

Boulder County Purchasing
1325 Pearl Street
Boulder, CO 80302
purchasing@bouldercounty.org

REQUEST FOR INFORMATION (RFI) COVER PAGE

RFI Number: 7225-21

RFI Title: CSA Shares for Food Insecurity Programming

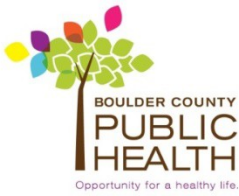
Due Date for RFI Questions: April 2, 2021 – 2:00 p.m.

RFI Submittal Due Date: April 12, 2021 – 2:00 p.m. MDT

Email Address: purchasing@bouldercounty.org

Documents Included in This Package:

- RFI Bid Proposal Instructions
- RFI Terms and Conditions
- RFI Specifications
- Insurance and W-9 Requirements
- RFI Submittal Checklist
- RFI Evaluation Criteria
- RFI Sustainability Questionnaire
- RFI Signature Page
- Sample Contract



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RFI Bid Proposal Instructions

1. PURPOSE/BACKGROUND.

Please provide a brief summary of the goods/services you would provide to Boulder County if awarded.

2. WRITTEN INQUIRIES.

If you have any questions regarding this RFI, you must submit them via email to the Boulder County Purchasing Office (purchasing@bouldercounty.org) on or before **2:00 p.m., April 2, 2021**. A response from Boulder County on all inquiries received will be subsequently posted on <https://www.bouldercounty.org/government/bids-and-purchasing/bid-opportunities> and on the Rocky Mountain E-Purchasing System and sent out via email no later than **April 7, 2021**.

Please do not contact any other Boulder County department or personnel with questions or to request information regarding this RFI solicitation. Inquiries received will NOT be forwarded to the Purchasing Office.

3. SUBMITTAL INSTRUCTIONS.

A. Submittal Requirements: In order for RFI submittals to be accepted for consideration by Boulder County:

1. All bids must be submitted by email only outlined below in "Submission Instructions."
2. All bids must be received and time/date recorded by authorized Boulder County staff before the established RFI due date and time.
3. **NO LATE SUBMITTALS WILL BE ACCEPTED.** If your RFI bid is received after the established RFI due date and time for any reason, your proposal will automatically be rejected and returned to you – there are NO EXCEPTIONS. Boulder County does not accept responsibility under any circumstance for delayed or failed RFI submittals.
4. You must include all required documents with your RFI bid, including but not limited to:
 - RFI Submittal Checklist (included in RFI package)
 - RFI Signature Page (included in RFI package)
 - Certificates of insurance, if applicable
 - W-9
5. It is the sole responsibility of RFI bidders to ensure that your RFI submittals are received by Boulder County before the deadline, as detailed in "Submission Instructions" below.
6. The Board of County Commissioners ("Board") reserves the right to reject any and all RFI bids; to waive any informalities or irregularities therein; and to accept the proposal that, in the opinion of the Board, is in the best interest of the Board and of Boulder County, Colorado.

B. Submission Instructions: All RFI submittals must be received by Boulder County for time and date recording on or before **2:00 p.m., MST, on April 12, 2021**, by the following method:

1. **Electronic, via Email (due to Covid19, currently, this is the only submittal method):**
 - a. Maximum size of submittal is 50MB.
 - b. NO ZIP FILES WILL BE ACCEPTED.
 - c. Electronic submittals must be emailed to purchasing@bouldercounty.org:
 - 1) Submittals emailed to any other mailbox will NOT be accepted or forwarded.

- 2) This email box will ONLY be monitored by Boulder County on the due dates for: 1) RFI inquiries; and 2) RFI submission.
- d. You must include **RFI #7225-21** in your email subject line.
 - e. Please use the delivery receipt option to verify receipt of your email.
 - f. **Americans with Disabilities Act (ADA):** If you need special services, as provided for under the Americans with Disabilities Act, contact the ADA Coordinator or Boulder County Human Resources at 303-441-3525 at least 48 hours before the scheduled event.



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RFI Terms and Conditions

1. Request for Proposal (“RFI”) bidders are expected to examine drawings, specifications, schedule of delivery, and all instructions. Failure to do so will be at the bidder’s risk.
2. Each bidder must furnish all information required in the RFI.
3. The RFI contract/purchase order will be awarded to the responsible bidder whose submittal, conforming to the RFI, will be most advantageous to Boulder County, Colorado, and/or Boulder County Public Health (“BCPH”), price and other factors considered.
 - a. The sample contract included with this RFI packet is indicative of the contract that the winning bidder will be required to sign. The final contract may contain additional terms required under the award agreement between Boulder County Public Health (“BCPH”) and the awarded bidder; a copy of that agreement is available to the bidder upon request.
4. Boulder County and/or BCPH reserves the right to reject any or all RFI proposals, to waive informalities and minor irregularities in bids received, and to accept any portion of or all items proposed if deemed in the best interest of Boulder County to do so.
5. No submittal will be withdrawn for a period of thirty (30) days subsequent to the opening of bids without the consent of the Boulder County Purchasing Agent or delegated representative.
6. A signed purchase order or contract furnished to the successful bidder shall result in a binding contract without further action by either party.
7. Late or unsigned RFI submittals will not be accepted or considered. It shall be the responsibility of RFI bidders to ensure that their proposals arrive at the designated Boulder County email box or Administrative Services Information Desk prior to the due date and time indicated in the RFI.
8. The proposed price shall be exclusive of any federal or state taxes from which Boulder County and BCPH are exempt by law.
9. Any interpretation, correction, or change of RFI documents shall be made by Addendum. Interpretations, corrections, and changes of the RFI documents made in any other manner will not be binding, and bidders must not rely upon such interpretations, corrections, and changes. The County’s representative will not be responsible for oral clarification.
10. *Confidential/Proprietary Information:* Proposals submitted in response to this RFI and any resulting contract shall be subject to the provisions of the [Colorado Public \(Open\) Records Act](#), 24-72-201 et. seq., C.R.S., as amended. Any restrictions on the use or inspection of material contained within the proposal and any resulting contract shall be clearly stated in the proposal itself.

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

11. Boulder County promotes the purchase/leasing of energy-efficient materials and efficient and reduced toxic-level products where availability, quality, and budget constraints allow. Bidders will be expected, whenever

possible, to provide products that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency with power management features enabled. Bidders are encouraged to offer products and equipment with post-consumer recycled-content materials. Products should be packaged and delivered with a minimum amount of recycled packaging that adequately protects the product but is not excessive.

12. Pursuant to Colorado law (e.g. [House Bill 13-1292](#)), in any bidding process for public works in which a bid is received from a non-resident bidder who is from a state that provides a percentage bidding preference, a comparable percentage disadvantage shall be applied to the bid of that bidder. Bidders may obtain additional information from the [State of Colorado website](#).



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RFI Specifications

Boulder County Public Health (BCPH) is interested in partnering with local farms to offer Community Supported Agriculture (CSA) Shares to local families experiencing food insecurity in the Longmont area. BCPH would like to partner with several farms located within or with drop-off locations in Longmont to serve this community. Below is a checklist to be completed by each farm interested in participating in this program. BCPH intends to work with several farms to offer these CSA shares to the intended population. While the exact number of CSA shares is not yet known, BCPH has the ability to purchase up to \$80,000 in CSA shares.

BCPH will use the scoring matrix to determine which farms to partner with. A “no” answer to any question below does not disqualify a farm from being eligible to participate in this program.

Required Responses:

1) How many CSA shares do you have available for this Food Access CSA? How many total CSA shares will you offer this season?

2) What is the cost of your CSA shares? How many can each share feed?

3) How many years has your farm offered CSA shares?

4) How many weeks do you typically distribute your CSA? Do you distribute weekly or biweekly? What is the typical date range of your CSA distribution?

5) We agree to meet with BCPH at the outset of the partnership to discuss implementation, logistics, and program checklists.

Yes

No

6) Participation in the program will not inhibit the farm from participating in the Boulder County Farmers Market or other farmers markets.

Yes

No

7) We agree to actively create a welcoming environment for CSA members experiencing food insecurity.

Yes

No

8) We offer different CSA sizes based on family size.

Yes

No

9) We will provide a newsletter or information sheet to each participant regarding produce items they receive each week.

Yes

No

- BCPH will provide QR codes and images of common produce items for the farm to use
- Participating farms must provide a list of items that can be expected in the CSA for the season so BCPH can create educational materials as needed

10) We agree to complete monthly checklists that demonstrate the number of CSA shares claimed and those that were unclaimed.

Yes

No

11) We agree to train all front-line staff on this CSA partnership with BCPH.

Yes

No

12) We agree to not raise prices of CSA shares above competitive market value during the program.

Yes

No

13) Do you or could you provide information/newsletters in Spanish? Please explain.

14) Are you able to deliver shares for an extra fee? If yes, how much would you charge for delivery to Longmont households?

15) Please list the typical variety (fruit, dried beans, types of vegetables, etc.) and quantity (lbs.) of produce provided in an average growing season.

16) How do you communicate with members?

17) Can CSA members select what is included in their share? Or do all members receive the same share?

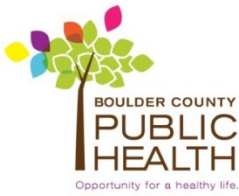
18) What days, times and locations are available for CSA pickup? Are you capable of adding additional days, times and locations in Longmont?

19) Do you have a farm stand or other way to sell your produce to the public? Please explain.

20) In non-pandemic times, what opportunities do you provide for families to engage with your farm?

Signature of Person Authorized to Reply on Farm's Behalf

Date



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Insurance and W-9 Requirements

INSURANCE REQUIREMENTS – *Please note that the limits below are the minimum insurance limits.*

General Liability: \$1,000,000 each occurrence
\$2,000,000 general aggregate
\$2,000,000 products completed operations aggregate
3 years products/completed operations

BCPH and Boulder County as Additional Insureds: BCPH and Boulder County shall be named as additional insureds on the Certificate of Insurance for General Liability, Umbrella/Excess Liability, and Pollution Liability, as designated in the Contract. Additional insureds shall be endorsed to the policy.

THE ADDITIONAL INSURED WORDING ON THE CERTIFICATE OF INSURANCE SHOULD BE AS FOLLOWS: *“Boulder County Public Health, State of Colorado, a political subdivision of the State; and County of Boulder, State of Colorado, a body corporate and politic, are named as Additional Insureds.”*

Automobile Liability: \$1,000,000 each accident
*Including owned, hired & non-owned autos used in the performance of the contract

Worker’s Compensation: Statutory limits

Employer’s Liability: \$100,000 each accident
\$500,000 disease Policy Limit
\$100,000 disease-each employee

NOTE:

*In regard to General Liability, Umbrella/Excess Liability, and Pollution Liability: If any or all of these coverages are required above, additional insured status will be required at the time a contract is executed.

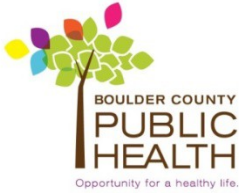
The above insurance amounts are the minimum required for this project. Boulder County and/or Boulder County Public Health (“BCPH”) reserves the right to amend insurance coverages in the awarded bidder’s contract. **Proof of current insurance must be provided with your RFI submittal in the form of a sample certificate, or your proposal will be deemed non-responsive.**

If you require a waiver of insurance requirements (e.g. workers’ compensation or sole proprietorships), you may request one in your RFI submittal along with an explanation for your request.

New insurance certificates will be requested if the contract process is longer than 30 days from contract award or they expire during the term of the contract award.

W-9 REQUIREMENT

Provide a signed and dated copy of your company’s W-9 Form with your proposal. The individual and/or business name and address on the W-9 Form must match the remit address.



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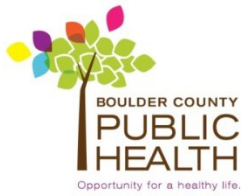
RFI Submittal Checklist

Please pay special attention to the items listed below, as this information is **REQUIRED IN FULL**, as part of your RFI proposal. Failure to provide any of the information or documents listed below; failure to acknowledge any addendum in writing with your proposal; or submitting a proposal on any condition, limitation, or provision not officially invited in this request for proposal (RFI) may be cause for rejection of your proposal.

YOU MUST COMPLETE AND INCLUDE THIS CHECKLIST WITH YOUR PROPOSAL PACKAGE!

Please check each box to indicate your compliance in providing the following RFI requirements:

INCLUDED	ITEM
<input type="checkbox"/>	Completed, signed Required Responses Questionnaire: pages 6 – 8.
<input type="checkbox"/>	Applicable certificate(s) of insurance.
<input type="checkbox"/>	Signed and dated W-9 form.
<input type="checkbox"/>	Signed RFI submittal signature page.
<input type="checkbox"/>	Addendum acknowledgement(s), if applicable.



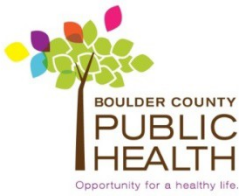
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RFI Evaluation Criteria

The RFI proposals received will be reviewed by a selection committee, which may request additional information from RFI bidders or request interviews with one or more of the bidders. Final evaluation and selection can be based on, but not limited to, any or all of the following:

- Information presented in proposals.
- Ability of RFI bidders to provide quality and timely products and/or services.
- Qualifications and experience of bidders.
- Reference checks.
- Interviews.
- Total cost or proposed pricing.
- Proposed timeline for the delivery of products and/or services.
- Other relevant and appropriate factors, as determined by you or Boulder County.

Description	Points
Q1	/1
Q2	/5
Q3	/5
Q4	/5
Q5	/5
Q6	/10
Q7	/5
Q8	/5
Q9	/10
Q10	/5
Q11	/1
Q12	/5
Q13	/5
Q14	/5
Q15	/5
Q16	/1
Q17	/1
Q18	/10
Q19	/1
Q20	/5
Total Possible	/95



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RFI Signature Page

CONTACT INFORMATION	RESPONSE
Company Name, including DBA ("Doing Business As")	
Type of Organization (e.g. corporation, partnership, etc.)	
Name/Title of Person Authorized to Contract with Boulder County Public Health ("Contact Person")	NAME:
	TITLE:
Contact Person Email Address	
Phone Numbers	CONTACT PERSON:
	COMPANY:
Company Address	
Company Website	

By signing below, I am certifying that:

- ✓ I am authorized to submit this bid on my company's behalf.
- ✓ I am not currently an employee of Boulder County or Boulder County Public Health ("BCPH").
- ✓ None of my employees or agents is currently employees of Boulder County or BCPH.
- ✓ I am not related to any BCPH or Boulder County employee or Boulder County elected official.
- ✓ *Sole Proprietorships Only:* I am not a Colorado Public Employees Retirement Association (PERA) retiree.

 Signature of Person Authorized to Bid on Company's Behalf

 Date

NOTE: If you cannot certify the above statements, please provide a statement of explanation.

SAMPLE CONTRACT

IMPORTANT: The following SAMPLE CONTRACT is provided for your reference and is subject to change. Therefore, DO NOT complete or return this contract with your proposal.

DETAILS SUMMARY	
Document Type	Choose an item.
OFS Number-Version	
BCPH Contact Information	
Boulder County Legal Entity	Boulder County Public Health
Department	Public Health
Division/Program	
Agency Mailing Address	3450 Broadway, Boulder, CO 80504
Program Contact – <i>Name, email</i>	
Invoice Contact	HealthAP@bouldercounty.org
Notices and Insurance Certificates Contact	ATTN: Health Contracts healthcontracts@bouldercounty.org
Contractor Contact Information	
Contractor Name	
Contractor Mailing Address	
Contact 1- <i>Name, title, email</i>	
Contact 2- <i>Name, title, email</i>	
Contract Term	
Start Date	
Expiration Date	
Final End Date	
Contract Amount	
Contract Amount	
Fixed Price or Not-to-Exceed?	Choose an item.
Brief Description of Work	
Contract Documents	
a. Formal Procurement (RFI/Bid/SOQ) No. Bid Variable (the "Bid Documents") b. Contractor's proposal in response to the Bid Documents (the "Proposal") c. Project Details, including project-specific terms and a Scope of Work, attached as Exhibit A (the "Scope of Work") d. Fee Schedule, attached as Exhibit B (the "Fee Schedule") e. Business Associate Agreement, attached as Exhibit C (the "BAA")	
Purchasing Details – BCPH Internal Use Only	
Grant funded?	Yes or No
Bid Number	
Award Date	
If no Bid No., bid process used	Choose an item.
Purchasing Notes <i>(optional)</i>	
COVID-19	Yes or No
Project No.	
Contract Notes	
<i>Additional information not included above</i>	

THIS CONTRACT ("Contract") is entered into by and between Boulder County Public Health ("BCPH"), State of Colorado, a political subdivision of the State, acting by and through the Boulder County Board of Health and [Supplier] ("Contractor"). BCPH and Contractor are each a "Party," and collectively the "Parties."

In consideration of the mutual covenants contained in this Contract, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation into Contract: The **Details Summary** is incorporated into this Contract. The **Contract Documents** are incorporated into this Contract by reference, except to the extent that the Proposal, if any is incorporated, contains any obligations placed upon BCPH and not otherwise contained in this Contract.

2. Work to be Performed: Contractor will provide all labor and equipment and do all tasks necessary and incidental to performing the work as described in the **Details Summary** and **Contract Documents** (the "Work"). Contractor will perform the Work (a) in a good and workmanlike manner, (b) at its own cost and expense, (c) in accordance with recognized industry standards of care, skill and diligence for the type of work being performed, and (d) in strict accordance with the Contract.

3. Term of Contract: The **Contract Term** begins on the **Start Date** and expires on the **Expiration Date**, unless terminated sooner. All the Work must be performed during the **Contract Term**.

4. Payment for Work Performed: In consideration of the Work performed by Contractor, and subject to conditions contained in this Contract, BCPH will pay an amount not to exceed the **Contract Amount** to Contractor in accordance with the **Contract Documents**.

5. Invoicing: Contractor will promptly provide a copy of its Form W-9 and invoice template to BCPH upon request. Contractor must submit an invoice to BCPH by the fifteenth (15th) day of the month for completion of any Work performed in the prior calendar month. All invoices submitted require the following components: Contractor's name and address (submitted W-9 address must match remit address), detailed description of services, dates of services, itemization of labor and materials costs, "Bill to: Boulder County Public Health" language, payment remittance address, payer, name and address, date of invoice, unique invoice number, and total amount due. Contractor must send all completed invoices to the **Invoice Contact** in the **Details Summary**. BCPH may require delivery of invoices by email. Failure to submit invoices in a timely manner and in accordance with the terms of this Contract may cause a delay in payment. BCPH may recoup any damages incurred because of Contractor's failure to submit invoices pursuant to the terms of this paragraph. BCPH's acceptance or payment of an invoice will not constitute acceptance of any Work performed under this Contract.

6. Extra Time to Complete the Work (Additional Time only): If Contractor cannot complete the Work by the **Expiration Date**, Contractor may request extra time to complete the Work. BCPH, in its sole discretion, may grant Contractor additional time to complete the Work by sending a written notice of extension to Contractor. An extension of time to complete the Work does not entitle Contractor to additional compensation from BCPH.

7. Extension of Contract Term (Additional Time and Work): Upon mutual agreement of the Parties, this Contract may be extended until the **Final End Date**. During any extended **Contract Term**, the terms of this Contract will remain in full force and effect, unless otherwise amended in writing by the Parties. Where the Contractor will provide additional services for additional compensation beyond the initial **Contract Amount**, the Parties must execute a written amendment before the then-current **Expiration Date**. If necessary, the written amendment will incorporate an updated Scope of Work and updated Fee Schedule

as exhibits. Contractor must provide a current Certificate of Insurance to BCPH that complies with the **Insurance Requirements** of this Contract, if any, prior to any extended **Contract Term**.

8. Schedule of Work: BCPH may designate the hours (on a daily or weekly basis) during which Contractor may perform the Work, strictly for the purposes of minimizing inconvenience to BCPH and interference with BCPH operations. Contractor will otherwise set its own work schedule.

9. Indemnity: Contractor will be liable for any damages to persons or property caused by or arising out of the actions, obligations, or omissions of Contractor, its employees, agents, representatives or other persons acting under Contractor's direction or control in performing or failing to perform the Work under this Contract. Contractor will indemnify and hold harmless BCPH and Boulder County, its elected officials and appointed department heads, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of Contractor, its employees, agents or representatives, or other persons acting under Contractor's direction or control. This indemnification obligation will extend to claims based on Contractor's unauthorized use or disclosure of confidential information and intellectual property infringement. BCPH and Boulder County will not be obligated to indemnify or defend Contractor under any circumstances. Contractor's obligations under this provision shall survive expiration or termination of this Contract. Nothing contained in this Contract or the **Contract Documents** is intended to limit or restrict the indemnification rights or obligations of any Party under this provision, or damages available for breaches of the obligations herein.

10. Nondiscrimination: Contractor will comply with the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, State and Federal laws concerning discrimination and unfair employment practices. BCPH prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-economic status, sexual orientation, genetic information, or any other status protected by applicable Federal, State or local law. Contractor must require that its subcontractors, if any, similarly comply with all applicable laws concerning discrimination and unfair employment practices.

11. Information and Reports: Contractor will provide to authorized BCPH, Boulder County, State, and Federal government representatives all information and reports that may be required for any purpose authorized by law. Contractor will permit access to such representatives to Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where information required by a representative is in the exclusive possession of a person or entity other than Contractor, Contractor must so certify to BCPH and explain what efforts it has made to obtain the information.

12. Independent Contractor: Contractor is an independent contractor for all purposes in performing the Work. None of Contractor, its agents, personnel or subcontractors are employees of BCPH for any purpose, including the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, BCPH will not withhold or pay any income tax, payroll tax, or retirement contribution of any kind on behalf of Contractor or Contractor's employees. As an independent contractor, Contractor is responsible for employing and directing such personnel and agents as it requires to perform the Work. Contractor will exercise complete authority over its personnel and agents and will be fully responsible for their actions.

13. Termination

a. **Breach:** Either Party's failure to perform any of its material obligations under this Contract, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the breaching Party does not cure the breach, at its sole expense, as reasonably determined by the non-breaching Party in its sole discretion, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of this Contract.

b. **Non-Appropriation:** The other provisions of this Contract notwithstanding, BCPH is prohibited by law from making commitments beyond the current fiscal year. Payment to Contractor beyond the current fiscal year is contingent on the appropriation and continuing availability of funding in any subsequent year. BCPH has reason to believe that sufficient funds will be available for the full **Contract Term**. Where, however, funds are not allocated for any fiscal period beyond the current fiscal year, BCPH may terminate this Contract without penalty by providing seven (7) days' written notice to Contractor.

c. **Convenience:** In addition to any other right to terminate under this Section 13, BCPH may terminate this Contract, in whole or in part, for any or no reason, upon seven (7) days' advance written notice to Contractor.

14. **Contractor Obligations upon Termination or Expiration:** By the **Expiration Date** or effective date of termination, if earlier, Contractor must (1) remove from BCPH property all of its personnel, equipment, supplies, trash and any hazards created by Contractor, (2) protect any serviceable materials belonging to BCPH, and (3) take any other action necessary to leave a safe and healthful worksite. Any items remaining on BCPH property after the Expiration Date or the effective date of termination, if earlier, will be deemed abandoned by Contractor.

15. **Payable Costs in Event of Early Termination:** If BCPH terminates this Contract before the **Expiration Date**, Contractor's payments (and any damages associated with any lawsuit brought by Contractor) are limited to only (1) payment for Work satisfactorily executed and fully and finally completed, as determined by BCPH in its sole discretion, prior to delivery of the notice to terminate, and (2) the reasonable and actual costs Contractor incurred in connection with performing the Work prior to delivery of the notice to terminate. Contractor explicitly waives all claims it may have against BCPH for any other compensation, such as anticipatory profits or any other consequential, special, incidental, punitive or indirect damages.

16. **Remedies for Non-Performance:** If Contractor fails to perform any of its obligations under this Contract, BCPH may, at its sole discretion, exercise one or more of the following remedies (in addition to any other remedies provided by law or in this Contract), which shall survive expiration or termination of this Contract:

a. **Suspend Performance:** BCPH may require that Contractor suspend performance of all or any portion of the Work pending necessary corrective action specified by BCPH and without entitling Contractor to an increase in compensation or extension of the performance schedule. Contractor must promptly stop performance and incurring costs upon delivery of a notice of suspension by BCPH.

b. **Withhold Payment Pending Corrections:** BCPH may permit Contractor to correct any rejected Work at BCPH's discretion. Upon BCPH's request, Contractor must correct rejected work at Contractor's sole expense within the time frame established by BCPH. Upon full and final completion of the corrections satisfactory to BCPH, BCPH will remit payment to Contractor.

c. **Deny Payment:** BCPH may deny payment for any Work that does not comply with the requirements of the Contract or that Contractor otherwise fails to provide or fully and finally complete, as determined by BCPH in its sole discretion. Upon BCPH request, Contractor will promptly refund any amounts prepaid by BCPH with respect to such non-compliant Work.

d. **Removal:** Upon BCPH 's request, Contractor will remove any of its employees or agents from performance of the Work, if BCPH, in its sole discretion, deems any such person to be incompetent, careless, unsuitable, or otherwise unacceptable.

17. **Binding Arbitration Prohibited:** BCPH does not agree to binding arbitration by any extra-judicial body or person.

18. **Conflicts of Interest:** Contractor may not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Contractor's obligations.

19. **Notices:** All notices provided under this Contract must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's **Contact** at the address specified in the **Details Summary**. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

20. **Statutory Requirements:** This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally, including but not limited to: C.R.S. § 38-26-107, which requires withholding funds where BCPH receives a claim for payment from a supplier or subcontractor of Contractor upon notice of final settlement (required for public works contracts that exceed \$150,000); C.R.S. § 8-17-101 et seq.; C.R.S. § 18-8-301, et seq.; and C.R.S. § 18-8-401, et seq.

21. **Public Contracts for Services (C.R.S. §§ 8-17.5-101, et seq.):** *The phrase "unauthorized worker" as used in this provision shall have the same and intended meaning as "illegal alien" as such phrase is used in C.R.S. §§ 8-17.5-101, et seq.* Contractor hereby certifies, warrants, and agrees that it does not knowingly employ or contract with an unauthorized worker who will perform work under this Contract and further certifies that it will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract by participating in the E-Verify Program established under Pub. L. 104-28 or the department verification program established under C.R.S. § 8-17.5-102(5)(c). Contractor (i) shall not knowingly employ or contract with an unauthorized worker to perform work under this Contract; (ii) shall not enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an unauthorized worker to perform work under this Contract; (iii) has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in the E-Verify program or department program; (iv) is prohibited from using either the E-Verify program or department program procedures to undertake preemployment screening of job applicants while this Contract is being performed; and (v) shall comply with any reasonable request by the department made in the course of an investigation that the Colorado Department of Labor and Employment is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5). If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an unauthorized worker, Contractor shall (a) notify the subcontractor and BCPH within three (3) days that Contractor has actual knowledge that subcontractor is employing or contracting with an unauthorized worker; and (b) terminate the subcontract if, within three (3) days of receiving notice hereunder, subcontractor does not stop employing or contracting with the unauthorized worker; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an

unauthorized worker. Contractor's violation of this provision will constitute a material breach of this Contract, entitling BCPH to terminate the contract for breach. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to the BCPH.

22. Entire Agreement/Binding Effect/Amendments: This Contract represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Contract terminates any prior agreements, whether written or oral in whole or in part, between the Parties relating to the Work. This Contract may be amended only by a written agreement signed by both Parties.

23. Assignment/Subcontractors: This Contract may not be assigned or subcontracted by Contractor without the prior written consent of BCPH. If Contractor subcontracts any of its obligations under this Contract, Contractor will remain liable to BCPH for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Contract.

24. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Contract. Any claim relating to this Contract or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

25. Breach: The failure of either Party to exercise any of its rights under this Contract will not be deemed to be a waiver of such rights or a waiver of any breach of the Contract. All remedies available to a Party in this Contract are cumulative and in addition to every other remedy provided by law.

26. Severability: If any provision of this Contract becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Contract will continue to be operative and binding on the Parties.

27. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Contract are reserved to the Parties. Any other person receiving services or benefits under this Contract is an incidental beneficiary only and has no rights under this Contract. Notwithstanding, where the beneficiary **Department** is led by an Elected Official, such Elected Official shall be considered a third-party beneficiary.

28. Colorado Open Records Act: BCPH may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq.

29. Conflict of Provisions: If there is any conflict between the terms of the main body of this Contract and the terms of any of the **Contract Documents**, the terms of the main body of the Contract will control.

30. Governmental Immunity: Nothing in this Contract shall be construed in any way to be a waiver of the BCPH's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

31. Representations and Warranties: Contractor represents and warrants the following:

- a. Execution of this Contract and performance thereof is within Contractor's duly authorized powers;
- b. The individual executing this Contract is authorized to do so by Contractor;
- c. Contractor is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the Contractor; and

d. Contractor and its subcontractors, if any, are financially solvent, able to pay all debts as they mature, and have sufficient working capital to complete the Work and perform all obligations under the Contract.

32. Legal Compliance: Contractor assumes full responsibility for obtaining and maintaining any permits and licenses required to perform the Work. Contractor is solely responsible for ensuring that its performance under this Contract and the Work itself will comply with all Federal, State, and local laws, regulations, ordinances and codes. BCPH's approval of the Work or any aspect of Contractor's performance, such as plans, designs, or other Contractor-drafted documents, shall not be interpreted to mean that Contractor has satisfied its obligations under this Section.

33. Litigation Reporting: Contractor is not currently involved in any action before a court or other administrative decision-making body that could affect Contractor's ability to perform the Work. Contractor will promptly notify BCPH if Contractor is served with a pleading or other document in connection with any such action.

34. Tax Exemption: BCPH is exempt from payment of Federal, State, and local government taxes. Contractor shall collect no tax from BCPH, and BCPH shall not be liable to pay any taxes imposed on Contractor. BCPH shall provide its tax exemption status information to Contractor upon request.

35. Delegation of Authority: The Parties acknowledge that the Boulder County Board of Health has delegated authority to the Department Head (e.g. Public Health Director) that leads the beneficiary **Department** and their designees to act on behalf of BCPH under the terms of this Contract, including but not limited to the authority to terminate this Contract.

36. Ownership of Work Product: All work product, property, data, documentation, information or materials conceived, discovered, developed or created by Contractor pursuant to this Contract ("Work Product") will be owned exclusively by BCPH. To the extent possible, any Work Product will be deemed to be a work made for hire. Contractor unconditionally and irrevocably transfers and assigns to BCPH all right, title and interest in and to any Work Product.

37. Publicity Releases: Contractor will not refer to this Contract or BCPH in commercial advertising without prior written consent of BCPH. This provision shall survive expiration or termination of this Contract.

38. Execution by Counterparts; Electronic Signatures: This Contract may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Contract solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Contract in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

39. Limitation on Public Statements and Lobbying Activity. During the term of this Contract, Contractor may receive from BCPH its confidential data, work product, or other privileged or confidential information that is protected by law. To maintain the fact and appearance of absolute objectivity, Contractor shall not, without the prior written consent of BCPH, which shall not be unreasonably withheld, do any of the following: (a) disclose information obtained because of this contractual relationship to any third party; (b) lobby any State or Federal agency on any pending matter while this Contract is effective; or (c) make any public statements or appear at any time to give testimony at any public meeting on the subject matters regarding which Contractor is or was

retained by BCPH. BCPH may set reasonable conditions on any disclosure authorized by BCPH under this provision. Notwithstanding, Contractor may make disclosures as required by law, and to law enforcement officials in connection with any criminal justice investigation.

40. Sustainability: BCPH encourages Contractor to consider the procurement and use of environmentally preferable products and services while performing services under this Contract. "Environmentally preferable purchasing" means making purchasing choices for products and services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products and services that serve the same purpose. Environmentally preferable purchasing is consistent with BCPH's commitment to protecting our air, water, soil, and climate for current and future generations. BCPH encourages Contractor to incorporate the following actions into Contractor's performance of the Work: environmentally preferable supplies and services; conservation of water; efficient energy use; waste prevention; reuse and recycle construction and de-construction materials in a manner that maximizes reuse of materials; sustainable transportation choices, including consideration to business communication software such as Skype alternative to air travel and public transit or carpooling for in-person meetings; pollution prevention; low toxicity for public health & safety; and reduced emissions to address climate change.

41. Limitation of Liability: BCPH AND BOULDER COUNTY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS CONTRACT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. BCPH'S AND BOULDER COUNTY'S AGGREGATE LIABILITY, IF ANY, ARISING FROM OR RELATED TO THIS CONTRACT, WHETHER IN CONTRACT, OR IN TORT, OR OTHERWISE, IS LIMITED TO, AND SHALL NOT EXCEED, THE AMOUNTS PAID OR PAYABLE HEREUNDER BY BCPH AND/OR BOULDER COUNTY TO CONTRACTOR. ANY CONTRACTUAL LANGUAGE LIMITING CONTRACTOR'S LIABILITY SHALL BE VOID.

42. Legal Interpretation. Each Party recognizes that this Contract is legally binding and acknowledges that it has had the opportunity to consult with legal counsel of its choice about this Contract. The rule of construction providing that any ambiguities are resolved against the drafting Party will not apply in interpreting the terms of this Contract.

43. No Suspension or Debarment: Contractor certifies, and warrants for the Contract Term, that neither it nor its principals nor any of its subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal or State department or agency. Contractor shall comply, and shall require its subcontractors to comply, with subpart C of 2 C.F.R. § 180.

44. Insurance: Prior to commencing the Work, Contractor will provide a Certificate of Insurance to BCPH demonstrating adequate insurance coverage as required by this Section. All policies evidencing coverage required by the Contract will be issued by insurance companies satisfactory to the BCPH. Contractor will forward Certificates of Insurance directly to BCPH'S **"Notices and Insurance Certificates" Contact** listed in the **Details Summary**.

a. BCPH and Boulder County as Additional Insureds: BCPH and Boulder County shall be named as additional insureds for General Liability, Umbrella/Excess Liability, and Pollution Liability, as designated in this Contract. Additional insureds shall be endorsed to the policy.

THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS: *Boulder County Public Health, State of Colorado, a political subdivision of the State; and County of Boulder, State of Colorado, a body corporate and politic, are named as Additional Insureds.*

b. Notice of Cancellation: Each insurance policy required by this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days' prior written notice has been given to BCPH except when cancellation is for non-payment of premium, then ten (10) days' prior notice may be given. If any insurance company refuses to provide the required notice, Contractor or its insurance broker shall notify BCPH of any cancellation, suspension, or nonrenewal of any insurance policy within seven (7) days of receipt of insurers' notification to that effect.

c. Insurance Obligations of BCPH: BCPH is not required to maintain or procure any insurance coverage beyond the coverage maintained by BCPH in its standard course of business. Any insurance obligations placed on BCPH in any of the **Contract Documents** shall be null and void.

d. Deductible: Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of Contractor.

e. Primacy of Coverage: Coverage required of Contractor and its subcontractors, if any, shall be primary over any insurance or self-insurance program carried by BCPH.

f. Subrogation Waiver: All insurance policies in any way related to this Contract secured or maintained by Contractor as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against BCPH, its organizations, officers, agents, employees, and volunteers.

g. Requirements: For the entire duration of this Contract including any extended or renewed terms, and longer as may be required by this Contract, Contractor shall procure and maintain at its own expense, and without cost to BCPH, the following kinds and minimum amounts of insurance to insure the liability risks that Contractor has assumed under this Contract:

i. **Commercial General Liability**

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate.

ii. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

iii. **Workers' Compensation and Employer's Liability**

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease-Each Employee.

iv. **Umbrella / Excess Insurance**

Umbrella/Excess Liability insurance in the amount \$2,000,000.00, following form.

v. Professional Liability (Errors and Omissions)

Professional liability coverage with minimum limits of \$1,000,000 Per Loss and \$1,000,000 Aggregate. Professional Liability provisions indemnifying for loss and expense resulting from errors, omission, mistakes or malpractice is acceptable and may be written on a claims-made basis. The contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

vi. Pollution Liability

Coverage pay for those sums the Contractor becomes legally obligated to pay as damages because of Bodily Injury, Property Damage or environmental Damage arising out of a pollution incident caused by the Contractor's work including Completed Operations. Coverage shall include emergency response expenses, pollution liability during transportation (if applicable) and at Non-Owned Waste Disposal Site (if applicable). The Minimum limits required are \$1,000,000 Per Occurrence/Loss and \$1,000,000 Policy Aggregate. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. BCPH shall be named as an additional insured for ongoing operations and completed operations.

vii. Third Party Commercial Crime Insurance / Third Party Fidelity Bond

The Crime limit shall be \$1,000,000 Per Loss and include an endorsement for "Employee Theft of Client Property". In order to provide coverage to BCPH during the course of this contract, Commercial Crime policies must be endorsed to cover Third Party Fidelity. Third party fidelity covers the vendor's employees when engaged in work for a client. In addition, BCPH will be listed as loss payee on the commercial crime coverage. This third-party coverage can also be provided by obtaining a third-party fidelity bond.

viii. Privacy / Cyber Liability Insurance

As a provider of a service which *may* require the knowledge and retention of personal identifiable information including but not limited to, names, dates of birth, social security numbers, usernames, and passwords, and/or HIPAA sensitive personal information of clients served, the following minimum insurance limits are required:

Contractors with 10 or fewer BCPH clients:	\$50,000
Contractors with 11 – 15 BCPH clients:	\$500,000
Contractors with more than 25 BCPH clients:	\$1,000,000

ix. Sexual Abuse and Molestation Coverage

As a provider of a service which has contact with individuals that are part of a sensitive population and are in a position of trust the following minimum insurance limits are required:

Contractors with 5 or fewer BCPH clients:	\$100,000
Contractors with 6-10 BCPH clients:	\$250,000

Contractors with 11-15 BCPH clients:	\$500,000
Contractors with 16 or more BCPH clients:	\$1,000,000

If the number of clients increases during the contract period, the required coverage limit will increase to correspond accordingly.

[Signature Page to Follow]

SAMPLE

IN WITNESS WHEREOF, the Parties have executed and entered into this Contract as of the latter day and year indicated below.

SIGNED for and on behalf of Boulder County Public Health	SIGNED for and on behalf of Contractor
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
↓↓ <i>For Board-signed documents only</i> ↓↓	
Attest:	<i>Initials</i>
Attestor Name:	
Attestor Title:	

SAMPLE BUSINESS ASSOCIATE AGREEMENT (“BAA”)

IMPORTANT: The following SAMPLE CONTRACT is provided for your reference and is subject to change. Therefore, DO NOT complete or return this contract with your proposal.

This Business Associate Agreement (the “Agreement”), effective as of the DATE (the “Effective Date”), is made by and between the Parties named in Section 1 for the good, valuable, and mutual consideration described herein, the sufficiency and receipt of which both Parties acknowledge.

1. THE PARTIES

The Parties to this Agreement are:

- 1.A Boulder County Public Health (“BCPH”), a local public health agency organized under a local board of health in accordance with Colorado Revised Statutes (“C.R.S.”) §25-1-501 *et seq.*
Boulder County Public Health
ATTN: Contracts
3450 Broadway
Boulder CO 80304
Email: healthcontracts@bouldercounty.org

BCPH is a “Covered Entity,” as defined by “The HIPAA Rules,” and is referred to in this Agreement as “Covered Entity.”

AND

- 1.B (“Contractor” or “Business Associate”)

Address

Address

Contractor is a “Business Associate,” as defined by The HIPAA Rules, and is referred to in this Agreement as “Business Associate.”

Covered Entity and Business Associate are sometime referred to in this Business Associate Agreement individually as a “Party” and collectively as the “Parties.”

2. HIPAA AND THE HIPAA RULES

- 2.A HIPAA

The Parties must comply with United States statutory law known as the Health Insurance Portability and Accountability Act of 1996, as amended, and any amendments and modifications to the law that become effective during the term of this Agreement.¹ The statutory law is referred to in this Agreement as “HIPAA.”

- 2.B THE HIPAA RULES

The Parties must comply with federal administrative law consisting of regulations authorized by HIPAA called the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule and any amendments, additions, and modifications to the regulations that become effective during the term of this Agreement.² The regulations are referred to in this Agreement as “The HIPAA Rules.”

3. THIS AGREEMENT

¹ United States statutes that, as of the Effective Date, consist of Sections 1171-1180 of the Social Security Act (Administrative Simplification), Sections 262 and 264 of Public Law 104-191 (Health Insurance Portability and Accountability Act of 1996), Section 105 of Public Law 110-233 (Genetic Information Nondiscrimination Act of 2008), Sections 13400-13424 of Public Law 111-5 (Health Information Technology for Economic and Clinical Health Act or “HITECH Act”) and Section 1104 of Public Law 111-148 (Patient Protection and Affordable Care Act).

² 45 CFR Parts 160 and Subparts A, C, D and E of Part 164.

This Agreement is a Business Associate Agreement (“BAA” or “Agreement”) between the Parties in compliance with The HIPAA Rules to accomplish the following purposes:

- 3.A To enable Covered Entity to obtain satisfactory assurances from Business Associate that Business Associate will appropriately safeguard all protected health information (“PHI”), including electronic protected health information (“EPHI”), that Covered Entity discloses to Business Associate and that the Business Associate creates, receives, maintains, transmits, or destroys on behalf of Covered Entity.
- 3.B To document the satisfactory assurances described Subsection 3.A in writing.
- 3.C To establish the permitted and required uses and disclosures of PHI, including EPHI, by Business Associate.
- 3.D To confirm and document the exchange and receipt of mutual promises made by the Parties that during the term of this Agreement, each Party will perform its obligations in compliance with HIPAA and The HIPAA Rules and establish and document the performance required of each Party by this Agreement.

4. DEFINED TERMS USED IN THIS AGREEMENT

The following terms are defined in The HIPAA Rules. Any change to HIPAA or The HIPAA Rules modifying a defined term or the citation of a defined term in this Agreement shall be deemed incorporated into this Agreement on the effective date of such change.

- 4.A “Access of Individuals to Protected Health Information” shall mean the procedures described in 45 CFR §164.524 of The HIPAA Rules and is referred to in this Agreement as “access of an individual to PHI.”
- 4.B “Accounting of Disclosures of Protected Health Information” shall mean the procedures described in 45 CFR §164.528 of The HIPAA Rules and is referred to in this Agreement as “accounting of disclosures of PHI.”
- 4.C “Amendment of Protected Health Information” shall mean the procedure described in 45 CFR §164.526 of The HIPAA Rules and is referred to in this Agreement as “amendment of PHI.”
- 4.D “Availability” shall have the same meaning as the term “availability,” as defined in 45 CFR §164.304 of The HIPAA Rules.
- 4.E “Breach” shall mean the acquisition, access, use, or disclosure of protected health information in a manner not permitted under the Privacy Rule that compromises the security or privacy of protected health information, as defined in 45 CFR §164.402 of The HIPAA Rules.
- 4.F “Breach Notification Rule” shall mean the regulations set forth in The HIPAA Rules at 45 CFR §164.400-414.
- 4.G “Business Associate” shall have the same meaning as the term “business associate,” as defined in 45 CFR §160.103 of The HIPAA Rules. Business Associate identified in this Agreement as a Party shall be a “business associate,” as defined by the HIPAA Rules.
- 4.H “Business Associate Agreement” shall mean a written contract as required by The HIPAA Rules and described at 45 CFR §164.308(b), 164.314(a), 164.502(e), and 164.504(e). This Agreement is a “Business Associate Contract (or Agreement),” as defined by The HIPAA Rules.
- 4.I “Confidentiality” shall have the same meaning as the term “confidentiality,” as defined in 45 CFR §164.304 of The HIPAA Rules.
- 4.J “Covered Entity” shall have the same meaning as the term “covered entity,” as defined in 45 CFR §160.103 of The HIPAA Rules. Covered Entity identified in this Agreement as a Party is a “covered entity,” as defined by The HIPAA Rules.
- 4.K “Data Aggregation” shall have the same meaning as the term “data aggregation,” as defined in 45 CFR §164.501 of The HIPAA Rules.
- 4.L “Date of Discovery” shall mean the first day on which a breach is known or, by exercising reasonable diligence, would have been known to any person, other than the person committing the breach, who is a workforce member or agent of the Covered Entity or Business Associate, as defined by 45 CFR §164.404(a)(2) and 45 CFR §164.410(a)(2) of The HIPAA Rules.

- 4.M "Designated Record Set" shall have the same meaning as the term "designated record set," as defined in 45 CFR §164.501 of The HIPAA Rules.
- 4.N "Disclosure" shall have the same meaning as the term "disclosure," as defined in 45 CFR §160.103 of The HIPAA Rules, and the term "disclose" shall mean to make a disclosure.
- 4.O "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information," as defined in 45 CFR §160.103 of The HIPAA Rules. Electronic protected health information is referred to in this Agreement as "EPHI." All EPHI is also "protected health information" (PHI); see definition below in Subsection 4.W.
- 4.P "Enforcement Rule" shall mean the regulations set forth in The HIPAA Rules at 45 CFR Part 160, Subparts C, D, and E.
- 4.Q "Individual" shall have the same meaning as the term "individual," as defined in 45 CFR §160.103 of The HIPAA Rules.
- 4.R "Integrity" shall have the same meaning as the term "integrity," as defined in 45 CFR §164.304 of The HIPAA Rules.
- 4.S "Marketing" shall have the same meaning as the term "marketing," as defined in 45 CFR §164.501 of The HIPAA Rules.
- 4.T "Minimum Necessary" shall have the same meaning as "minimum necessary," as defined in 45 CFR §164.502(b) and 45 CFR §164.514(d) of The HIPAA Rules.
- 4.U "Organized Health Care Arrangement" shall have the same meaning as "organized health care arrangement," as defined in 45 CFR §160.103.501 of The HIPAA Rules.
- 4.V "Privacy Rules" shall mean the regulations set forth in The HIPAA Rules at 45 CFR Part 160 and Subparts A and E of Part 164.
- 4.W "Protected Health Information" shall have the same meaning as the term "protected health information," as defined in 45 CFR §160.103 of The HIPAA Rules. Protected health information is referred to in this Agreement as "PHI."
- 4.X "Reasonable Diligence" shall have the same meaning as the term "reasonable diligence," as defined in 45 CFR §160.401 of The HIPAA Rules.
- 4.Y "Remuneration" shall have the same meaning as "financial remuneration," as defined in Section (3) of the definition of "marketing" in 45 CFR §164.501 of The HIPAA Rules, including direct or indirect remuneration for the sale of protected health information in accordance with 45 CFR §164.502(a)(5)(ii)(B)(1) of The HIPAA Rules.
- 4.Z "Required by Law" shall have the same meaning as the term "required by law," as defined in 45 CFR §164.103 of The HIPAA Rules.
- 4.AA "Restriction" shall mean a restriction of uses and disclosures of protected health information in accordance with 45 CFR §164.522(a), a restriction to accommodate an Individual's request for confidential communications in accordance with 45 CFR §164.522(b) or a restriction of unencrypted electronic transmission of an Individual's PHI to the Individual in accordance with The HIPAA Rules explained at 78 FR 5634, Jan. 25, 2013, and 79 FR 7302, Feb. 6, 2014.
- 4.BB "Sale of Protected Health Information" shall have the same meaning as the term "sale of protected health information," as defined in 45 CFR §164.502(a)(5)(ii)(b) of The HIPAA Rules. Sale of protected health information is sometimes referred to in this Agreement as "sale of PHI."
- 4.CC "Secretary" shall mean the Secretary of U.S. Department of Health and Human Services (HHS) or any other officer or employee of HHS to whom the authority involved has been delegated, as defined in 45 CFR §160.103 of The HIPAA Rules.
- 4.DD "Security Incident" shall have the same meaning as the term "security incident," as defined in 45 CFR §164.304 of The HIPAA Rules.
- 4.EE "Security Rule" shall mean the regulations set forth in The HIPAA Rules at 45 CFR Part 160 and Subparts A and C of Part 164.
- 4.FF "State Law" shall have the same meaning as the term "state law," as defined in 45 CFR §164.202 of The HIPAA Rules.

- 4.GG “Subcontractor” shall mean a Business Associate that creates, receives, maintains, transmits, or destroys PHI on behalf of a Business Associate, as defined in 45 CFR §160.103 of The HIPAA Rules and is referred to in this Agreement as “subcontractor Business Associate.”
- 4.HH “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information,” as defined in 45 CFR §164.402 of The HIPAA Rules and means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in guidance issued under HIPAA (Section 13402(h)(2) of Public Law 111-5). Unsecured protected health information is referred to in this Agreement as “unsecured PHI.”
- 4.II “Use” shall have the same meaning as the term “use,” as defined in 45 CFR §160.103 of The HIPAA Rules.

5. THE SPECIFIC PROTECTED HEALTH INFORMATION (PHI) AND ELECTRONIC PROTECTED HEALTH INFORMATION (E PHI) THAT ARE THE SUBJECT OF THIS AGREEMENT

In this Agreement, the defined terms protected health information (PHI) and electronic protected health information (E PHI) refer exclusively and only to:

- 5.A PHI and E PHI that Business Associate creates, receives, maintains, transmits, or destroys on behalf of Covered Entity to perform a function or activity regulated by The HIPAA Rules.
- 5.B PHI and E PHI disclosed to Business Associate by or on behalf of Covered Entity so that Business Associate may provide legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for Covered Entity.
- 5.C PHI and E PHI that a subcontractor Business Associate creates, receives, maintains, transmits, or destroys on behalf of Business Associate related to a function or activity described in Subsection 5.A or provision of a service described in Subsection 5.B.

6. UNDERLYING BUSINESS AGREEMENT

Covered Entity and Business Associate may enter into or already have a business relationship established by one or more written or oral contracts or agreements made before, on, or after the Effective Date involving use, disclosure, creation, receipt, maintenance, transmission, or destruction of PHI and/or E PHI described in Section 5 that are referred to in this Agreement collectively as the “underlying Business Agreement.”

6.A THE UNDERLYING BUSINESS AGREEMENT – HIPAA AND THE HIPAA RULES

The underlying Business Agreement requires the Business Associate to perform a function or activity or provide a service involving PHI and/or E PHI described in Section 5 that is subject to compliance with HIPAA and The HIPAA Rules. Accordingly, in order to perform their respective obligations established by the underlying Business Agreement, Covered Entity and Business Associate must enter into a Business Associate Agreement (BAA).

6.B EFFECT OF THIS AGREEMENT – CONSIDERATION

This Agreement is a BAA. The Parties agree that the terms, conditions, promises, and performance described in this Agreement are required by HIPAA and The HIPAA Rules to perform their respective obligations established by the underlying Business Agreement. Accordingly, the mutual promises and obligations of the Parties set forth in this Agreement are good, valuable, sufficient, and mutual consideration given, received, and accepted by each Party for this Agreement and elements of the good, valuable, sufficient, and mutual consideration given, received, and accepted by each Party for the underlying Business Agreement that permit the Parties to continue their established business relationship or establish a new business relationship.

