

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Contract exists in Colorado Medical Assistance Act (Section 25.5-4-104, *et seq.* C.R.S.) and Title XIX of the Social Security Act and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Purpose

The purpose of this Contract is for the Contractor to participate in the Accountable Care Collaborative Program as a PCMP in order to provide a Medical Home for Clients.

C. References

All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. **“Contract”** means this Contract, its terms and conditions, attached addenda, exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

B. **“Exhibits”** and other **“Attachments”** means the following documents which are attached hereto and incorporated by reference herein:
Exhibit A, Statement of Work; and
Exhibit B, Eligible Member Categories

C. **“Party”** means the State or Contractor and Parties means both the State and Contractor.

D. **“Review”** means examining Contractor’s Work to ensure that it is adequate, accurate, correct and in accordance with the standards described in this Contract.

E. **“Services”** means the required services to be performed by Contractor pursuant to this Contract.

F. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

G. **“Work”** means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract, including the performance of the Services and delivery of the Goods.

H. **“Work Product”** means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement

The Parties’ respective performances under this Contract shall commence on the Effective Date. This Contract shall expire on December 31, 2020 unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion, upon written notice to Contractor as provided in §16, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties desire to continue the services and a replacement Contract has not been fully executed by the expiration of any initial term or renewal term. The provisions of this Contract in effect when such notice is given, including, but not limited to, prices, rates and delivery requirements, shall remain in effect during the two month extension. The two month extension shall immediately terminate when and if a replacement contract is approved and signed by the Colorado State Controller or an authorized designee, or at the end of two months, whichever is earlier.

6. STATEMENT OF WORK

A. Completion

Contractor shall complete the Work and its other obligations as described in this Contract on or before termination of this Contract. The State shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the expiration or termination of this Contract.

B. Independent Contractor

All persons employed by Contractor or Subcontractor to perform Work under this Contract shall be Contractor's or Subcontractor's employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Contract.

7. PAYMENTS TO CONTRACTOR

The State shall, in accordance with the provisions of this § 7 and **Exhibit A, Statement of Work**, pay Contractor in the amounts and using the methods set forth below:

A. Payment

In accordance with and subject to Section 5.0 of **Exhibit A**, the State shall pay Contractor for all earned Per Member Per Month Payments and Primary Care Medical Provider incentive payments.

B. Interest

The State shall not pay interest on any amounts due to Contractor hereunder.

C. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the State's current fiscal year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used to fund this Contract, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds and the State's liability for such payments shall be limited to the amount remaining of such available funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability notwithstanding any notice and cure period in § 14.B.

D. Erroneous Payments

At the State's sole discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements

between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

8. REPORTING NOTIFICATION

A. Litigation Reporting

Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the Department.

B. Noncompliance

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this § 8 may result in the delay of payment of funds and/or termination as provided under this Contract.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files and electronic communications, pertaining in any manner to the Work or the delivery of Services hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of six (6) years after the date this Contract expires or is sooner terminated, or (ii) a period of six (6) years after final payment is made hereunder, or (iii) a period of six (6) years after the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "**Record Retention Period**"). The State shall have access to all such records, documents, communications and other materials, which shall be maintained by the Contractor in a central location.

B. Inspection

Contractor shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the State may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

Contractor shall permit the State, the federal government and any other duly authorized agent of a government agency, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site

checking, formal audit examinations, or any other procedure. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

D. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION

Contractor shall comply with the provisions of this § 10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, *et seq.*

A. Confidentiality

Contractor shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

B. Health Insurance Portability & Accountability Act of 1996 ("HIPAA")

Pursuant to federal law and regulations governing the privacy of certain health information, the Contractor, to the extent applicable, shall comply with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d – 1320d-8 ("HIPAA") and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164 (the "Privacy Rule") and other applicable laws, as amended. If personally identifying information is disclosed to the Contractor, the Contractor shall protect the confidentiality of all records and other materials containing the personally identifying information and comply with HIPAA rules and regulations.

C. Notification

Contractor shall notify its agents, employees, Subcontractors and assigns who may come into contact with State records or other confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

D. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way; except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State.

E. Disclosure-Liability

Disclosure of State records or other confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the 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 this § 10.

F. Colorado Open Records Act, C.R.S. 24-72-201 to 24-72-309 (“CORA”)

This Contract and all amendments and rate documents are subject to public release as State records under CORA.

11. CONFLICTS OF INTEREST

- A. Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor’s obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State’s interests. Absent the State’s prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor’s obligations to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the apparent conflict constitutes a breach of this Contract.

12. REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

A. Standard and Manner of Performance

Contractor shall perform its obligations hereunder in accordance with the highest standards of medical care, skill and diligence in the Contractor’s community and in the sequence and manner set forth in this Contract.

B. Legal Authority – Contractor Signatory

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and bylaws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor’s authority to enter into this Contract within five (5) days of receiving such request.

C. Licenses, Permits, Etc.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in the Contract. Additionally, all employees, Subcontractors and agents of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar

requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

13. INSURANCE

Contractor and its Subcontractors shall obtain and maintain malpractice/general liability insurance as required under current state and federal law and the provider application and provider participation agreement between Contractor and State.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Contract, the failure of the Contractor to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes 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 twenty (20) days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the State shall notify the Contractor of such in writing in the manner provided in § 16. If such breach is not cured within ten (10) days of receipt of written notice, the State may exercise any of the remedies set forth in § 15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

A. Termination for Cause and/or Breach

If Contractor is in breach under any provision of this Contract, the State shall have all of the remedies listed in this § 15 in addition to all other remedies set forth in other sections of this Contract, and without limiting its remedies otherwise available at law or equity, following the notice and cure period set forth in § 14.B. Remedies are cumulative and the State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. The State may terminate this entire Contract or any part of this Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder.

i. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work and Services not cancelled by the termination notice. Contractor shall continue performance of this Contract up to the effective date of the termination. To the extent the Contract is not terminated, if any, Contractor shall continue performance until the expiration of this Contract. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall

become the State's property. The Contractor shall be obligated to return any payment advanced under the provisions of this Contract.

ii. Payments

The State shall reimburse Contractor only for accepted performance up to the effective date of the termination. If, after termination by the State, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work or Services as cover.

B. Early Termination in the Public Interest

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract, in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by § 15.A or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination, which shall be at least twenty (20) days, and whether it affects all or a portion of this Contract.

ii. Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in § 15.A.i.

iii. Payments

If this Contract is terminated by the State pursuant to this § 15.B, Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made.

C. Remedies

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Contractor’s performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance of such portions of the Contract.

ii. Withhold Payment

Withhold payment to Contractor until Contractor’s performance or corrections in Contractor’s performance are satisfactorily made and completed.

iii. Deny/Reduce Payment

Deny payment for those obligations not performed in conformance with Contract requirements that, due to Contractor’s actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided that any denial or reduction of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

The State may request the removal from Work on the Contract of any of Contractor’s employees, agents, or Subcontractors whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State’s best interest. For any requested removal of Contractor’s employees, agents or Subcontractors, the State shall provide written notice to Contractor identifying each element of dissatisfaction and Contractor shall have ten (10) business days from receipt of such written notice to provide the State with a written action plan to remedy each stated point of dissatisfaction. Contractor’s written action plan may or may not include the removal of such employees, agents or Subcontractors from Work on the Contract.

16. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to, but not in lieu of, a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

For the State:

Curtis Johnson

Department of Health Care Policy and Financing

1570 Grant Street

Denver, Colorado 80203

curtis.johnson@state.co.us

For the Contractor:

17. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, and the risk management statutes, CRS §24-30-1501, *et seq.*, as now or hereafter amended.

18. GENERAL PROVISIONS

A. Assignment and Subcontracts

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer or subcontracting without such consent shall be void.

B. Binding Effect

Except as otherwise provided in § 18.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Entire Understanding

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

D. Indemnification

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 Contract; however, the provisions hereof shall not 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, CRS §24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, as applicable, as now or hereafter amended.

E. Jurisdiction and Venue

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

F. Modification

i. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by the Parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification

automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

G. Order of Precedence

The provisions of this Contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions
- ii. The provisions of the main body of this Contract; and
- iii. Exhibit A, Statement of Work
- iv. Exhibit B, Eligible Member Categories

H. Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

I. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

J. Third Party Beneficiaries

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

19. ADDITIONAL GENERAL PROVISIONS

A. Compliance With Applicable Law

The Contractor shall at all times during the execution of this Contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this Contract. The Contractor shall also require compliance with these statutes and regulations in subcontracts and subgrants. The federal laws and regulations include:

Age Discrimination Act of 1975, as amended	42 U.S.C. 6101, et seq.
Age Discrimination in Employment Act of 1967	29 U.S.C. 621-634
Americans with Disabilities Act of 1990 (ADA)	42 U.S.C. 12101, et seq.
Clean Air Act	42 U.S.C. 7401, et seq.
Equal Employment Opportunity	E.O. 11246, as amended by E.O. 11375, amending E.O. 11246 and as supplemented by 41 CFR Part 60
Equal Pay Act of 1963	29 U.S.C. 206(d)

Federal Water Pollution Control Act, as amended	33 U.S.C. 1251, et seq.
Immigration Reform and Control Act of 1986	8 U.S.C. 1324b
Section 504 of the Rehabilitation Act of 1973, as amended	29 U.S.C. 794
Title VI of the Civil Rights Act of 1964, as amended	42 U.S.C. 2000d, et seq.
Title VII of the Civil Rights Act of 1964	42 U.S.C. 2000e
Title IX of the Education Amendments of 1972, as amended	20 U.S.C. 1681

State laws include:

Civil Rights Division	Section 24-34-301, CRS, <i>et seq.</i>
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The Contractor also shall comply with any and all laws and regulations prohibiting discrimination in the specific program(s) which is/are the subject of this Contract. In consideration of and for the purpose of obtaining any and all federal and/or state financial assistance, the Contractor makes the following assurances, upon which the State relies.

- i. The Contractor will not discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of Work under this Contract.
- ii. At all times during the performance of this Contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor.

The Contractor shall take all necessary affirmative steps, as required by 45 CFR 92.36(e), Colorado Executive Order and Procurement Rules, to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this Contract.

B. Debarment and Suspension

- i. If this is a covered transaction or the Contract amount exceeds \$100,000, the Contractor certifies to the best of its knowledge and belief that it and its principals and Subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
- ii. This certification is a material representation of fact upon which reliance was placed when the State determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available at law or by contract, the State may terminate this Contract for default.
- iii. The Contractor shall provide immediate written notice to the State if it has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency.
- iv. The terms "covered transaction," "debarment," "suspension," "ineligible," "lower tier covered transaction," "principal," and "voluntarily excluded," as used in this paragraph, have the meanings set out in 2 CFR Parts 180 and 376.

- v. The Contractor agrees that it will include this certification in all lower tier covered transactions and subcontracts that exceed \$100,000.

C. Force Majeure

Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this Contract, "**force majeure**" means acts of God; acts of the public enemy; acts of the state and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

D. Disputes

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

E. Lobbying

Contractor certifies, to the best of his or her knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Contracts) and that all subrecipients shall certify and disclose accordingly.
- iv. This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of the certification is a requisite for making or entering into transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

20. SPECIAL PROVISIONS

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

- A. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- B. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- C. **GOVERNMENTAL IMMUNITY.** No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- D. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor 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 Contract. 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.
- E. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- F. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special 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 Contract, to the extent capable of execution.
- G. **BINDING ARBITRATION PROHIBITED.** 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.
- H. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation

of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

- I. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
- J. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.** [*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
- K. **PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.** [*Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.
- L. **PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Contract.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

CONTRACTOR:

STATE OF COLORADO:

John W. Hickenlooper, Governor

Legal Name of Contracting Entity

By: _____
Signature of Authorized Officer

By: _____
Susan E. Birch, MBA, BSN, RN Executive
Director
Department of Health Care Policy and
Financing

Printed Name of Authorized Officer

Printed Title of Authorized Officer

Date: _____

LEGAL REVIEW:

John W. Suthers, Attorney General

Date: _____

By: _____

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any services provided hereunder.

STATE CONTROLLER:

David J. McDermott, CPA

By: _____

Date: _____

EXHIBIT A, STATEMENT OF WORK

SECTION 1.0 TERMINOLOGY

1.1. ACRONYMS, ABBREVIATIONS AND DEFINITIONS

- 1.1.1. Acronyms and abbreviations are defined at their first occurrence in this Statement of Work. The following list of acronyms, abbreviations and definitions is provided to assist the reader in understanding acronyms, abbreviations and terminology used throughout this document.
 - 1.1.1.1. ACC – Accountable Care Collaborative
 - 1.1.1.2. ACC Program – The Department program designed to affordably optimize Client health, functioning, and self-sufficiency with the primary goals to improve Medicaid Client health outcomes and control costs.
 - 1.1.1.3. C.C.R. – Colorado Code of Regulations
 - 1.1.1.4. CFR – Code of Federal Regulations
 - 1.1.1.5. Client – An individual eligible for and enrolled in the Colorado Medicaid Program.
 - 1.1.1.6. Contractor’s Member – A Member that has selected the Contractor to be their PCMP or has been attributed to the Contractor by the Department. A Member is considered a Contractor’s Member during any month in which that Member was enrolled in the ACC Program and had selected the Contractor as their PCMP as of the first day of that month.
 - 1.1.1.7. Contractor’s RCCO – The RCCO with which the Contractor enters into an agreement to participate in the ACC Program.
 - 1.1.1.8. CRS – Colorado Revised Statutes
 - 1.1.1.9. EPSDT – Early Periodic Screening, Diagnosis and Treatment, the child health component of the Medicaid Program, as defined by the Federal Health Resources and Services Administration.
 - 1.1.1.10. Expansion Phase – The period of time starting from the end of the Initial Phase until the termination of this Contract.
 - 1.1.1.11. Federally Qualified Health Center – A provider defined under 10 C.C.R. 2505-10 §8.700.1.
 - 1.1.1.12. FQHC – Federally Qualified Health Center
 - 1.1.1.13. Initial Phase – The period of time from when the Department authorizes the Contractor’s RCCO to enter the Initial Phase until June 30, 2012 or until the Department authorizes the Contractor’s RCCO to enter the Expansion Phase, whichever is later.
 - 1.1.1.14. Medical Home – An approach to providing comprehensive primary-care that facilitates partnerships between individual Clients, their providers, and, where appropriate, the Client’s family, that meets the requirements described in Section 3 of this Statement of Work.
 - 1.1.1.15. Member – Any individual Client who is enrolled with the Contractor’s RCCO or another RCCO.
 - 1.1.1.16. PCCM – Primary Care Case Manager
 - 1.1.1.17. PCMP – Primary Care Medical Provider

- 1.1.1.18. Primary Care Case Manager – A physician, a physician group practice, a physician assistant, nurse practitioner, certified nurse-midwife or entity that employs or arranges with providers to furnish primary care case management services or as described 42 CFR 438.2.
- 1.1.1.19. Primary Care Medical Provider – A primary care provider who serves as a Medical Home for Members and may be an FQHC, RHC, clinic or other group practice that provides the majority of a Member’s comprehensive primary, preventive and sick care. Individual PCMPs or pods can be physicians, advanced practice nurses, or physician assistants with a focus on primary care, general practice, internal medicine, pediatrics, geriatrics or obstetrics and gynecology.
- 1.1.1.20. PMPM – Per Member Per Month
- 1.1.1.21. PMPM Payment – A monthly payment to the Contractor for providing medical home service for each Member who has selected the Contractor as a PCMP.
- 1.1.1.22. RCCO – Regional Care Collaborative Organization
- 1.1.1.23. Region – A geographical area containing specific counties, within the State of Colorado, as designated by the Department, that is served by a RCCO.
- 1.1.1.24. Regional Care Collaborative Organization – One of seven (7) Regional entities contracted with the Department to support the ACC Program by improving the health outcomes for Members and controlling the cost of care.
- 1.1.1.25. RHC – Rural Health Clinic
- 1.1.1.26. Rural Health Clinic – A provider or practice as defined in 10 C.C.R. 2505-10 §8.740.

SECTION 2.0 ACC PROGRAM AND REGION

2.1. ACC PROGRAM

- 2.1.1. The Contractor shall be a Primary Care Medical Provider (PCMP) participating in the Department’s Accountable Care Collaborative (ACC) Program. The Contractor shall be a current Medicaid provider for the State of Colorado and shall comply with all requirements of the provider application and provider application agreement between the Contractor and the State.

2.2. REGIONAL CARE COLLABORATIVE ORGANIZATION (RCCO)

- 2.2.1. The Department has designated a RCCO for each of the seven (7) Regions. The Contractor may enter into an agreement with any RCCO for a Region in which the Contractor has an office (the Contractor’s RCCO), and to participate in the ACC Program, the Contractor shall enter into an agreement with at least one (1) RCCO.
- 2.2.2. In addition to the requirements of this Contract, the Contractor shall comply with all requirements of any contract or agreement into which it enters with the Contractor’s RCCO.

SECTION 3.0 PCMP REQUIREMENTS

3.1. FEDERAL PRIMARY CARE CASE MANAGER REQUIREMENTS

- 3.1.1. As a PCMP, the Contractor shall be a Primary Care Case Manager (PCCM) as described in 42 CFR 438.2. As a PCCM, the Contractor shall:
 - 3.1.1.1. Provide reasonable hours of operation, including twenty-four (24) hour availability of information, referral and treatment for emergency medical conditions.

- 3.1.1.2. Restrict acceptance of Members to those who reside sufficiently near the Contractor's location, or one of the Contractor's locations if the Contractor has multiple, so that the Member can reach that location in a reasonable time using available and affordable modes of transportation.
- 3.1.1.3. Provide for arrangements with or referrals to a sufficient number of physicians and other providers to ensure that the services under this Contract can be furnished to a Member promptly and without compromise to the Member's quality of care.
- 3.1.1.4. Prohibit discrimination in which the Members which the Contractor accepts are based on the Member's health status or need for health care services or the Member's race, color or national origin.
 - 3.1.1.4.1. The Contractor shall not use any policy or practice that has the effect of discriminating on the basis of race, color or national origin.
- 3.1.1.5. Ensure that when it accepts Members, the Contractor accepts those Members in the order in which they enrolled, up to the maximum number of Members that the Contractor is willing to accept.
 - 3.1.1.5.1. A Member may voluntarily select the Contractor as their PCMP, and the Contractor shall accept all Members who select the Contractor to be their PCMP up to the maximum number of Members that the Contractor is willing to accept.
 - 3.1.1.5.2. Any Member shall be automatically reenrolled with the Contractor if:
 - 3.1.1.5.2.1. The Member had selected the Contractor to be the Member's PCMP;
 - 3.1.1.5.2.2. The Member was disenrolled from the ACC Program solely because that Member became ineligible for Medicaid; and
 - 3.1.1.5.2.3. The Member's ineligibility lasted for a period of two (2) months or less.
- 3.1.1.6. Allow any Member to select to disenroll with the Contractor, in accordance with 42 CFR 438.56(c).
- 3.1.1.7. Notify all Members, who have selected the Contractor as their PCMP, of the Contractor's termination in the ACC Program in the event that the Contractor stops its participation in the ACC Program for any reason.
- 3.1.1.8. Allow any Member to obtain emergency services from any other provider regardless of whether the Contractor referred the Member for those services.
- 3.1.2. Eligibility and Enrollment
 - 3.1.2.1. The Department will enroll Clients into the ACC Program in accordance with its existing policies and procedures. The Department may enroll any Client who is included in any of the eligibility categories shown in Exhibit B, Eligible Member Categories.
- 3.1.3. Disenrollment
 - 3.1.3.1. The Contractor may only request the disenrollment of a Member from the ACC Program under the following circumstances:
 - 3.1.3.1.1. The Member moves out of the Contractor's Region.
 - 3.1.3.1.2. The Contractor's plan does not, because of moral or religious reasons, cover the service the Member seeks.

- 3.1.3.1.3. The Member needs related services to be performed at the same time, not all related services are available within the network and the Member's PCMP or another provider determines that receiving the services separately would subject the Member to unnecessary risk.
- 3.1.3.1.4. Other reasons, including but not limited to, lack of access to services covered under the Contract or lack of access to providers experienced in dealing with the Member's health care needs.
- 3.1.3.1.5. Abuse or intentional misconduct consisting of any of the following:
 - 3.1.3.1.5.1. Behavior of the Member that is disruptive or abusive to the extent that the Contractor's ability to furnish services to either the Member or other Members is impaired.
 - 3.1.3.1.5.2. A documented, ongoing pattern of failure on the part of the Member to keep scheduled appointments or meet any other Member responsibilities.
 - 3.1.3.1.5.3. Behavior of the Member that poses a physical threat to the Contractor, to Contractor staff or to other Members.
 - 3.1.3.1.5.4. The Contractor shall provide one oral warning, to any Member exhibiting abusive behavior or intentional misconduct, stating that continuation of the behavior or misconduct will result in a request for disenrollment. If the Member continues the behavior or misconduct after the oral warning, the Contractor shall send a written warning that the continuation of the behavior or misconduct will result in disenrollment from the Contractor's plan. The Contractor shall send a copy of the written warning and a written report of its investigation into the behavior, to the Department, no less than thirty (30) days prior to the disenrollment. If the Member's behavior or misconduct poses an imminent threat to the Contractor, to other staff of the Contractor, to other providers or to other Members, the Contractor may request an expedited disenrollment after it has provided the Member exhibiting the behavior or misconduct an oral warning.
 - 3.1.3.1.6. Any other reason determined to be acceptable by the Department.
- 3.1.3.2. The Contractor may not request disenrollment of a Member because of:
 - 3.1.3.2.1. Adverse changes in the Member's health status.
 - 3.1.3.2.2. Change in the Member's utilization of medical services.
 - 3.1.3.2.3. The Member's diminished mental capacity.
 - 3.1.3.2.4. Any behavior of the Member resulting from the Member's special needs, as determined by the Department, unless those behaviors seriously impair the Contractor's ability to furnish services to that Member or other Members.
- 3.1.3.3. The Department may disenroll a Member from the ACC Program upon that Member's request. A Member may request disenrollment, in writing from the Department, and the Department may grant the Member's request:
 - 3.1.3.3.1. For cause, at any time. A disenrollment for cause may occur under the following circumstances:
 - 3.1.3.3.1.1. The Member moves out of the Contractor's Region.
 - 3.1.3.3.1.2. The Contractor does not, because of moral or religious objections, cover the service the Member needs.

- 3.1.3.3.1.3. Administrative error on the part of the Department or its designee or the Contractor including, but not limited to, system error.
- 3.1.3.3.1.4. Poor quality of care, as documented by the Department.
- 3.1.3.3.1.5. Lack of access to covered services, as documented by the Department.
- 3.1.3.3.1.6. Lack of Contractor's experience in dealing with the Member's health care needs.
- 3.1.3.3.2. Without cause during the ninety (90) days following the date of the Member's initial enrollment with the Contractor.
 - 3.1.3.3.2.1. A Member may request disenrollment, without cause, at least once every twelve (12) months after the first ninety (90) day period.
 - 3.1.3.3.2.2. A Member may request disenrollment, without cause, upon automatic reenrollment under 42 CFR 438.56(g), if the temporary loss of Medicaid eligibility has caused the Member to miss the annual disenrollment opportunity.
- 3.1.3.4. The Department shall review any request for disenrollment from the Contractor or a Member. The Department may grant a request for disenrollment in its sole discretion.
- 3.1.3.5. In the event that the Department grants a request for disenrollment, either from the Contractor or from a Member, the effective date of that disenrollment shall be no later than the first day of the second month following the month in which the Member or Contractor files the request. If the Department fails to either approve or deny the request in this timeframe, the request shall be considered approved.
- 3.1.4. Marketing
 - 3.1.4.1. The Contractor shall engage in marketing that is accurate and does not mislead, confuse, or defraud any Members or the Department.
 - 3.1.4.2. The Contractor shall distribute any materials to the Contractor's entire service area.
 - 3.1.4.3. The Contractor shall not seek to influence enrollment in conjunction with the sale or offering of any private insurance.
 - 3.1.4.4. The Contractor shall not, directly or indirectly, engage in door-to-door, telephone, or other cold call marketing activities.
 - 3.1.4.5. Marketing materials shall not contain any assertion or statement, whether written or oral, that the potential Member must enroll with the Contractor to obtain benefits or not to lose benefits.
 - 3.1.4.6. Marketing Materials shall not contain any assertion or statement, whether written or oral, that Contractor is endorsed by the Centers for Medicare and Medicaid Services, the Federal or State government or similar entity.
- 3.1.5. All materials that the Contractor creates for distribution to any Client or Member shall be culturally and linguistically appropriate to the recipient.
 - 3.1.5.1. The Contractor shall ensure that any Member information materials provided by the Contractor are written in an easily understood manner and format. Written materials shall be available in the prevalent non-English languages spoken in the area the Contractor serves and available in alternative formats to accommodate Members with special needs. The Contractor shall notify its Members that this written information is available in prevalent languages and alternative formats and how Members can access those services/formats.

- 3.1.6. The Contractor shall provide oral interpretation services for any Members that do not speak the same language as the Contractor. In the event that the Contractor's RCCO provides this service for the Contractor, the Contractor may use an interpreter or interpretation service provided by the Contractor's RCCO to fulfill this obligation. The Contractor shall notify all Members it serves of the availability of these interpretation services.
- 3.1.7. Debarment
- 3.1.7.1. In addition to the Debarment and Suspension provisions in §19(B) of this Contract, the Contractor shall not knowingly have a relationship with any of the following entities:
- 3.1.7.1.1. An individual who is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No.12549 or under guidelines implementing Executive Order No. 12549.
- 3.1.7.1.2. An individual who is an affiliate, as defined in the Federal Acquisition Regulation, of a person described in the prior paragraph.
- 3.1.7.2. For the purposes of this section, a relationship is described as:
- 3.1.7.2.1. A director, officer or partner of the Contractor.
- 3.1.7.2.2. A person or entity with more than five percent (5%) beneficial ownership of the Contractor.
- 3.1.7.2.3. A person with an employment, consulting or other arrangement with the Contractor that is responsible for any of the Contractor's obligations under this Contract.
- 3.1.8. Federal Disclosures of Information on Ownership and Control
- 3.1.8.1. The Contractor shall provide all disclosures required by 42 CFR 455.104, as amended or hereinafter amended. These disclosures currently include:
- 3.1.8.1.1. The name and address of any person, either an individual or a corporation, with an ownership or control interest in the Contractor. For a corporate entity, the address shall include the primary business address, the address of each business location if there is more than one location and any applicable P.O. Box address.
- 3.1.8.1.1.1. The date of birth and social security number for any individual with an ownership or control interest in the Contractor.
- 3.1.8.1.1.2. The tax identification number of any corporate entity with an ownership or control interest in the Contractor or in any subcontractor in which the Contractor has a five percent (5%) or greater interest.
- 3.1.8.1.2. Whether any person, either an individual or a corporation, with an ownership or control interest in the Contractor is related to another person with ownership or control interest in the Contractor as a spouse, parent, child or sibling.
- 3.1.8.1.3. Whether any person, either an individual or a corporation, with an ownership or control interest in the any subcontractor in which the Contractor has a five percent (5%) or greater interest is related o another person with ownership or control interest in the Contractor as a spouse, parent, child or sibling.
- 3.1.8.1.4. The name of any other entity required to disclose under 42 CFR 455.104 in which any owner of the Contractor has an ownership or control interest.

- 3.1.8.1.5. The name, address, date of birth and Social Security Number of any managing employee of the Contractor.
- 3.1.8.2. “Ownership interest” and “person with an ownership or control interest” shall have the meaning specified in 42 CFR 455.101, as amended or hereinafter amended. “Subcontractor”, for purposes of this subsection 3.1.8 only, shall have the meaning specified in 42 CFR 455.101, as amended or hereinafter amended.
- 3.1.8.3. The Contractor shall complete and deliver these disclosures to the Department:
 - 3.1.8.3.1. Upon submitting the Contractor’s provider application to the Department.
 - 3.1.8.3.2. Upon executing the Contractor’s provider agreement with the Department.
 - 3.1.8.3.3. Upon the Department’s request during the re-validation of enrollment process under 42 CFR 455.414.
 - 3.1.8.3.4. Within thirty-five (35) days of the any change in ownership of the Contractor.
- 3.1.8.4. The Contractor shall provide this disclosure to the Department’s Medicaid fiscal agent.
- 3.1.9. Federal Intermediate Sanctions
 - 3.1.9.1. The Department may implement any intermediate sanctions, as described in 42 CFR 438.702, if the Department makes the determination to impose sanctions under 42 CFR 438.700.
 - 3.1.9.2. Before imposing any intermediate sanctions, the Department shall give the Contractor timely written notice that explains:
 - 3.1.9.2.1. The basis and nature of the sanction.
- 3.1.10. Termination under Federal Regulations
 - 3.1.10.1. The Department may terminate this Contract for cause if the Department determines that the Contractor has failed to:
 - 3.1.10.1.1. Carry out the substantive terms of its contracts.
 - 3.1.10.1.2. Meet applicable requirements in sections 1932, 1903(m) and 1905(t) of the Social Security Act (42 U.S.C. 401).
 - 3.1.10.2. Before terminating the Contractor’s Contract as described in this section, the Department shall:
 - 3.1.10.2.1. Provide the Contractor a cure notice that includes, at a minimum, all of the following:
 - 3.1.10.2.1.1. The Department’s intent to terminate.
 - 3.1.10.2.1.2. The reason for the termination.
 - 3.1.10.2.1.3. The time and place for the pre-termination hearing.
 - 3.1.10.2.2. Conduct a pre-termination hearing.
 - 3.1.10.2.3. Give the Contractor written notice of the decision affirming or reversing the proposed termination of the Contract.
 - 3.1.10.2.4. If the Department determines, after the hearing, to terminate the Contract for cause, then the Department shall send a written termination notice to the Contractor that contains the effective date of the termination.
 - 3.1.10.2.4.1. Upon receipt of the termination notice, the Contractor shall give Members enrolled with

the Contractor notice of the termination and information, consistent with 42 CFR 438.10, on their options for receiving Medicaid services following the effective date of termination.

- 3.1.10.3. Once the Department has notified the Contractor of its intent to terminate under this section, the Department may:
 - 3.1.10.3.1. Give the Members enrolled with the Contractor written notice of the State's intent to terminate the Contract.
 - 3.1.10.3.2. Allow Members enrolled with the Contractor to disenroll immediately, without cause.
- 3.1.11. Termination by the Contractor
 - 3.1.11.1. The Contractor may terminate this Contract by giving written notice of termination to the Department and specifying the effective date thereof. The effective date of any such termination shall be the last day of a month. The Contractor shall provide its notice of termination at least forty-five (45) days before the effective date of such termination. Upon issuance of written notice of termination, Contractor shall be subject to and comply with the same obligations and rights set forth in § 15.A.i of the Contract. Upon termination pursuant to this §3.1.11, Contractor shall be paid only for Services provided through the effective date of the termination.

3.2. GENERAL PCMP REQUIREMENTS

- 3.2.1. To participate in the ACC Program as a PCMP, the Contractor shall be committed to the following principles of the Medical Home model as amended by the Department:
 - 3.2.1.1. The care provided is:
 - 3.2.1.1.1. Member/family-centered;
 - 3.2.1.1.2. Whole-person oriented and comprehensive;
 - 3.2.1.1.3. Coordinated and integrated;
 - 3.2.1.1.4. Provided in partnership with the Member and promotes Member self-management;
 - 3.2.1.1.5. Outcomes-focused;
 - 3.2.1.1.6. Consistently provided by the same provider as often as possible so a trusting relationship can develop; and
 - 3.2.1.1.7. Provided in a culturally competent and linguistically sensitive manner.
 - 3.2.1.2. The Contractor is:
 - 3.2.1.2.1. Accessible, aiming to meet high access-to-care standards, such as:
 - 3.2.1.2.1.1. 24/7 phone coverage with access to a clinician that can triage;
 - 3.2.1.2.1.2. Extended daytime and weekend hours;
 - 3.2.1.2.1.3. Appointment scheduling within 48 hours for urgent care, 10 days for symptomatic, non-urgent care and 45 days for non-symptomatic routine care; and
 - 3.2.1.2.1.4. Short waiting times in the Contractor's reception area;
 - 3.2.1.2.2. Committed to operational and fiscal efficiency;

- 3.2.1.2.3. Able and willing to coordinate with the Contractor's RCCO on medical management, care coordination, and case management of Members;
- 3.2.1.2.4. Committed to initiating and tracking continuous performance and process improvement activities, such as improving tracking and follow-up on diagnostic tests, improving care transitions, and improving care coordination with specialists and other Medicaid providers, etc;
- 3.2.1.2.5. Willing to use proven practice and process improvement tools, such as assessments, visit agendas, screenings, Member self-management tools and plans;
- 3.2.1.2.6. Willing to spend the time to teach Members about their health conditions and the appropriate use of the health care system as well as inspire confidence and empowerment in Members' health care ownership;
- 3.2.1.2.7. Focused on fostering a culture of constant improvement and continuous learning;
- 3.2.1.2.8. Willing to accept accountability for outcomes and the Member/family experience;
- 3.2.1.2.9. Able to give Members and designated family members easy access to their medical records when requested; and
- 3.2.1.2.10. Committed to working as a partner with the Contractor's RCCO in providing the highest level of care to Members. This commitment includes data-sharing, access to medical records when requested, cooperation on referrals, participation in performance improvement activities and initiatives, willingness to give feedback and potentially participate on committees and provide clinical expertise, and use the data available to the practice to better manage Members and their health needs.

3.3. PCMP REQUIREMENTS

- 3.3.1. In order to participate as a PCMP in the ACC Program, the Contractor shall:
 - 3.3.1.1. Be enrolled as a provider in the Colorado Medicaid program;
 - 3.3.1.2. Be any of the following:
 - 3.3.1.2.1. Certified by the Department as a provider in the Medicaid and CHP+ Medical Homes for Children program;
 - 3.3.1.2.2. A Federally Qualified Health Center (FQHC), Rural Health Clinic (RHC) or a clinic or other group practice with a focus on primary care, general practice, internal medicine, pediatrics, geriatrics, or obstetrics and gynecology; or
 - 3.3.1.2.3. An individual physician, advanced practice nurse or physician assistant with a focus on primary care, general practice, internal medicine, pediatrics, geriatrics, or obstetrics and gynecology;
 - 3.3.1.3. Act as the dedicated source of primary care for Members and be capable of delivering the majority of the Members' comprehensive primary, preventive, and sick medical care;
 - 3.3.1.4. Be currently licensed by the Colorado Medical Board to practice medicine in the State of Colorado.
- 3.3.2. In the event that the Contractor participates in the ACC Program as a practice, the Contractor shall provide a list of all individual providers who are part of the Contractor's practice, to the Department, within five (5) days after the Effective Date of this Contract.

- 3.3.2.1. The Contractor shall submit an updated list of individual providers who are part of the Contractor's practice, to the Department, within thirty (30) days after the addition or removal of any provider in the practice.

3.4. OTHER DEPARTMENT PROGRAMS

- 3.4.1. The Contractor may participate in any other programs within the Department, such as the Medicaid and CHP+ Medical Homes for Children Program. If the Contractor does choose to participate in any other program within the Department, then the Contractor shall abide by all of the requirements of that program.

SECTION 4.0 CARE COORDINATION

4.1. RCCO COOPERATION

- 4.1.1. When the Contractor provides care to a Member, the Contractor shall cooperate with the RCCO with which the Member is enrolled, even if this is not the Contractor's RCCO. This cooperation shall include, but is not limited to, providing all requested information relating to the Member's care, providing any required or requested referrals for the Member and meeting all requirements of any written agreement between the RCCO and the Contractor.
 - 4.1.1.1. The Contractor may accept and act on recommendations or advice given to the Contractor by a RCCO, but shall not make any decision regarding any Member's treatment or regarding that Member's health care at the direction of the RCCO. In the event that the Contractor determines the proper decision regarding any Member's treatment or regarding that Member's health care is the same as any direction given by a RCCO, then the Contractor may act upon their own determination, regardless of the RCCO's direction.
- 4.1.2. The Contractor shall provide the Contractor's RCCO accurate contact and practice information upon enrollment with the Contractor's RCCO, within ten (10) business days of any change to the information or as required in its agreement with the RCCO. This contact and practice information shall include, at a minimum, all of the following:
 - 4.1.2.1. The name of the Contractor's practice;
 - 4.1.2.2. The names of all providers in the Contractor's practice;
 - 4.1.2.3. The telephone number for the Contractor's practice;
 - 4.1.2.4. The address of the Contractor's practice;
 - 4.1.2.5. Whether the Contractor is accepting new Members; and
 - 4.1.2.6. The field or fields in which the Contractor practices.
- 4.1.3. The Contractor may engage in care coordination activities as allowed in any contract or agreement that the Contractor has with the Contractor's RCCO.

4.2. REFERRALS

- 4.2.1. The Contractor may refer a Member to any other specialist or Medicaid provider, if the Contractor determines that such a referral is appropriate to that Member's care. In the event that the Contractor determines such a referral is appropriate, the Contractor shall provide a referral, which includes the Contractor's Medicaid ID number and the reason for the referral, to the other provider for any Member that receives care or other services from that provider. A referral from the Contractor is not required for the following services:
 - 4.2.1.1. Emergency care.

- 4.2.1.2. EPSDT screenings.
- 4.2.1.3. Emergency and non-emergent medical transportation.
- 4.2.1.4. Anesthesiology services.
- 4.2.1.5. Dental services.
- 4.2.1.6. Vision services.
- 4.2.1.7. Family planning services.
- 4.2.1.8. Behavioral health services.
- 4.2.1.9. Home and Community-Based Waiver services, as defined in the waivers that the Department has submitted to the Centers for Medicare and Medicaid Services.
- 4.2.1.10. Obstetrical care.

SECTION 5.0 COMPENSATION AND PAYMENTS

5.1. PER MEMBER PER MONTH (PMPM) PAYMENT

- 5.1.1. The Department shall pay the Contractor a PMPM Payment for each of the Contractor's Members, regardless of the RCCO in which the Member is enrolled, that was enrolled in the ACC Program as of the first day of the month for which the Department is making the PMPM Payment.
- 5.1.2. The Department shall calculate the number of the Contractor's Members based on the information in the Department's Medicaid Management Information System.
- 5.1.3. The Department shall remit all PMPM Payments to the Contractor on or before the last day of the month for which the PMPM Payment applies.
- 5.1.4. PMPM Payments shall commence in the first full month in which the Contractor is enrolled and continue for all subsequent months until the termination of this Contract.
- 5.1.5. PMPM Payments pursuant to this contract shall be made in accordance with the State's Medicaid state plan and at the rates shown on the PMPM Payment schedule of rates posted on the Provider Services page of the Department's website.

5.2. EXPANSION PHASE PCMP INCENTIVE PAYMENTS

- 5.2.1. The Department has instituted an incentive program with each RCCO that may make a PMPM incentive payment, for each of the RCCO's Members, to the RCCO if the RCCO meets certain performance targets. In the event that a RCCO receives an incentive payment, the Department shall pay the Contractor an amount equal to that RCCO's PMPM incentive payment for each of the Contractor's Members who reside in that RCCO's Region.
 - 5.2.1.1. In the event that the Contractor serves Members in different Regions, then the incentive payment shall be based on the Region in which the Member who received care resides. In this event, the incentive payment for each Region shall only be paid for the number of the Contractor's Members who reside in that Region. This may result in the Contractor receiving different incentive payments for different Members.
- 5.2.2. In no event shall any incentive payment for any Member exceed the amount received by the RCCO, for the Region in which the Member resides, for that Member.

- 5.2.3. The Department shall remit all incentive payments to the Contractor on a quarterly basis within one-hundred and twenty (120) days from the last day of the quarter in which the incentive payments were earned. The Department will calculate the incentive payment separately for each month in a quarter, and the Contractor may receive different amounts for each month within a quarter based on the specific performance targets the Contractor's RCCO was able to meet during each specific month.

5.3. GENERAL COMPENSATION

- 5.3.1. If the Contractor is certified by the Medicaid and CHP+ Medical Homes for Children Program, the Contractor will continue to receive pay-for-performance under that program for any children from the Medical Homes for Children Program, that are also enrolled in the ACC Program, until the beginning of the Expansion Phase. In the event that the Contractor receives any compensation under the Medical Homes for Children Program for any Member during a month, the Contractor shall not receive any PMPM Payment or any incentive payments for that Member and that Member shall not be counted toward the calculation of the number of the Contractor's Members during that month.
- 5.3.2. If the Contractor is a FQHC, RHC or a clinic or other group practice enrolled with the Colorado Medicaid program, then any PMPM Payments or incentive payments for the providers employed or contracted by that entity shall be paid to the employing or contracting entity.
- 5.3.3. The Contractor's RCCO, or any other RCCO, may develop additional compensation methods or payments for the Contractor under the ACC Program. The existence or amount of these payments, or the absence thereof, shall not impact any payments required by this Contract in any way.

5.4. PAYMENT CALCULATION DISPUTES

- 5.4.1. In the event that the Contractor believes that the calculation or determination of any incentive payment or PMPM Payment is incorrect, the Contractor shall notify the Department of its dispute within thirty (30) days of the receipt of the payment. The Department shall review calculation or determination and may make changes based on this review. The determination or calculation that results from the Department's review shall be final. No disputed payment shall be due until after the Department has concluded its review.

EXHIBIT B, ELIGIBLE MEMBER CATEGORIES

Clients in the following categories, described in the Department's State Plan, are eligible for enrollment in the ACC Program:

- 1) Aid to Families with Dependent Children – Adults (AFDC – A)
- 2) Aid to Families with Dependent Children – Children (AFDC – C)
- 3) Aid to the Needy Disabled/Aid to the Blind (AND/AB)
- 4) Baby Care/Kids Care – Adults (BCKC-A)
- 5) Baby Care/Kids Care – Children (BCKC-C)
- 6) Foster Care (FC)
- 7) Old Age Pensioners – Age 65+ (OAP-A)
- 8) Old Age Pensioners under Age 65 (OAP-B)
- 9) Refugee Medical Assistance – Adults (RMA-A)
- 10) Refugee Medical Assistance – Children (RMA-C)
- 11) Adults Without Dependent Children (AWDC), as described in CRS 25.5-4-402.3(4)(b)(IV)(C)
- 12) Any other Medicaid eligibility category that is eligible for full Medicaid benefits, except for Clients in the following circumstances:
 - a) During the Initial Phase, any Client who is eligible for both Medicare and Medicaid. Clients that are eligible for both Medicare and Medicaid shall only be eligible for the ACC Program during the Expansion Phase.
 - b) Clients residing in any federal, state or county institution at the time of enrollment. Any Member who becomes a resident of an institution after their enrollment in the ACC Program may choose to remain in the program or request disenrollment for cause at the Member's discretion.