

MEMORANDUM OF AGREEMENT

Between

THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

And

>Enter entity legal name<

> To be used only with non-IT related agreements when there is no exchange of funds or other compensation<

I. Purpose

This Memorandum of Agreement (MOA) is entered by and between the Department of Public Health and Environment (hereinafter referred to as “CDPHE”), and >Enter entity legal name<, (hereinafter referred to as “Contractor”), for the purpose of >Enter brief description of purpose<. This MOA establishes the terms conditions, and responsibilities between the parties for deployment, management, and maintenance of this privately owned asset. This MOA is subject to the provisions of all applicable Federal and State laws, regulations, policies and standards.

II. No Private Right Created.

This document is an internal agreement between the State of Colorado and the entity with ownership or control of >Enter entity legal name< and does not create or confer any right or benefit on any other person or party, private or public. Nothing in this agreement is intended to restrict the authority of either signatory to act as provided by law or regulation, or to restrict any agency from enforcing any laws within its authority or jurisdiction.

III. Parties

The Administrator for the CDPHE will be:

>Name<, >Title<, >unit/program/section<, >Division<, at the Colorado Department of Public Health and Environment (CDPHE) with the physical address at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. The mailing address is the same. Business phone is 303-692-xxxx and the fax number is 303-692-xxxx.

The Administrator for the Contractor will be:

>Name<, >Title<, >unit <, at >Enter entity legal name< with the physical address at >Street Address<, >City<, >State and Zip<. The mailing address is >insert address or “the same”<. Business phone is xxx-xxx-xxxx and the fax number is xxx-xxx-xxxx.

IV. Effective Date, Modification, and Termination

This Agreement shall become effective upon the signature of both parties commencing >Start Month Day, Year< and terminating >End Month Day, Year<. This MOA may be amended if mutually agreed upon, to change scope and terms of the MOA. Such changes shall be incorporated as a written Amendment to this MOA. This Agreement may be terminated by either party at any time; however, the terminating party shall provide written notice to the other party at least thirty (30) days in advance of the effective date of termination unless there is a critical failure to perform. Notice of change of address or change or representative shall be treated as any other notice.

V. State Responsibilities.

The CDPHE agrees to fulfill the terms and conditions executed between >Enter entity legal name< and the State of Colorado in the Memorandum of Agreement as follows:

[Click or tap here to enter text.](#)

VI. Contractor Responsibilities

The Contractor agrees to:

[Click or tap here to enter text.](#)

VII. Financial Considerations

Except where otherwise detailed in this MOA, each party is responsible for its own costs. Any assistance provided by the State of Colorado under this MOA and any assistance provided by the CDPHE is subject to the availability of appropriations. Any and all financial assistance provided by the state will be done pursuant to in compliance with the State of Colorado fiscal rules and procurement code (e.g., a separate written agreement that complies with the state fiscal rules).

VIII. General Provisions.

A. Exhibits - Interpretation:

Unless otherwise stated, all referenced exhibits are incorporated herein and made a part of this MOA. In the event of any conflicts or inconsistencies between this MOA and its exhibits or attachments, the terms of this MOA shall control.

B. Contractor Representations – Qualifications/Licenses/Approvals/Insurance:

The Contractor certifies that, at the time of entering into this MOA, it and its agents have currently in effect all necessary licenses, certifications, approvals, insurance, etc. required to properly provide the services and/or supplies covered by this MOA in the state of Colorado. Proof of such licenses, certifications, approvals, insurance, etc. shall be provided upon the State's request. Any revocation, withdrawal or non-renewal of necessary license, certification, approval, insurance, etc. required for the Contractor to properly perform this MOA, shall be grounds for termination of this MOA by the State.

Contractor certifies that it is qualified to perform such services or provide such deliverables as delineated in this MOA.

C. Waivers:

The waiver of any breach of a term or provision of this MOA shall not be construed as a waiver of breach of any other term or as a waiver of any subsequent breach of the same or any other term or provision.

D. Capacity to Enter Into Agreement.

The persons executing this Memorandum of Agreement on behalf of their respective entities hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this agreement on behalf of the entity for which they sign.

E. Complete Agreement:

This MOA is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a MOA duly executed and approved.

F. Non-Discrimination:

The contractor shall strictly comply with all applicable State and federal laws, rules and regulations involving discrimination and unfair employment practices.

G. Insurance:

Contractor shall obtain, maintain, and keep in force at all times during the term of this MOA, an insurance policy or policies, issued by a company authorized to do business in Colorado, in the kinds and minimum amounts, and under the conditions specified below:

1. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of their employment;
2. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - a. \$1,000,000 each occurrence;
 - b. \$1,000,000 general aggregate;
 - c. \$1,000,000 products and completed operations aggregate; and
 - d. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

3. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows:
\$1,000,000 each accident combined single limit.
4. The State of Colorado shall be named as an additional insured on the Commercial General Liability policy. Coverage required of the MOA will be primary over any insurance or self-insurance program carried by Contractor or the State of Colorado.
5. The insurance shall include provisions preventing cancellation or non-renewal without at least thirty (30) calendar days prior written notice to the State by certified mail.
6. The Contractor will require all insurance policies in any way related to the MOA and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
7. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
8. The Contractor shall provide certificates showing insurance coverage required by this MOA to the State by the effective date of the MOA. No later than fifteen (15) calendar days prior to the expiration date of any such coverage, the Contractor shall deliver to the State certificates of insurance evidencing renewals thereof. At any time during the term of this MOA, the State may request in writing, and the Contractor shall thereupon within ten (10) calendar days, supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.
9. The Contractor shall provide such other insurance as may be required by law, or in a specific solicitation.

H. Confidential or Proprietary Information:

Subject to the Public (Open) Records Act, section 24-72-101, et seq., C.R.S., as amended, if the Contractor obtains access to any records, files, or other information of the State in connection with, or during the performance of, this MOA, then the Contractor shall keep all such records, files, or other information

confidential and shall comply with all laws and regulations concerning the confidentiality of all such records, files, or information to the same extent as such laws and regulations apply to the State. Contractor shall protect the confidentiality of all information accessed, used, held, created or received in connection with this MOA and shall insure that any subcontractors or agents of Contractor protect the confidentiality of all information under this MOA. Contractor shall access, use and disclose confidential information only for the operation and administration of the MOA, and shall not directly or indirectly disclose confidential information after the term of the MOA. Contractor shall implement appropriate safeguards as are necessary to prevent accidental or unauthorized use or disclosure of confidential information and shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards for maintaining and transmitting electronic confidential information. Contractor shall promptly notify the State if Contractor breaches the confidentiality of any information covered by this MOA. Any breach of confidentiality by the Contractor, or third party agents of the Contractor, shall constitute good cause for the State to cancel this MOA, without liability to the State. Any State waiver of an alleged breach of confidentiality by the Contractor, or third party agents of the Contractor, does not constitute a waiver of any subsequent breach by the Contractor, or third party agents of the Contractor.

The Contractor must identify to the State the information that it considers confidential or proprietary. This is a continuing obligation. Confidential or proprietary information for the purpose of this paragraph is information relating to Contractor's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, information which is in the public domain, or information which is or could have been acquired/developed independently by the State or a third party. Notwithstanding the foregoing, the State shall not be in violation of its obligations under this section should it disclose confidential information if such disclosure is, in the sole opinion of the State's legal counsel, required by applicable law and/or legal process (including, but not limited to, disclosures required pursuant to the Colorado (Open) Public Records Act, sections 24-72-201, et. Seq., C.R.S., as now or hereafter amended). The State shall endeavor to provide notice to the Contractor, as promptly as practicable under the circumstances, of any demand, request, subpoena, court order or other action requiring such disclosure, in order to afford Contractor the opportunity to take such lawful action as it deems appropriate to oppose, prevent or limit the disclosure, solely at its own instance and expense; but nothing herein shall be construed to require the State to refuse or delay compliance with any such law, order or demand.

I. Permitted Uses And Disclosures:

If the Contractor is a covered entity under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d – 1320d-8, the Contractor shall comply with applicable HIPAA requirements. If Contractor is a business associate under HIPAA, Contractor hereby agrees to, and has an affirmative duty to, execute the State's current HIPAA Business Associate Agreement. In this case, Contractor must contact the State's representative and request a copy of the Business Associate Agreement, complete the agreement, have it signed by an authorized representative of the Contractor, and deliver it to the State.

J. Inspection And Acceptance:

The CDPHE reserves the right to review the services provided hereunder by Contractor at all reasonable times and places during the term of this MOA. If any services do not conform to the Contractor Responsibilities (See V above), the CDPHE may require the Contractor to perform the services again in conformity to the Contractor Responsibilities. When defects in the services cannot be corrected by re-performance, then the CDPHE may require the Contractor to take all necessary actions to ensure that future performance conforms to the Contractor Responsibilities. In addition, the XXXX shall have all other remedies available pursuant to law.

K. Dispute Resolution.

Except as herein specifically provided otherwise, disputes concerning the performance of this MOA which cannot be resolved by the designated MOA representatives shall be referred in writing to a senior departmental management staff designated by the CDPHE and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the CDPHE Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

L. Media or Public Announcements:

Unless otherwise provided for in this MOA, the Contractor shall not make any news release, publicity statement, or other public announcement, either in written or oral form that concerns the work provided under this MOA, without the prior written approval of the State. The Contractor shall submit a written request for approval to the State no less than ten (10) business days before the proposed date of publication. The State shall not unreasonably withhold approval of the Contractor's written request to publish. Approval or denial of the Contractor's request by the State, shall be delivered to the Contractor in writing within six (6) business days from the date of the State's receipt of Contractor's request for approval.

M. Indemnification:

The Contractor shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this MOA.

N. Governmental Immunity:

Notwithstanding any other provision to the contrary, no term or condition of this MOA shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et. seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 et. seq., CRS and the risk management statutes, Section 24-30-1501, et. seq., CRS as now or hereafter amended.

O. Independent Contractor:

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

P. Choice of Law and Venue:

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this MOA. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Provision in

whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this MOA, to the extent capable of execution. Venue for any action related to this MOA shall be in the Denver District Court.

Q. No Interest:

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

CONTRACTOR

INSERT-Contractor Name

Print Name of Authorized Individual

Print Title of Authorized Individual

Signature of Authorized Individual

Date

STATE OF COLORADO

John W. Hickenlooper, Governor

**Colorado Department of Public Health and
Environment**

Larry Wolk, MD, MSPH, Executive Director and
Chief Medical Officer

By: _____
Lisa McGovern
Purchasing and Contracting Section Director, CDPHE

Date

PROGRAM APPROVAL

Colorado Department of Public Health and Environment

INSERT-Name of Authorized Individual
INSERT-Official Title of Authorized Individual

By: _____
Signature of Authorized CDPHE Program Approver

Date