6.C THIS AGREEMENT INCORPORATED IN UNDERLYING BUSINESS AGREEMENT

The Parties agree that this Agreement is incorporated by reference in the underlying Business Agreement, and by execution of this Agreement, do hereby amend the underlying Business Agreement to include this Agreement. This Agreement supersedes and renders null and void any provision in the underlying Business Agreement, whether made before or after the

effective date, that conflicts with HIPAA or The HIPAA Rules. Any provisions in the underlying Business Agreement, whether made before or after the Effective Date, regarding Business Associate's limitation or exclusion of liability or damages shall not apply to Business Associate's liability for breach of this Agreement or limit remedies available to Covered Entity under this Agreement.

7. OBLIGATIONS OF BUSINESS ASSOCIATE UNDER THIS AGREEMENT

- 7.A Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement, the underlying Business Agreement, or as required by law.
- 7.B Business Associate shall appropriately safeguard all PHI, including EPHI, that Covered Entity discloses to Business Associate and that Business Associate creates, receives, maintains, transmits, or destroys on behalf of Covered Entity.
- 7.C Business Associate warrants that, as of the Effective Date, it is compliant with the applicable requirements of the HIPAA Security Rule and will remain compliant with the Security Rule at all times during the term of the Agreement, and, if necessary, comply with the Security Rule and The HIPAA Rules that are applicable to fulfill any obligations that survive the Agreement's termination in accordance with Section 12 and Subsection 10.C of this Agreement.
- 7.D Business Associate shall enter into a written Business Associate Agreement with any subcontractor Business Associate to which it discloses PHI, including EPHI, or that creates, receives, maintains, transmits, or destroys EPHI on its behalf, by which Business Associate shall obtain satisfactory assurances that the subcontractor Business Associate agrees to comply with the same restrictions and conditions that apply to Business Associate with respect to all PHI including EPHI; comply with applicable requirements of the Security Rule; and appropriately safeguard all such PHI, including EPHI.
- 7.E Business Associate shall not engage the services of a subcontractor Business Associate; enter into a Business Associate Agreement with a subcontractor Business Associate described in Subsection 7.D; disclose PHI, including EPHI; or permit a subcontractor Business Associate to create, receive, maintain, or transmit PHI and EPHI on its behalf unless the subcontractor Business Associate is, at all relevant times, subject to the laws of the United States, including the Secretary's Enforcement of HIPAA and The HIPAA Rules and civil enforcement by Business Associate of the Business Associate Agreement with a subcontractor Business Associate.
- 7.F If Business Associate knows of a pattern of activity or practice of a subcontractor Business Associate that constitutes a material breach or violation of the subcontractor Business Associate's obligations under the Business Associate Agreement described in Subsection 7.D, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Business Associate Agreement with the subcontractor Business Associate.
- 7.G Business Associate shall not disclose PHI for marketing for which it receives remuneration unless the individual has executed a valid authorization stating remuneration is involved in accordance with 45 C.F.R. §164.508(a)(3) of the HIPAA Rules and shall not disclose PHI which is a sale of PHI unless the individual has executed a valid authorization stating remuneration is involved in accordance with 45 C.F.R. §164.508(a)(4) of The HIPAA Rules.
- 7.H Business Associate, when using, disclosing, or requesting PHI, shall make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
- 7.I Business Associate shall comply with applicable requirements of the Breach Notification Rule and shall notify Covered Entity of any breach of unsecured PHI it discovers not later than five (5) calendar days after Business Associate's date of discovery of the breach of unsecured PHI.
- 7.J Business Associate shall report to Covered Entity any use or disclosure of information not provided for by this Agreement or the underlying Business Agreement of which it becomes aware not later than five (5) calendar days after it becomes aware of such use or disclosure.

- 7.K Business Associate shall report any security incident of which it becomes aware to Covered Entity not later than thirty (30) calendar days after it becomes aware of such security incident. The Parties agree that this Subsection 7.K constitutes ongoing notice by Business Associate to Covered Entity of “unsuccessful” security incidents that do not represent substantial risks to PHI, such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service, and any combination of the above and no additional notice to Covered Entity shall be required provided that no such unsuccessful security incident results in unauthorized acquisition, access, use, disclosure, modification, or destruction of EPHI or interference with Business Associate's information system operations related to EPHI.
- 7.L If Business Associate maintains PHI of an individual in a designated record set, Business Associate shall make the PHI available to Covered Entity within five (5) calendar days after receiving a request for the PHI from Covered Entity, as provided for in Subsection 9.B, in order for Covered Entity to satisfy Covered Entity’s obligations regarding access of an individual to PHI in accordance with 45 CFR §164.524 of The HIPAA Rules.
- 7.M If Business Associate maintains PHI of an individual in a designated record set, Business Associate shall make the PHI available to Covered Entity within five (5) calendar days after receiving notice from Covered Entity, as provided in Subsection 9.C that the PHI is subject to an individual's request for amendment in accordance with 45 CFR §164.526 of The HIPAA Rules. Covered Entity shall be solely responsible for determining the appropriate response to a request for amendment and Business Associate shall incorporate any such amendments in the individual's designated record set maintained by Business Associate.
- 7.N Business Associate will maintain and make available to Covered Entity the information required to provide an accounting of disclosures of PHI in accordance with 45 CFR §164.528 of The HIPAA Rules within five (5) calendar days of receipt of notice requesting such information from Covered Entity, as provided for in Subsection 9.D.
- 7.O Business Associate, to the extent it is required to carry out an obligation of Covered Entity under the Privacy Rule, shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of the obligation.
- 7.P Business Associate, if required by the underlying Business Agreement to make uses or disclosures of PHI subject to restrictions, shall comply with each such restriction immediately upon receipt of notification of the restriction from Covered Entity in accordance with Subsection 9.E and shall comply with the restriction during the term of this Agreement or until Covered Entity notifies Business Associate that the restriction has been terminated.
- 7.Q Business Associate will disclose PHI to the Secretary in accordance with 45 CFR §164.502(a)(4)(i) of The HIPAA Rules when required by the Secretary under the Enforcement Rule to investigate or determine Business Associate’s compliance with The HIPAA Rules.
- 7.R Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary in accordance with 45 CFR §164.504(e)(2)(ii)(I) of The HIPAA Rules for purposes of determining Covered Entity’s compliance with The Privacy Rule.

8. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

- 8.A Business Associate may use or disclose PHI for its proper management and administration or carry out its legal responsibilities if the disclosure is required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and that person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- 8.B Business Associate may provide data aggregation services if performance of such services is provided for in the underlying Business Agreement.

9. OBLIGATIONS OF COVERED ENTITY

- 9.A Covered Entity shall make reasonable efforts to limit any use, disclosure, or request of PHI made to Business Associate to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
- 9.B Covered Entity shall notify Business Associate in a timely manner in accordance with 45 CFR §164.524 and 45 CFR § 164.502(a)(4)(ii) of The HIPAA Rules, so that Business Associate may make the PHI available to Covered Entity as necessary to satisfy Covered Entity's obligations regarding a request for access of individuals to PHI, as provided in Subsection 7.L.
- 9.C Covered Entity shall notify Business Associate in a timely manner in accordance with 45 CFR §164.526 of The HIPAA Rules, as necessary, so Business Associate may make available PHI for amendment of PHI and incorporate any amendment of PHI in a designated record set, as provided in Subsection 7.M.
- 9.D Covered Entity shall notify Business Associate in a timely manner in accordance with 45 CFR §164.528 of The HIPAA Rules, as necessary, to enable Business Associate to fulfill any obligation regarding an accounting of disclosures of PHI, as provided in Subsection 7.N.
- 9.E Covered Entity shall notify Business Associate of any restriction of the use or disclosure of an individual's PHI that is applicable to Business Associate's performance of its obligations required by the underlying Business Agreement when and if such restriction becomes effective during the term of this Agreement and shall notify Business Associate when and if such restriction is terminated.

10. TERM AND TERMINATION

10.A TERM

The Term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of five (5) years or until either Party terminates this Agreement pursuant to a provision of this Section 10 or until the Parties otherwise mutually agree in writing to terminate this Agreement. Any termination is subject to the provisions of Subsection 10.C and Section 12 concerning survival of certain obligations and provisions of this Agreement.

10.B TERMINATION

The Parties may terminate this Agreement by mutual consent in writing executed by the Parties and on terms that are agreeable to the Parties provided the Agreement is no longer required under HIPAA or The HIPAA Rules.

10.B.1 If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, Covered Entity shall take reasonable steps to cure the breach or end the violation, as applicable. If such steps are unsuccessful, Covered Entity may terminate this Agreement and the underlying Business Agreement (if any) with Business Associate by providing notice in accordance with Section 13.

10.B.2 Either Party, upon learning or having reasonable cause to believe that the other Party has committed a material breach or violation of this Agreement, shall give written notice to the other Party describing the material breach or violation and granting the other Party a period of thirty (30) days to cure the material breach or violation or submit proof that it has not committed such material breach or violation. If such material breach or violation was committed and is not cured within thirty (30) days, this Agreement and the underlying Business Agreement (if any) shall be terminated by written notice to the Party that committed the material breach or violation, provided, however, that if substantial cure is in progress, the Parties may extend the period to

cure the material breach or violation by mutual agreement in writing by providing notice in accordance with Section 13.

10.B.3 Covered Entity may terminate this Agreement and the underlying Business Agreement (if any) immediately if Business Associate is determined to have violated HIPAA or The HIPAA Rules in any administrative, judicial, or other legal proceeding, regardless of whether the violation involves this Agreement or the underlying Business Agreement by giving written notice to Business Associate.

10.B.4 If either Party believes in good faith that any provision of this Agreement fails to comply with modifications or administrative or judicial interpretations of HIPAA or The HIPAA Rules, such Party shall give written notice to the other Party stating its specific concerns. For a period of thirty (30) days following provision of notice, the Parties shall address in good faith such concerns and amend this Agreement, if necessary. If, after such thirty-day period, a Party believes in good faith that the Agreement fails to comply with HIPAA or The HIPAA Rules, that Party has the right to terminate this Agreement and the underlying Business Agreement (if any) by written notice to the other Party.

10.C EFFECT OF TERMINATION

When this Agreement is terminated or expires, if feasible, Business Associate shall return to Covered Entity or destroy all PHI (including EPHI) received from, or created, or received by Business Associate on behalf of, Covered Entity that Business Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, extend the protections of this Agreement to PHI and EPHI and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. When it becomes feasible, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy PHI and EPHI retained by Business Associate. Business Associate's obligations under this Agreement regarding PHI and EPHI that is not returned or destroyed at termination or expiration of this Agreement shall remain in full force and effect and survive termination of this Agreement in accordance with Section 12 and Subsection 7.C.

11. SEVERABILITY CLAUSE

If an Arbitrator or Court of competent jurisdiction shall declare any provision of this Agreement to be invalid, illegal, or unenforceable, that provision shall be severed from this Agreement, and all the remaining provisions of this Agreement shall continue in full force and effect. The invalidity, illegality, or unenforceability of any term of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms of this Agreement. However, if permitted by applicable law, any invalid, illegal, or unenforceable provision may be considered in determining the intent of the Parties with respect to other provisions of this Agreement.

12. SURVIVAL OF COVENANTS

Any provision in this Agreement that is specifically stated to survive the termination of this Agreement and any provision which, by its terms, cannot be performed prior to the termination or expiration of this Agreement or which, by its terms, continues beyond the term of this Agreement shall be deemed to survive the termination of this Agreement and shall be enforceable by the Parties, including but not limited to Business Associate's obligation to extend all protections described in this Agreement to PHI and EPHI that is not returned or destroyed upon termination in accordance with Subsection 10.C.

13. NOTICE

All notices or other communication required or permitted under this Agreement shall be provided under this Contract must be in writing and sent by certified U.S. Mail (return receipt requested), electronic mail, hand delivery, or national overnight delivery service (e.g. Federal Express, UPS, etc.) to the other Party's Contact at the address specified in Section 1. For certified mailings, notice

periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

14. ASSIGNABILITY

No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party, and such consent shall not be withheld unreasonably.

15. ENTIRE BUSINESS ASSOCIATE AGREEMENT – AMENDMENT MUST BE IN WRITING

This is the entire Business Associate Agreement between the Parties. This Agreement shall not be altered, amended, or modified except in writing executed by the Parties.

15.A Amendments to the underlying Business Agreement or the making of an underlying Business Agreement between the Parties after the effective date shall not be construed as an amendment of this Agreement.

15.B The Parties agree to take such action as is necessary to amend this Agreement to the extent necessary to allow either Party to comply with HIPAA and The HIPAA Rules during the term of this Agreement.

15.C Regardless of whether this Agreement is amended in writing to conform to an amendment of HIPAA or The HIPAA Rules, it shall be construed to comply with HIPAA, The HIPAA Rules, and applicable state law in accordance with Subsections 20.A and 20.B.

16. WAIVER

Failure of either Party at any time to require strict performance of any provision of this Agreement shall not be considered to be an implied waiver of any breach, or of any succeeding breach, of such provision or an implied waiver of any right of the Party to take any action or obtain any relief permitted under this Agreement. A waiver of any right, duty, or obligation established by this Agreement must be an express written waiver executed by the Party making the waiver.

17. FORCE MAJEURE – SECURITY RULE EXCEPTION

17.A FORCE MAJEURE

If either Party is delayed or prevented from fulfilling its obligations under this Agreement by Force Majeure, the Party shall not be liable under this Agreement for the delay or failure. Force Majeure means any cause beyond the reasonable control of a Party, including but not limited to acts of God, civil or military disruption, terrorism, fire, strike, flood, riot, war, or inability, due to the aforementioned causes, to obtain necessary labor, materials, or facilities.

17.B HIPAA SECURITY RULE EXCEPTION TO FORCE MAJEURE

The provisions of Subsection 17.A concerning Force Majeure shall not relieve Business Associate of its responsibility under the Security Rule to implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level to ensure the confidentiality, integrity, and availability of all EPHI Business Associate creates, receives, maintains, transmits, or destroys; protect against any reasonably anticipated threats or hazards to the security or Integrity of such information and protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under Privacy Rule.

18. RELATIONSHIP BETWEEN THE PARTIES

The Parties to this Agreement are independent contractors.

18.A This Agreement does not create a joint venture, partnership, merger, and employer-employee relationship or organized health care arrangement between the Parties, nor does it make either Party an agent of the other.

18.B No provision of this Agreement is intended to create, nor may be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other for the purpose of complying with HIPAA and The HIPAA Rules.

18.C Nothing in this Agreement is intended to confer on Covered Entity the authority or right to control the other Party's conduct in the course of performing its obligations under this Agreement.

19. EXECUTION AND COUNTERPARTS, COUNTERPARTS, AND FACSIMILE DELIVERY

The Parties may execute this Agreement in any number of counterparts, and each counterpart shall, for all purposes, be deemed an original instrument. All such counterparts together shall constitute but one and the same Agreement. The Parties may sign and deliver this Agreement by facsimile or electronic transmission and may execute this Agreement in compliance with applicable e-signature law. At the request of either Party, the Parties shall also provide signed counterparts to each other.

20. MISCELLANEOUS

20.A COMPLIANCE WITH HIPAA AND THE HIPAA RULES

Any ambiguity in this Agreement shall be construed and resolved to permit the Parties to comply with HIPAA and The HIPAA Rules, as may be amended or modified during the term of this Agreement.

20.B STATE LAW

In accordance with 45 CFR §160.203 of The HIPAA Rules, the Parties shall comply with applicable State Law, as may be amended or modified during the term of this Agreement, that is not preempted by The HIPAA Rules.

20.C GOVERNING LAW

This Agreement and the rights and obligations of the Parties shall be governed and construed by HIPAA, The HIPAA Rules, and the law of the State of Colorado without regard to applicable conflict of laws principles.

20.D VENUE

Any dispute relating to this Agreement shall be resolved by alternative dispute resolution or in a state or federal court located in the State of Colorado and Business Associate consents to such venue.

20.E SUCCESSORS AND ASSIGNS

This Agreement is binding upon all successors and assigns of the Parties.

20.F NO THIRD PARTY BENEFICIARY

Nothing in this Agreement, whether expressed or implied, shall be considered or construed to confer any rights, remedies, obligations, or liabilities or to impose any obligation whatsoever on any person other than the Parties and the respective successors or assigns of the Parties.

20.G CAPTIONS

Each Section and Subsection in this Agreement identified by a caption is for convenience only. No caption is substantive or may be used to construe the meaning of any Section, Subsection, or provision of this Agreement.

20.H EQUITABLE RELIEF

The Parties recognize that a breach of this Agreement by one Party may result in irreparable or immediate harm to the other Party. Accordingly, either Party shall have the right to seek equitable relief to enjoin, restrain, redress, mitigate, or prevent irreparable harm in a court of competent jurisdiction to enforce the terms of this Agreement while reserving its rights to pursue all other available remedies from the other Party under this Agreement or the underlying Business Agreement. In the event a Party seeks equitable relief from a court of competent jurisdiction under this Section, the prevailing Party shall be entitled to receive its costs from the other Party including actual attorneys' fees that are reasonably incurred.

IN WITNESS WHEREOF:

The Parties hereby execute this Business Associate Agreement and confirm it is in full force and effect as of the effective date written above.

BOULDER COUNTY PUBLIC HEALTH:

CONTRACTOR:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE