



COLORADO
Financial Services
Division of Contracts & Procurement



REQUEST FOR PROPOSAL

IHGA 2021000282

**Marketing and Advertising for the Low-Income Energy
Assistance Program (LEAP)**

05/12/2021

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SECTION I

ISSUE AND TIMELINE INFORMATION

A. ISSUING OFFICE:

This Request for Proposal (RFP) 2021000282 is issued for the State of Colorado (State) by the Department of Human Services (CDHS or Department), for the benefit of the Department through the CDHS Division of Procurement.

B. INVITATION TO SUBMIT PROPOSALS:

The State of Colorado is posting this RFP on the Colorado Vender Self Service page (Colorado VSS) so that firms that have an interest may submit a proposal in accordance with the terms of this RFP.

C. MEANS OF COMMUNICATION:

In the event that it becomes necessary to revise any part of this RFP, a modification will be published on the Colorado VSS web site at www.colorado.gov/vss. It is incumbent upon Offerors to carefully and regularly monitor Colorado VSS for any such postings.

The CDHS Division of Procurement is the SOLE point of contact concerning this RFP. **All communication for this procurement must be done through the CDHS Division of Procurement point of contact indicated in this RFP and Colorado VSS.**

D. PURPOSE:

This RFP provides prospective firms with sufficient information to enable them to prepare and submit proposals for consideration to satisfy the need for expert assistance in the completion of the goals of this RFP.

E. SCOPE:

This RFP contains the instructions governing the proposal to be submitted and the material to be included therein and other requirements to be met by each proposal.

F. SCHEDULE OF ACTIVITIES:

		Date	Time (MT)
1	RFP PUBLISHED ON COLORADO VSS WEB PAGE (www.colorado.gov/VSS)	5/12/21	
2	PROSPECTIVE FIRMS WRITTEN INQUIRY DEADLINE (NO WRITTEN QUESTIONS WILL BE ACCEPTED AFTER THIS DATE). Email Inquiries: toby.erxleben@state.co.us	5/26/21	5:00 p.m.
3	RESPONSES TO WRITTEN INQUIRIES PUBLISHED ON Colorado VSS	6/2/21	
4	PROPOSAL SUBMISSION DEADLINE See Administrative Information Section II-D for submission.	6/14/21	4:00 p.m.
5	PUBLIC OPENING	6/15/21	10:00 a.m.
6	CONTRACT PERIOD: ESTIMATED 10-01-2021 to 9-30- 2022 plus four (4) one year options to renew (option of the State)		

G. BUDGET:

The budget for this RFP will not be made public until an award has been issued. The State reserves the right to increase or decrease the amount awarded based upon availability of appropriated funding.

H. TERM OF CONTRACT:

The anticipated initial term of the resulting contract is October 1, 2021 through September 30, 2022. The resulting contract may be renewed for four (4) additional one-year periods at the sole discretion of the State, contingent upon funds being appropriated, budgeted, and otherwise made available, and other contractual requirements, if applicable, being satisfied.

Section II

ADMINISTRATIVE INFORMATION

A. OFFICIAL MEANS OF COMMUNICATION: During the solicitation process for this RFP, all official communication with Offerors will be via notices on Colorado VSS. Notices may include any modifications to administrative or performance requirement, answers to inquiries received, clarifications to requirements, and the announcement of the apparent winning Offeror. ***It is incumbent upon Offerors to carefully and regularly monitor VSS for any such notices.***

B. INQUIRIES: Unless otherwise noted, prospective offerors may make written or e-mail inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time indicated in the Schedule of Activities.

E-mail all inquiries to: toby.erxleben@state.co.us clearly identify your inquiries as RFP IHGA 2021000282, LEAP Marketing and Advertising.

Responses to offerors' inquiries will be published as a modification on the State of Colorado - VSS web page in a timely manner.

C. MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

D. PROPOSAL SUBMISSION:

ELECTRONIC SUBMISSION:

The Colorado Department of Human Services (Department) is utilizing a new online solicitation submission application. To use this application, please send an email to the email address located below that contains your proposal as a zip folder. Please note the following:

- **The subject line and the body of the email are not uploaded into the online submission application.** Only email attachments are uploaded. Should any Vendor wish to ask a question or make a comment regarding the solicitation, the Vendor should email the procurement contact. If any comment or question is included in the email to the online submission application, the Department will not answer or address them because the Department does not receive them.
- The solicitation submission application typically uploads proposals within five minutes. The Vendor should submit proposals thirty minutes prior to the solicitation deadline to ensure the proposal was validly received.
- The application sends an email confirmation if the proposal was uploaded correctly.
- All inquiries, questions, comments, or concerns should be submitted to the procurement contact, not through the solicitation submission application. This includes questions asked during the Questions and Answers period.

- Vendors should submit one zip folder that contains all proposal submission documents. The zip folder name should start with the solicitation type, solicitation number, and vendor name (e.g., “CDHS RFP IHGA 2021000282”). The vendor may include additional information in the folder title.
- The solicitation submission application is only for proposal submission. All other communications, including the Notice of Intent to Award will be posted on the Colorado Vendor Self-Service Website and/or through a direct email from the procurement contact.
- **Please do not encrypt your email.** The e-submission program automatically encrypts attachments, and the Department has experienced errors with emails encrypted by vendors.

Proposals shall be emailed to: TE_RFP_yt9eevn75hty4bg7@u.box.com

Proposals must be received on or before the date and time indicated in the Schedule of Activities. Late proposals will not be accepted. It is the responsibility of the offeror to ensure that the proposal is received by the Division of Procurement on or before the proposal opening date and time.

The State of Colorado Request for Proposal Signature Page MUST be signed in (preferably blue) ink by the offeror or an officer of the offeror legally authorized to bind the offeror to the proposal.

Proposals which are determined to be at a variance with this requirement may not be accepted.

PUBLIC OPENING: On the date and time shown in the VSS Portal, the Division of Procurement will hold a Public Opening of Proposals. The Public Opening will disclose only the names of all Offerors who have submitted a proposal for evaluation by DHS. Information on costs and qualifications will be available from the Division of Procurement following selection of the winning Offeror. All vendors must notify the Division of Procurement if they wish to attend at least one day prior to Public Opening of Proposals.

E. PROPOSAL NARRATIVE LENGTH AND PAGE FORMATTING

The Division of Procurement desires and encourages that proposals be submitted on recycled paper, printed on both sides. While the appearance of proposals and professional presentation is important, for physical submissions, the use of non-recyclable or non-recycled glossy paper is discouraged.

Applicants should adhere to the following length and page formatting instructions.

Total proposal Length:	Maximum of fifteen (15) pages
Font:	Times New Roman twelve (12) point
Spacing:	Double or single
Margins:	One (1) inch margins on all sides
Paper:	8 ½ X 11

Header: Applicant Name
Footer: Page number

All acronyms in the proposal must be defined.

F. ADDENDUM OR SUPPLEMENT TO REQUEST FOR PROPOSAL:

In the event that it becomes necessary to revise any part of this RFP, an addendum/amendment will be published on the Colorado-VSS web site. It is incumbent upon offerors to carefully and regularly monitor VSS for any such postings. It is the offeror's responsibility to make known to the Division of Procurement its interest in any addendum/amendment if it has received the RFP in a direct mailing from the Division of Procurement and no addendum has been received by mail.

G. ORAL PRESENTATIONS/SITE VISITS:

At the conclusion of evaluation and discussion of the written proposals, the State may (at the evaluation committee's sole discretion) request an oral presentation of the most favorable proposals. *Offeror should not, however, prepare the written proposal with the assumption that an opportunity for oral presentations or revisions will be offered; rather, the most favorable proposal should be submitted as their initial written submittal.*

Should the evaluation committee decide not to award solely based on initial proposals, then those proposals in the competitive range (those most responsive to the requirements and reasonably susceptible of being selected for award) will have an opportunity to make an oral presentation. The oral presentation may include a discussion for the purpose of clarification and to ensure full understanding of and responsiveness to solicitation requirements. The same criteria for evaluation will be employed and each committee member will be provided the opportunity to modify their original evaluation. Following all oral presentations, the committee will again discuss their individual evaluations.

If the evaluation committee requires such presentations, the State will schedule these sessions for the purpose of:

- Allowing the Offeror an opportunity to present its proposal to the evaluation committee;
- Allowing the Offeror an opportunity to demonstrate its background and capabilities in providing the requested services;
- Allowing the State an opportunity to obtain further clarification of proposal aspects and attempt to resolve any uncertainties;
- Resolving suspected mistakes by calling such perceived errors to Offeror's attention without disclosing information concerning other Offerors' proposals; and
- Allowing the State an opportunity to ask specific questions of the Offeror regarding its proposal offer.

Any presentations and/or site visits will be at the offeror's expense.

H. ACCEPTANCE OF RFP TERMS: A proposal submitted in response to this RFP shall constitute a binding offer. Acknowledgment of this condition shall be indicated by

the autographic signature of the offeror or an officer of the offeror legally authorized to execute contractual obligations. It is assumed by the offeror's response that it acknowledges all terms and conditions of this invitation for an offer. An offeror shall identify clearly and thoroughly any variations between its proposal and the State's RFP. Failure to do so shall be deemed a waiver of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP.

I. PROTESTED SOLICITATIONS AND AWARDS: Any actual or prospective offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to Chris Frenz, Procurement Director, christopher.frenz@state.co.us. The protest shall be submitted in writing within ten working days after such aggrieved person knows, or should have known, of the facts giving rise thereto. Reference C.R.S. Title 24, Article 109.

J. CONFIDENTIAL/PROPRIETARY INFORMATION: Any restrictions of the use or inspection of material contained within the proposal shall be requested prior to the submission of the proposal itself. Written requests for confidentiality shall be submitted, by the offeror prior to the proposal submission date. The offeror must state specifically what elements of the proposal that would be considered confidential/proprietary. The Division of Procurement will make a written determination as to the apparent validity of any written request for confidentiality, the written determination will be sent to the offeror.

Requests that are granted shall use the following format:

- Confidential/proprietary information must be readily identified marked and separated/packaged from the rest of the proposal.
- Co-mingling of confidential/proprietary and other information is NOT acceptable. Neither a proposal, in its entirety, nor proposal price information will be considered confidential and proprietary.
- Any information that will be included in any resulting contract cannot be considered confidential.

After award, the offers shall be open to public inspection subject to any continued prohibition on the disclosure of confidential data, C.R.S. Title 24, Article 72, Part 2 as amended.

K. RFP RESPONSE MATERIAL OWNERSHIP: All material submitted regarding this RFP becomes the property of the State of Colorado. Proposals may be reviewed by any person after the "Notice of Intent to Make an Award" letter has been issued, subject to the terms of C.R.S. Title 24, Article 72, Part 2 as amended.

L. PROPOSAL PRICES: Estimated proposal prices are not acceptable. Best and final offers may be considered in determining the apparent successful offeror. Proposals shall be firm for a period of not less than One hundred eighty (180) calendar days from the date of award.

M. EVALUATION: The evaluation will identify the proposals that most effectively meet the requirements of this RFP. The work will be offered to the Offerors whose proposals, conforming to the RFP, will be most advantageous to the State of Colorado, price and other factors considered.

The State of Colorado will conduct a comprehensive, fair and impartial evaluation of each proposal received. First, all proposals will be submitted to the Division of Procurement for acceptance. The Division of Procurement will be responsible for ensuring that:

- The Offeror's proposal complied with the due date and time.
- The Offeror's "Colorado Request for Proposal Signature Page" meets content and other requirements.
- The Offeror included the appropriate number of proposal copies.

Evaluation Process:

The Department plans an intensive, thorough, complete and fair evaluation process. Proposals will be evaluated on both the proposed service and the cost of the service. The evaluation will be performed and an award recommendation made to the Division of Procurement by the Evaluation Committee. Evaluation Committee Members will be selected who do not have a conflict of interest in this procurement.

The Evaluation Committee will be responsible for the evaluation process that will include the following steps:

- Review proposals for any conditions that may disqualify the Offeror and to ensure that required terms and conditions have been met.
- Review proposal content, contact references and assign a preliminary score to each factor for each proposal.
- Determine whether, as part of the deliberations, any Offerors will be invited to participate in discussions with the Committee. (Offerors would be those who, based on preliminary scores, are reasonably susceptible of being selected for the award.) However, proposals may be reviewed and determinations made without discussion. Therefore, it is important that proposals be complete, and Offerors should recognize that opportunity for further explanation may not exist.
- Oral presentations, if required, for invited offerors to demonstrate their proposed service.
- Adjust points or ratings as necessary.
- Best and final offers may take place at the State's option.
- Make final selection recommendation to the Division of Procurement.

N. PROPOSAL SELECTION: Upon review and approval of the evaluation committee's recommendation for award, the Division of Procurement will issue a "Notice of Intent to Award" on Colorado-VSS. A notice will be sent to all offeror's indicating the notice of intent has been posted. A contract will be completed and signed by all parties concerned on or before the date indicated in the Schedule of Activities. If this date is not met, through no fault of the State, the State, at its sole discretion, may elect to cancel the "Notice of Intent to Award" notice and make the award to the next most advantageous

offeror.

O. AWARD OF CONTRACT: The award will be made to offeror(s) whose proposal, conforming to the RFP, will be the most advantageous to the State of Colorado, price and other factors considered.

P. PROPOSAL CONTENT ACCEPTANCE: The contents of the proposal (including persons specified to implement the project) of the successful offeror will become contractual obligations if acquisition action ensues. Failure of the successful offeror to accept these obligations in a contract, purchase document, delivery order or similar acquisition instrument may result in cancellation of the award and such offeror may be removed from future solicitations.

Q. STANDARD CONTRACT: After award and before Contract execution the successful Offeror must be registered to do business in the State of Colorado. This registration is maintained through the Colorado Secretary of State Office. (<http://www.sos.state.co.us/>) If Offeror is a foreign corporation (formed under a statute or common law in a jurisdiction other than Colorado) or other foreign entity transacting business in the State of Colorado, shall warrant that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process.

Except as modified herein, the standard State Contract Terms and Conditions and the Sample Model Contract (attached separately on VSS as Exhibit A) included in this RFP shall govern this procurement and are hereby incorporated by reference. Please note this Model Contract lists the State's required legal provisions but does not include the specific scope of work and requirements for this RFP. This SOW and other specifics will be attached to the awarded offeror's contract as an exhibit.

The Offeror is expected to review the attached Model Contract and note exceptions. Offerors agreeing to abide by the requirements of the RFP are also agreeing to abide by the terms of the Model Contract. Unless the Offeror notes exceptions in its proposal, the conditions of the Model Contract will govern. It may be possible to negotiate some of the wording in the final contract; however, there are many provisions, (such as those contained in the Special Provisions pages) which cannot be changed. Offerors are cautioned that the State believes modifications to the standard provisions, terms and conditions, and Special Provisions constitute increased risk to the State and increased costs. Therefore, the scope of requested exceptions is considered in the evaluation of proposals.

R. RFP CANCELLATION: The State reserves the right to cancel this Request for Proposal at any time, without penalty.

S. STATE OWNERSHIP OF CONTRACT PRODUCTS/SERVICES:
Proposals upon established opening time become the property of the State of Colorado. All products/services produced in response to the contract resulting from this RFP will be

the sole property of the State of Colorado, unless otherwise noted in the RFP. The contents of the successful offeror's proposal will become contractual obligations.

The State of Colorado has the right to retain the original proposal and other RFP response materials for our files. As such, the State of Colorado may retain or dispose of all copies as is lawfully deemed appropriate. Proposal materials may be reviewed by any person after the "Notice of Intent to Make an Award" letter(s) has/have been issued, subject to the terms of Section 24-72-201 et seq., C.R.S., as amended, Public (open) Records. The State of Colorado has the right to use any or all information/material presented in reply to the RFP, subject to limitations outlined in the clause, Proprietary/Confidential Information. Offeror expressly agrees that the State may use the materials for all lawful State purposes, including the right to reproduce copies of the material submitted for purposes of evaluation, and to make the information available to the public in accordance with the provisions of the Public Records Act.

T. INCURRING COSTS: The State of Colorado is not liable for any cost incurred by offerors prior to issuance of a legally executed contract or procurement document. No property interest, of any nature shall occur until a contract is awarded and signed by all concerned parties.

U. PROPOSAL REJECTION: The State of Colorado reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received and to accept any portion of a proposal or all items proposed if deemed in the best interest of the State of Colorado.

V. VENDOR IDENTIFICATION: The tax identification number provided must be that of the offeror responding to the RFP. The offeror must be a legal entity with the legal right to contract.

W. NEWS RELEASES: News releases pertaining to this RFP shall NOT be made prior to execution of the contract without prior written approval by the State.

X. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

1. By submission of this proposal each offeror certifies, and in the case of a joint proposal each party, thereto certifies as to its own organization, that in connection with this procurement:
 - a. The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly to any other offeror or to any competitor; and
 - c. No attempt has been made or will be made by the offeror to induce any

other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

2. Each person signing the Request for Proposal Signature Page of this proposal certifies that: They are the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that they have not participated, and will not participate, in any action contrary to (1)(a) through (1)(c) above; or they are not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that they have been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (1)(a) through (1)(c) above, and as their agent does hereby so certify; and they have not participated, and will not participate, in any action contrary to (1)(a) through (1)(c) above.
3. A proposal will not be considered for award where (1)(a), (1)(c), or (2) above has been deleted or modified. Where (1)(b) above has been deleted or modified, the proposal will not be considered for award unless the offeror furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or their designee, determines that such disclosure was not made for the purpose of restricting competition.

Y. CONFLICTS OF INTEREST: The holding of public office or employment is a public trust. A public officer or employee whose conduct departs from his fiduciary duty is liable to the people of the State. Rules of conduct for public officers and state employees:

1. Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.
2. A public officer or a state employee shall not:
 - a. Engage in a substantial financial transaction for their private business purposes with a person whom they inspect, regulate, or supervises in the course of their official duties;
 - b. Assist any person for a fee or other compensation in obtaining any contract, claim, license, or other economic benefit from their agency;
 - c. Assist any person for a contingent fee in obtaining any contract, claim, license, or other economic benefit from any state agency; or
 - d. Perform an official act directly and substantially affecting its economic benefit a business or other undertaking in which they either have a substantial financial interest or is engaged as counsel, consultant, representative, or agent.
 - e. Serve on the Board of any entity without disclosure to the entity, the Secretary of State, and their employer.
3. A head of a principal department or a member of a quasi-judicial or rule-making agency may perform an official act notwithstanding paragraph (d) of subsection (2) of this section if their participation is necessary to the administration of a statute and if they

comply with the voluntary disclosure procedures under C.R.S. 24-18-110.

4. Paragraph (c) of subsection (2) of this section does not apply to a member of a board, commission, council, or committee if they comply with the voluntary disclosure procedures under C.R.S. 24-18-110 and if they are not a full-time state employee. Reference C.R.S. 24-18-108, as amended.

Z. TAXES: The State of Colorado, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K) and from all state and local government use taxes C.R.S. 39-26-114(a). Our Colorado State and Local Sales Tax Exemption Number is 98-02565. Seller is hereby notified that when materials are purchased in certain political sub-divisions (for example - City of Denver), the seller may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

AA. PUBLIC CONTRACTS FOR SERVICES. CRS 8-17.5-101 (EXCLUDED; SECURITIES, INVESTMENT ADVISORY SERVICES OR FUND MANAGEMENT, SPONSORED PROJECTS, INTERGOVERNMENTAL AGREEMENTS, OR INFORMATION TECHNOLOGY SERVICES OR PRODUCTS AND SERVICES).

Effective May 13, 2008, contractors who enter into or renew a public contract for services with Colorado state agencies or political subdivisions must participate in either the Federal ***E-Verify program***, or the Colorado Department of Labor and Employment Program. For more information see:

E-Verify Program: <http://www.dhs.gov/e-verify> or,

Colorado Department of Labor and Employment Program and notice forms: Division of Labor: <http://www.colorado.gov/cs/Satellite/CDLE-LaborLaws/CDLE/1248095356380>

BB. CRS 24-102-206 Contract Performance for Services Outside US or CO - Now requires Contractors to give written notice in accordance with the following State Contract terms and conditions:

If any services are performed outside the United States or Colorado:
[Not applicable if Contract Funds include any federal funds]

Prior to contracting or as a requirement for the solicitation of any contract from the state for services, as appropriate, any prospective vendor shall disclose in a written statement of work whether it anticipates subcontracting any services under the contract, where such subcontracted services will be performed under the contract, including any subcontracts, and whether any subcontracted services under the contract or any subcontracts are anticipated to be performed outside the United States or the state. If the prospective vendor anticipates services under the contract or any subcontracts will be performed outside the United States or the state, the vendor shall provide in its written statement of work a provision setting forth why it is necessary or advantageous to go outside the United States or the state to perform the contract or any subcontracts.

Following the Contract Effective Date, Contractor shall provide written notice to the State, within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State shall constitute a material breach of this Contract.

Noncompliance

Contractor's failure to provide reports and notify the State in a timely manner may result in the delay of payment of funds and/or termination as provided under this Contract.

Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

SECTION III

BACKGROUND, OVERVIEW AND GOALS

A. BACKGROUND

Colorado's Low-Income Energy Assistance Program (LEAP) is a federally funded program that helps eligible Coloradans meet their winter home heating costs, weatherize their homes, and repair or replace the home's primary heating system.

LEAP is administered by the Colorado Department of Human Services, Office of Economic Security, Division of Food and Energy Assistance with funds awarded by the U.S. Department of Human Services, Administration of Children and Families, Office of Community Services. LEAP is a seasonal program that typically operates annually from November 1st through April 30th, though season extensions are possible.

The core components of LEAP are as follows:

1. Home heating bill assistance payments made to utility companies on behalf of eligible households, or, in a minority of cases, directly to the household. Households who do not qualify for LEAP or need additional heating bill assistance are referred to Energy Outreach Colorado.
2. Crisis Intervention Program (CIP): Furnace repair and replacement for LEAP households in heat-related emergencies. This program is administered by Energy Outreach Colorado.
3. Weatherization Assistance Program (WAP): Administered by the Colorado Energy Office, WAP partners with local weatherization agencies to provide free weatherization services to Coloradans. LEAP eligible households automatically qualify for weatherization services, pending the results of the home energy audit.

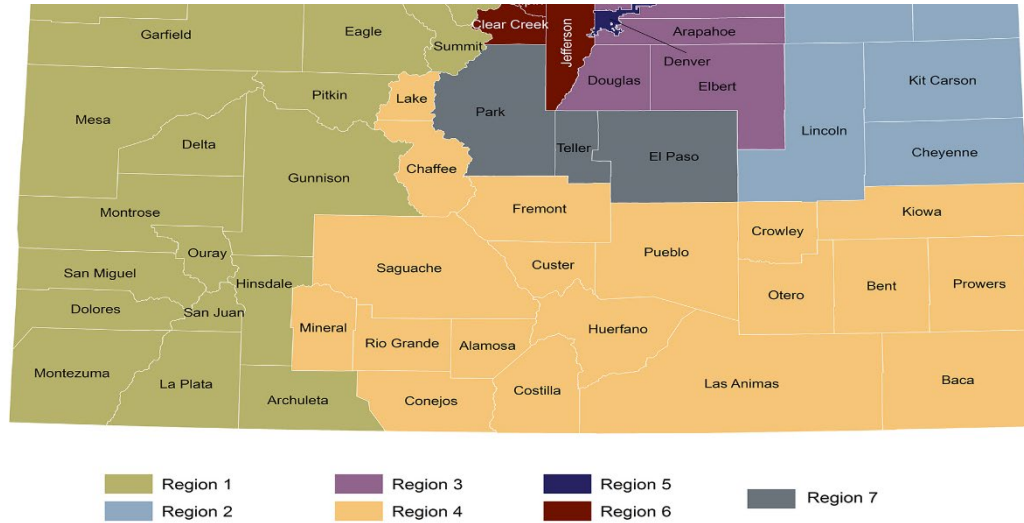
For additional information, please visit the LEAP website at <https://cdhs.colorado.gov/leap>.

B. OVERVIEW

Many Coloradans struggle to pay their heating bills, especially during winter, thus LEAP seeks to provide home heating assistance to as many eligible Coloradans as possible as quickly as possible. This need for heating assistance has been exacerbated by the effects of the COVID-19 pandemic. Heating arrearages have reached unprecedented levels. In addition to the underserved communities that were already struggling, many Colorado households have experienced unexpected job loss and, as a result, are eligible for heating assistance for the first time. Because of this widespread need, LEAP must conduct all-inclusive promotional campaigns to notify Coloradans of the availability of heating assistance and advise them how to access it.

LEAP is designed to offer maximum access to services for individuals in throughout the

following seven Regions:



Geographic Service Region	Counties
Region 1	Archuleta, Delta, Dolores, Eagle, Garfield, Grand, Gunnison, Hinsdale, Jackson, La Plata, Larimer, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel, Summit
Region 2	Cheyenne, Kit Carson, Lincoln, Logan, Morgan, Phillips, Sedgwick, Washington, Weld, Yuma
Region 3	Adams, Arapahoe, Douglas, Elbert
Region 4	Alamosa, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Lake, Las Animas, Mineral, Otero, Prowers, Pueblo, Rio Grande, Saguache,
Region 5	Denver
Region 6	Boulder, Broomfield, Clear Creek, Gilpin, Jefferson
Region 7	El Paso, Park, Teller

C. GOALS

The goal of this RFP is to obtain competitive bid proposals from entities (Offerors) to develop and execute a comprehensive and statewide marketing and advertising strategy and provide brand strategy for the Colorado Low-Income Energy Assistance Program that takes into account and builds upon the current strategy. The Offeror should consider and build upon the existing marketing plan and promote LEAP.

The Offeror shall gather extensive knowledge of LEAP current branding, services, industry, and partners to ensure overall modification, transition and success of the new

marketing programs to be implemented. The Offeror shall ensure growth and development of LEAP utilization through marketing/advertising services.

The objectives of the marketing and advertising campaign are:

1. Target audience identification - Identify eligible Coloradans who are unaware of the availability of LEAP assistance or how to apply.
2. In collaboration with CDHS staff, create a marketing and advertising plan that promotes awareness, understanding and availability, and encourages participation in LEAP for all Colorado residents.
3. Manage outreach to target audiences through a variety of channels and multiple languages (English and Spanish at minimum), including but not limited to social media, online advertisements, traditional newspaper and radio advertisements, news stories, TV advertising, and bus ads.
4. Develop content, including but not limited to advertisements, brochures, posters, online content, and talking points consistent with outreach goals.
5. Promote all the ways that Coloradans can apply for LEAP, including online, with the help of their local county office, and over the phone.
6. Reduce the stigma associated with public benefit programs such as LEAP.
7. Create KPIs, in coordination with CDHS staff, and report back on results of promotion efforts.

SECTION IV

REQUIREMENTS / STATEMENT OF WORK

Restate each requirement as set forth in this Section IV, followed by a response describing the approach and how the requirement will be met. Indicate in detail, the scope of services included in your proposal and identify any items requested by the State that are not included in your proposal.

The selected contractor will be responsible for designing a statewide advertising campaign targeted toward LEAP-eligible Coloradans, and completing the following tasks, in collaboration with CDHS staff:

Marketing Strategy

1. Offeror shall prepare an annual marketing and media strategic plan to include all of the activities listed below. If changes need to be made to the plan, Offeror shall present any updates or refinements to the final strategy and tactical plan to CDHS/LEAP.
2. Offeror shall negotiate and procure final media placements (advertising time and/or space), including added value, based on the approved media plan.
3. Offeror shall draft media communications briefs, creative briefs and production requests by outlining the project scope, deliverables, strategic objectives, budgets and timelines.
4. Offeror shall support any efforts to create and approve a new or improved logo for LEAP.
5. Offeror shall recommend, design and produce collateral and promotional materials including but not limited to: brochures, posters, and flyers.
6. Offeror shall develop and execute social media programs that connect with target audiences in accordance with the overall brand strategy.
7. Offeror shall manage and respond to all social media comments as appropriate and shall send all negative comments to LEAP staff.
8. Offeror shall utilize digital and social media including social media influencers.
9. Offeror shall engage in marketing tactics that may include, but are not limited to:
 - Collateral and promotional materials such as brochures, posters, and flyers.
 - Digital Display Advertising
 - Out-of-Home Advertising
 - Paid Search / Pay-Per-Click
 - Print
 - Radio
 - Social Media
 - Television / Video
10. Offeror shall analyze and report to CDHS/LEAP detailed data such as demographics, socio-economics and geographic market to achieve a comprehensive marketing strategy.

Research

1. Offeror shall work with CDHS/LEAP to identify targeted populations and deliver marketing messaging appropriately.
2. Analysis of the optimum combinations of advertising methods, timing, and placement to achieve maximum effectiveness in promoting LEAP participation.
3. Offeror shall conduct message testing activities to ensure that collateral materials are relevant and effective with the target audience.
4. Offeror shall research and analyze all paid, earned and owned media opportunities and channels to determine the most effective way to reach our target audience(s) and geographical target markets.
5. All materials and concepts belong to CDHS/LEAP.

Staffing

1. Offeror shall develop a minimum staffing plan that includes a Contract Manager responsible for ensuring program compliance and contractual oversight.
2. Offeror shall develop a contingency staffing plan, to account for personnel changes, dismissals, etc.

CDHS/LEAP Clearance and Approval Processes

1. All press releases and media relations related to this contract shall be pre-approved by the State prior to release and follow the press release protocol that may include: press release packets, talking points, and other marketing materials as specified by the State.
2. Offeror shall deliver batched marketing materials for State approval prior to targeted use date.
3. Offeror shall be notified by LEAP of any projects that require approval from the Governor's Office and the submission timeline for review and approval necessary to meet the targeted use date.
4. Offeror shall notify the designated LEAP contact via email with details and plans to address the problem in the event marketing deadlines cannot be met.
5. Offeror shall send all media requests related to LEAP to the CDHS/LEAP point of contact to receive direction prior to response.

Analytics Tracking and Process Measures

1. Offeror shall measure success to include but not limited to website analytics, surveys capturing brand awareness, earned media, total impressions by tactic, click through rate, number of clicks, video completion rate, use of the hotline (text, chat, and call), and public use of LEAP services.
2. Offeror shall work with CDHS/LEAP to determine reasonable goals and key performance indicators.
3. Offeror shall prepare and submit a Monthly Campaign Analytics Report to CDHS/LEAP which shall include an overview of the analytics, a progress to goal comparison, and any additional items requested by CDHS/LEAP.

4. Prepare and submit a final report to designated to LEAP staff summarizing the results of the advertising initiative including by June 30th each year for the duration of the contract. At a minimum, the report must include:
 - Impact of all paid, earned, shared and owned efforts, including but not limited to print, TV, radio, and online mentions, ad value, and reach.
 - Reach, Impressions, Clicks, Views from Digital Ad Campaigns
 - Month-over-month and year-over-year comparisons off all aforementioned metrics as applicable

Fiscal Management

1. Offeror shall develop accurate production estimates, budgets, and procure broadcast, printing, art and other production services at the best quality and price.
2. Offeror shall provide staff positions and rates for personnel on an annual basis that are subject to approval by the State.
3. Offeror shall review media contract and agreement details with LEAP and keep all contracts and subcontracts on file to support invoicing and provide to CDHS/LEAP upon request.
4. Offeror shall develop and track staffing assigned to this contract and other programs for invoice support (time and effort reporting) to ensure staff time for other projects are not paid by this contract.

SECTION V

RESPONSE FORMAT

To facilitate an effective evaluation process, proposals must be submitted in the following format on 8 1/2 by 11-inch paper and all pages should be numbered in the following manner: page ____ of ____ pages. Please use double-sided pages. All acronyms in the proposal must be defined. Failure to provide the requested information may result in disqualification of the proposal. ***Proposals that do not follow the sequence, outline, and response format of this RFP, may be deemed non responsive and disqualified from further consideration.***

A. STATE OF COLORADO REQUEST FOR PROPOSAL SIGNATURE PAGE

Include the State of Colorado Request for Proposal Signature Page. An officer of the offeror who is legally authorized to bind the offeror to the proposal must sign this page in ink.

B. TRANSMITTAL LETTER

Submit a Transmittal Letter on your official business letterhead that:

1. Positively states your willingness to comply with all work requirements and other terms and conditions as specified in this RFP.
2. Identifies all material and attachments that comprise your proposal.
3. Is signed by an individual authorized to commit your organization to the proposed work.
4. States whether the Offeror is a partnership, a non-profit corporation, a Colorado corporation, a non-Colorado corporation, or some other business structure. Non-Colorado corporations must register as a foreign corporation to conduct business in Colorado and appoint a resident agent to review process. If the Offeror is a foreign corporation, a limited liability partnership or a limited liability limited partnership, state that the Offeror currently has a Certificate of Good Standing or Certificate of Existence to do business in Colorado. Proof of such certification shall be provided upon request.
5. States whether the Offeror or any of the Offeror's employees, agents, independent Contractors, or proposed subcontractors have ever been an excluded provider, convicted of any criminal charges or actions involving moral turpitude. If yes, attach an explanation.
6. States that the Offeror's Proposal shall remain valid for a minimum of one hundred eighty (180) days from the date of the award.
7. Discloses all current pending contracts with the State of Colorado and all bids or proposals submitted to the State of Colorado but not yet awarded.
8. Identifies all potential conflicts of interest related to this RFP. If any actual or potential conflicts of interest are identified, provide your plan to mitigate the actual or potential conflict of interest.
9. Vendor disclosure of services identifies if the vendor or subcontractor will perform the services outside the state of Colorado or United States. If this is the case, provide a brief statement explaining why the vendor believes it is necessary or

advantageous to perform the services outside the state of Colorado or United States. Contracts entered into or renewed by a government entity are subject to the following statute(s) under HB 13-1292 "Keep Jobs in Colorado Act of 2013".

10. Service-Disabled Veteran Owned Small Businesses (SDVOSBs) – Per C.R.S. 24-103-905. Vendors who are officially registered and verified as a SDVOSB by the Center for Veteran Enterprise within the U.S. Department of Veterans Affairs. (www.vip.vetbiz.gov) should disclose this information. SDVOSBs making this claim shall submit documentation of SDVOSB certification issued through the U.S. Department of Veterans Affairs in their response to the solicitation. Bid submissions without this documentation will not be considered a SDVOSB.

C. TECHNICAL/ BUSINESS PROPOSAL

Restate each requirement set forth in Section 4, Requirements/Statement of Work, followed by a response describing the approach and how the requirement will be met. Identify the Section number of each requirement. Indicate in detail the scope of services included in your proposal and identify any items requested by the State that are not included in your proposal.

Include a risk assessment and how your firm proposes to minimize those risks including vendor self-assessment and quality control for a successful engagement meeting the goals and expected outcomes described in this RFP and RFP proposal response.

D. DEMONSTRATED EXPERIENCE AND CAPABILITIES

Demonstrate the organization's ability for the following requirements (the following information will not count towards page maximum):

1. Provide company information such as:
 - a. Company history, website information and any other information deemed relevant to the company.
 - b. Organizational charts of essential staff.
 - c. A list of relevant projects that the firm currently has on hand.
2. Indicate key personnel who will be assigned to the project and describe their experience. CDHS expects that the awarded vendor will continue to make the key project personnel available through the life of the contract as long as they remain in the Proposer's employ. If key personnel are no longer available, backup personnel with equally qualified credentials will be required. CDHS reserves the right to approve any replacement personnel.
3. Describe your firm's experience with similar projects. Submit at least one (1) client reference for each project for a maximum of two (2) projects within the past ten (5) years. References may or may not be contacted any time during the solicitation process.

E. COST PROPOSAL

Proposals must include a budget which reflects the funds requested to provide the required services. In particular:

- a. Costs must be tied to services that meet or exceed the requirements and expected outcomes.
- b. Costs must describe expenses and necessity.
- c. Costs must be associated with personnel activities and program development work.

Note: This RFP will result in a fixed-price or NOT TO EXCEED contract. Costs will be tied to services that meet or exceed the requirements and expected outcomes. This may include the expertise, and relevant experience of the offeror that will enhance the success of the project and provide minimal risk or need for State resources. The proposal must state the cost for performance of and completion of services that will become part of a contract between the State and the awarded vendor.

F. ADDITIONAL DATA

Since the preceding sections are to contain information that is specifically requested, the firm may include any additional information considered essential to the proposal in this section. The firm should not include general information publications, such as marketing, directories or client lists.

G. STATE RESPONSIBILITIES

The Department will appoint an individual to be a liaison to the successful Offeror. This individual will attend entrance/exit conferences and assist the firm in understanding Department requirements and reporting guidelines.

SECTION VI

EVALUATION AND AWARD

A. EVALUATION OF PROPOSALS

The award decision ultimately is a business judgment that will reflect an integrated assessment of the relative merits of the proposals using the factors set forth in the RFP. The Department intends to award the contract to the Offeror whose proposal, conforming to the RFP, will be most advantageous to the Department, price and other factors considered.

The Department will conduct a comprehensive, fair, and impartial evaluation of the proposals received in this solicitation effort. A Proposal Evaluation will evaluate Proposals that meet the minimum general requirements. Evaluation criteria for the proposals will be used for the purpose of ranking the proposals in a relative position based on how fully each proposal meets the requirements of this RFP. Such ranking will not necessarily be conclusive in selection of a prospective Contractor but will be evaluated with other information that may come to the attention of the State, and may, in their judgment, impact the prospective Contractor's ability to perform the services.

Offerors should not assume that they would have an opportunity for oral presentations or revisions of proposals. Therefore, Offerors should submit their most favorable proposal as their initial proposal. If an award is not made based on the initial proposals, Offerors considered most competitive may be provided an opportunity to make an oral presentation. The competitive range determination will be based exclusively on the written proposals. Offerors are therefore cautioned to ensure that their proposals adequately convey a sound approach and a comprehensive understanding of the scope of work requirements. If proposal revisions are permitted after the conclusion of oral presentations and discussions, the Department will establish a date, in writing, for submission of best and final offers. The purpose of this step would be to submit revisions only, not to submit comprehensive proposal rewrites.

B. SUBMISSION CHECKLIST

Proposals that have met the minimum submission requirements outlined in this RFP will be passed on to the evaluation review committee for further review and consideration.

At a minimum, proposals are:

1. Submitted by the due date and time.
2. Completed and Signed Signature Page
3. Completed and Signed Transmittal Letter
4. Organized, Tabbed and formatted per instructions contained within the RFP and all other documents considered to be a part of the RFP.
5. Packaging instructions and designated number of copies.

Proposals that do not meet the criteria of the Submission Checklist and initial review may be disqualified.

C. GENERAL CRITERIA

Proposals will be evaluated and scored in the following categories detailed in this RFP. Proposals must meet or exceed the following requirements:

Category 1 – Organizational Structure, Demonstrated Experience and Capabilities

- There is breadth and depth of relevant experience to design, implement, and manage an effective marketing and advertising campaign and outreach.
- Qualifications and experience of staff, including specialists and consultants to be assigned to the project, are sufficient to minimize risk and allow for the greatest potential for meeting or exceeding goals and outcomes.

Category 2 – Technical Requirements/Proposed Solution Plan

- Application components are appropriate, complete and clearly articulated.
- Organizational goals are defined, appropriate and are aligned with project requirements.
- Strategy and implementation plan appears reasonable and accomplishable.
- Performance measures and outcomes are sufficient for the activities.

Category 3 – Cost Proposal

- Costs are tied to services that meet or exceed the requirements and expected outcomes.
- Costs describe expenses and necessity.
- Costs are associated with personnel activities and program development work.

D. BASIS FOR AWARD

The business and technical factors will be assessed based on the soundness of the Offeror's overall approach and the Respondent's understanding of the requirements. The experience and/or demonstrated capabilities factor will be assessed by considering the extent to which the qualifications, experience and past performance are likely to foster successful, on-time performance. Strategies for meeting expedited implementation timeframes will be assessed based on their reasonable likelihood of success. Assessments may include a judgment concerning the potential risk of unsuccessful or untimely performance, and the anticipated amount of State involvement necessary (beyond that reasonably necessary) to ensure timely, successful performance.

The State may contact client references provided, and in addition, obtain information concerning the Offeror's performance on other work performed for the State of Colorado. Client references will be used as a verification of information provided by the Offeror and as a means to validate the performance of the Offeror on prior work and will have a bearing on the scoring of Proposals. The State cannot assume any liability for statements made by client references provided by Offerors.

The Offeror recommended for an award must provide (upon request) documentation of financial responsibility, financial stability, and sufficient financial resources to provide the services sought in this RFP. This response must include financial information by which the State may reasonably formulate an opinion about the relative stability and financial strength of the Offeror and a credit rating by a rating service. These statements shall include at least a balance sheet and income statement (including footnotes). These statements must be certified by a certified public accountant (CPA).

The State may disqualify from consideration any Offeror who is involved in bankruptcy proceedings or whose financial condition is deemed to pose a risk to the State for successful performance of the contract.

E. PERFORMANCE OF AWARD

Proposed changes or exceptions to any requirement, or State's Contract Terms and Conditions (Exhibit D), may disqualify Offeror's proposal response from consideration. A completed contract is expected within 30 days following the letter of intent to award. In the event a contract is not signed (through no fault of the State) by the awarded Offeror within 30 days and barring any protest that may delay the completion of a contract, the State may elect to cease negotiations, withdraw the award, and award to the next most advantageous Offeror.

Choose Fiscal Year **Choose Program Code** **Insert CMS Number**
eClearance: **Insert eClearance Number**

**STATE OF COLORADO
DEPARTMENT OF HUMAN SERVICES CONTRACT**

SIGNATURE AND COVER PAGES

<p>State Agency Colorado Department of Human Services Insert Office Insert Division</p>	<p>Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc... Contractor's State of Incorporation: Insert State</p>
<p>Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms Edit/delete this section as needed, or put "None" State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Maximum Amount for All Fiscal Years \$0.00</p>	<p>Contract Performance Beginning Date The later of the Effective Date or Month Day, Year</p> <p>Initial Contract Expiration Date Month Day, Year</p> <p>Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed Insert Contract's Maximum Amount of Years or Months as required by solicitation, or otherwise Years from its Performance Beginning Date.</p>
<p>Pricing/Funding Price Structure: Choose an item. Contractor shall invoice: Choose an item. Fund Source: Insert name of funding source, whether it's state general funds, cash, Federal Program / Grant and Funds ID#, if none, put NA</p>	<p>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: Choose an item. Option to Increase or Decrease Maximum Amount per §5.B.v: Choose an item.</p>
<p>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: Choose an item. Protected Information: Choose an item. Professional Liability Insurance: Choose an item. Crime Insurance: Choose an item.</p>	<p>Miscellaneous Authority to enter into this Contract exists in: Insert statutory and/or other legal authority here. Law-Specified Vendor Statute (if any): Insert Statute, otherwise put NA Procurement Method: Choose an item. Solicitation Number (if any): Insert Solicitation #, otherwise put NA</p>
<p>State Representative Insert State Representative Name, Title, Department, Address, Phone, and Email</p>	<p>Contractor Representative Insert Contractor Representative Name, Title, Address, Phone, and Email</p>

Exhibits

The following Exhibits are attached and incorporated into this Contract:
List Exhibits here

Contract Purpose

Insert brief description of the purpose of the Contract

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.

<p style="text-align: center;">CONTRACTOR</p> <p style="text-align: center;">Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...</p> <p>_____</p> <p style="text-align: center;">By: Name & Title of Person Signing for Contractor</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">Jared S. Polis, Governor Department of Human Services Michelle Barnes, Executive Director</p> <p>_____</p> <p style="text-align: center;">By: Name & Title of Person Signing for CDHS</p> <p style="text-align: center;">Date: _____</p>
<p style="text-align: center;">2nd State or Contractor Signature if Needed</p> <p>_____</p> <p style="text-align: center;">By: Name & Title of Person Signing for Signatory</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW</p> <p style="text-align: center;">Philip J. Weiser, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Assistant Attorney General</p> <p style="text-align: center;">Date: _____</p>
<p style="text-align: center;">In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p style="text-align: center;">By: _____</p> <p style="text-align: center;">Andrea Eurich / Janet Miks</p> <p style="text-align: center;">Effective Date: _____</p>	

-- 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 C(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 C(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., CDHS may 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	Option Contract Number Insert CMS number or Other Contract Number of this Option
Initial Term State Fiscal Year 20xx \$0.00	Contract Performance Beginning Date Month Day, Year
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	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 1E: 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.

<p>STATE OF COLORADO INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <p><u>SAMPLE ONLY – DO NOT SIGN</u> By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: <u>SAMPLE ONLY – DO NOT SIGN</u></p>	<p>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.</p> <p style="text-align: center;">STATE CONTROLLER</p> <p style="text-align: center;"><u>SAMPLE ONLY – DO NOT SIGN</u> Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Option Effective Date: <u>SAMPLE ONLY – DO NOT SIGN</u></p>
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EXHIBIT Insert Exhibit Letter - Supplemental Provisions for Federal Awards

For the purposes of this Exhibit only, Contractor is also identified as “Subrecipient.” This Contract has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions for Federal Awards, the Special Provisions, the Contract or any attachments or exhibits incorporated into and made a part of the Contract, the Supplemental Provisions for Federal Awards shall control. In the event of a conflict between the Supplemental Provisions for Federal Awards and the FFATA Supplemental Provisions (if any), the FFATA Supplemental Provisions shall control.

1) Federal Award Identification

- i. Subrecipient: **Subrecipient name (must match registered name in the Data Universal Number System (DUNS))**;
- ii. Subrecipient DUNS number: **DUNS #**;
- iii. The Federal Award Identification Number (FAIN) is **FAIN**;
- iv. The Federal award date is **Award Date (this is the date when the Federal award is signed by the authorized official of the Federal awarding agency)**;
- v. The subaward period of performance start date is **start date** and end date is **end date**;
- vi. Federal Funds:

Contract or Fiscal Year	Amount of Federal funds obligated by this Contract	Total amount of Federal funds obligated to the Subrecipient	Total amount of the Federal Award committed to Subrecipient by CDHS
Insert Contract term or fiscal year	Amount of Federal Funds obligated by this Contract by CDHS to Subrecipient	Total amount of Federal Funds awarded to Subrecipient per program across all active contracts	Total Amount of the Federal Award committed to Subrecipient by CDHS

- vii. Federal award project description: **Federal award project description (as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA))**;
- viii. The name of the Federal awarding agency is **Federal awarding agency**; the name of the pass-through entity is the State of Colorado, Department of Human Services (CDHS); and the contact information for the awarding official is **contact information for awarding official of CDHS**;
- ix. The Catalog of Federal Domestic Assistance (CFDA) number is **if applicable, insert CFDA number, otherwise put N/A**, name is **if applicable, insert program title, otherwise put N/A**, and dollar amount is **if applicable, insert dollar amount, otherwise put N/A**;
- x. This award **[is or is not]** for research & development;
- xi. The indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&A) costs) is pre-determined based upon the State of Colorado and CDHS cost allocation plan.

- 2) All requirements imposed by CDHS on Subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award, are stated in **insert reference to exhibit that contains this information**.
- 3) Any additional requirements that CDHS imposes on Subrecipient in order for CDHS to meet its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports, are stated in **insert reference to exhibit that contains this information (put N/A if not applicable)**.
- 4) Subrecipient's approved indirect cost rate is **Choose an item. Insert percentage (this must match your budget). If zero, choose CDHS negotiated rate and put 0 %**.
- 5) Subrecipient must permit CDHS and auditors to have access to Subrecipient's records and financial statements as necessary for CDHS to meet the requirements of 2 CFR §200.331 Requirements for pass-through entities, §§ 200.300 Statutory and National Policy Requirements through §200.309 Period of performance, and Subpart F—Audit Requirements of this Part.
- 6) The appropriate terms and conditions concerning closeout of the subaward are listed in Section 16 of this Exhibit and **insert reference to exhibit that contains closeout procedures, or put N/A**.
- 7) **Performance and Final Status.** Subrecipient shall submit all financial, performance, and other reports to CDHS no later than **Insert number of days** calendar days after the period of performance end date or sooner termination of this Contract containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

8) Matching Funds

If a box below is checked, the accompanying provision applies.

- i. Subrecipient is not required to provide matching funds.
- ii. Subrecipient shall provide matching funds as stated in **insert reference to exhibit that contains match information**. Subrecipient shall have raised the full amount of matching funds prior to the Effective Date and shall report to CDHS regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Contract by the authorized representatives of the Subrecipient and paid into the Subrecipient's treasury or bank account. Subrecipient represents to CDHS that the amount designated as matching funds has been legally appropriated for the purposes of this Contract by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Contract irrevocably pledge present cash reserves for payments in future fiscal years, and this Contract is not intended to create a multiple-fiscal year debt of the Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies.

9) **Record Retention Period.** The record retention period previously stated in this Contract is replaced with the record retention period prescribed in 2 CFR §200.333.

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

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

- ii. Exemption. If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- iii. Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by 2 CFR Part F-Audit Requirements.

11) **Contract Provisions.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Contract:

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

“During the performance of this contract, the contractor agrees as follows:

- a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- f) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”
- ii. 4.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- iii. Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- iv. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- v. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
 - vi. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12) **Compliance.** Subrecipient shall comply with all applicable provisions of The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), including but not limited to these Supplemental Provisions for Federal Awards. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. CDHS may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 13) **Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 14) **Certifications.** Unless prohibited by Federal statutes or regulations, CDHS may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis (2 CFR §200.208). Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to CDHS at the end of the Contract that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(b)(3). If the required level of activity or effort was not carried out, the amount of the Contract must be adjusted.
- 15) **Event of Default.** Failure to comply with the Uniform Guidance or these Supplemental Provisions for Federal Awards shall constitute an event of default under the Contract pursuant to 2 CFR §200.339 and CDHS may terminate the Contract in accordance with the termination provisions in the Contract.
- 16) **Close Out.** Subrecipient shall close out this Contract within 90 days after the End Date. Contract close out entails submission to CDHS by Subrecipient of all documentation defined as a deliverable in this Contract, and Subrecipient’s final reimbursement request. CDHS shall withhold 5% of the allowable costs until all final project documentation has been submitted and accepted by State as substantially complete. If the project has not been closed by the Federal awarding agency within 1 year and 90 days after the End Date due to Subrecipient’s failure to submit required documentation that CDHS has requested from Subrecipient, then Subrecipient may be prohibited from applying for new Federal awards through the State until such documentation has been submitted and accepted.
- 17) **Erroneous Payments.** The closeout of a Federal award does not affect the right of the Federal awarding agency or CDHS to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

EXHIBIT END

Exhibit C – Signature Page
STATE OF COLORADO
DEPARTMENT OF HUMAN SERVICES
Marketing and Advertising for the Low Income Energy Assistance Program
(LEAP)

REQUEST FOR PROPOSAL SIGNATURE PAGE

DATE: May 12, 2021
RFP NO: IHGA 2021000282

DIRECT INQUIRIES TO: Toby Erxleben

E-Mail: toby.erxleben@state.co.us

DATE DUE: June 14, 2021 **AT 5:00PM (MT)**

Proposals, subject to the conditions herein stipulated and in accordance with the specifications set forth and/or attached hereto, will be accepted at the address listed above, prior to the date and time listed for the RFP opening. All proposals shall be quoted F.O.B. destination, unless otherwise specified, to the delivery location or jobsite listed herein.

ALL PROPOSALS ARE SUBJECT TO THE TERMS AND CONDITIONS REFERENCED ON THE CDHS PERSONAL SERVICES CONTRACT TEMPLATE AS WELL AS ALL PROPOSAL REQUIREMENTS.

IMPORTANT: Proposals submitted in response to this RFP **MUST** be accompanied by this SIGNATURE page
Proposers should read the entire RFP document before submitting a proposal.

It is strongly encouraged that vendors must be registered with Colorado CORE-VSS by the proposal submission due date and time.

PROPOSALS MUST BE SIGNED ELECTRONICALLY

Company Name: _____

Typed/Printed Name of Authorized Officer or Agent: _____

Electronic Signature by Authorized Officer or Agent: _____

Title: _____

Date: _____

Confirmation # of Amendments Received: _____

RETURN THIS PAGE