of PHI.* BA shall make available to CE such information as CE may require to fulfill CE's obligations to provide an accounting of disclosure with respect to PHI in accordance with HIPAA and the HIPAA Regulations. In addition, BA shall maintain a record of all disclosures of PHI, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the basis for such disclosure. BA shall make this record available to CE upon CE's request.

D. *Forwarding Request From Individual.* In the event that any individual request access to, amendment of, or accounting of PHI directly from BA, BA shall within two (2) days forward such request to CE. CE shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to CE would cause CE or BA to violate HIPAA or the HIPAA Regulations, BA shall instead respond to the individual's request as required by such law and notify CE of such response as soon as practicable.

7. Material Breach, Enforcement and Termination.

A. *Term.* This Agreement shall be effective as of the Agreement Effective Date, and shall continue until the Agreement is terminated in accordance with the provisions of Section 7.b.

B. *Termination.* CE may Terminate this Agreement:

1.) Immediately if BA is named as a defendant in a criminal proceeding for a violation of HIPAA or HIPAA Regulations;
2.) Immediately if a finding or stipulation that BA has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which BA has been joined; or
3.) Pursuant to Section 7.c. or 8.b. of this Agreement.

C. *Remedies.* If CE determines that BA has breached or violated a material term of this Agreement, CE may, at its option, pursue any and all of the following remedies:

1.) Exercise any of tis rights of access and inspection under Section 5.f. of this Agreement;
2.) Take any other reasonable steps that CE, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
3.) Terminate this Agreement immediately.

D. *Knowledge of Non-Compliance*. Any non-compliance by BA with this Agreement or with HIPAA or the HIPAA Regulations automatically will be considered a breach or violation of a material term of this Agreement if BA know or reasonable should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

E. R*eporting to United States Department of Health and Human Services*. If CE's efforts to cure any breach or end any violation are unsuccessful, and if termination of this Agreement is not feasible, CE shall report BA's breach or violation to the Secretary of HHS, and BA agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against CE with respect to such reports.

F. *Return or Destruction of Records.* Upon termination of this Agreement for any reason, BA shall return or destroy, as specified by CE, all PHI that BA still maintains in any form, and shall retain no copies of such PHI. If CE, in its sole discretion, requires that BA destroy any of all PHI, BA shall certify to CE that the PHI has been destroyed. If return of destruction is not feasible, BA shall inform CE of the reason it is not feasible and shall continue to extend the protections of this Agreement to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

G. *Injunctions*. CE and BA agree that any violation of the provisions of the Agreement may cause irreparable harm to CE. Accordingly, in addition to any other remedies available to CE at law, in equity, or under this Agreement, in the event of any violation by BA of any of the provisions of this Agreement, or any explicit threat thereof, CE shall be entitled to an injunction of other decree of specified performance with respect to such violation or explicit threat thereof without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section 7.g shall survive termination of the Agreement.

H. *Indemnification* - BA shall indemnify, hold harmless, and defend CE from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of BA in connection with the representations, duties, and obligations of BA under this Section 7.h. shall survive termination of the Agreement.

8. Miscellaneous Terms

A. *State Law.* Nothing in this Agreement shall be construed to require BA to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written

authorization from any other person, where such authorization would be required under state law or such use or disclosure.

B. *Amendment*. CE and BA agree that amendment of the Agreement may be required to ensure that CE and BA comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI. CE may terminate this Agreement upon thirty (30) days written notice in the event that BA does not promptly enter into an amendment that CE, in its sole discretion, deems sufficient to ensure that CE will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between the parties.

C. *No Third Party Beneficiaries*. Nothing expressed or implied in this Agreement is intended or shall be deemed to confer upon any person other than CE and BA, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

D. *Ambiguities*. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA and the HIPPA Regulations.

E. *Primacy*. To the extent that any provision of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement.