

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**The Colorado Health Benefit Exchange**  
**and**  
**The State of Colorado, Department of Health Care Policy and Financing**

**1. PARTIES**

This Memorandum of Understanding (hereinafter called "MoU") is entered into by and between THE COLORADO HEALTH BENEFIT EXCHANGE doing business as Connect for Health Colorado (hereinafter "C4HCO"), and the STATE OF COLORADO acting by and through the Department of Health Care Policy and Financing, (hereinafter "HCPF") and hereby agree to the following terms and conditions.

**2. EFFECTIVE DATE**

This MoU shall not be effective until it is approved and signed by all Parties ("the Effective Date").

**3. RECITALS**

a. HCPF

HCPF is the federally-designated single state agency having the responsibility to administer or supervise the administration of the Medicaid (Title XIX) and Child Health Insurance Program (operating as Child Health Plan *Plus* or CHP+), as well as a variety of other programs for Colorado's low-income families and individuals, the elderly and persons with disabilities, as set forth in C.R.S. §§ 25.5-4-104, 25.5-8-101 *et seq.*

b. C4HCO

C4HCO was established by C.R.S. § 10-22-101, *et seq.*, as a nonprofit unincorporated public entity. C4HCO is an instrumentality but not an agency of the State of Colorado for the purpose of establishing and operating a health benefit exchange ("Exchange") fitting the unique needs of the residents of Colorado. The Executive Director of HCPF is an ex-officio member of the Board of Directors of C4HCO. Pursuant to C.R.S. § 10-22-106(2), the Board of Directors of C4HCO is authorized to enter into information-sharing agreements or memoranda of understanding with state agencies to carry out its responsibilities so long as the agreements include adequate protections with respect to the confidentiality of the information that is shared and comply with all state and federal laws, rules, and regulations.

#### **4. DEFINITIONS**

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

- a. "ACA" means the federal Patient Protection and Affordable Care Act of 2010, as amended by the federal Health Care and Education Reconciliation Act of 2010, and as may be further amended, and any federal regulation implementing these federal acts.
- b. "CMS" means the Centers for Medicare and Medicaid Services of the federal Department of Health & Human Services.
- c. "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1996 and any federal regulation implementing this federal act.
- d. "MoU" means this Memorandum of Understanding, its terms and conditions, attached addenda, exhibits, documents incorporated by reference under the terms of this MoU, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules and State Controller Policies.
- e. "Party" means HCPF or C4HCO and "Parties" means both HCPF and C4HCO.
- f. "SLA" means a Service Level Agreement for areas of interoperability, e.g. system, business processes and customer support.
- g. Any terms used herein which are defined in Exhibits or other incorporated attachments shall be construed and interpreted as defined therein.

#### **5. BACKGROUND AND SHARED OBJECTIVES**

- a. Pursuant to C.R.S. § 10-22-101, et seq., (The Colorado Health Benefit Exchange Act), Colorado policymakers established C4HCO to perform certain duties and to assume certain responsibilities under ACA. The intent of C4HCO is to increase access, affordability, and choice for individuals and small employers purchasing health insurance in Colorado. C4HCO has been created to address the unique needs of Coloradans by seeking Colorado-specific solutions and by exploring all options available to the state of Colorado. C4HCO is intended to facilitate access to and enrollment in health plans in the individual market and to include a small business health options program to assist small employers in facilitating the enrollment of their employees in health plans offered in the small employer market.
- b. To obtain approval for a state-based exchange, federal law requires an exchange to perform certain functions. The law also requires a state-based exchange to enter into written agreements, or MoUs, with state agencies. Although agreements are not

required in all circumstances, it is in the public interest for C4HCO and HCPF to find ways to operate efficiently and coordinate effectively by minimizing the duplication of services and leveraging limited resources. Federal law requires both C4HCO and HCPF to build systems that share application data and provide accurate eligibility determinations for a new continuum of Insurance Affordability Programs (“IAPs”): Medicaid, Child Health Plan Plus, and Qualified Health Plans with advanced premium tax credits and cost sharing reductions. In an effort to provide accurate and timely eligibility determinations and ensure people can enroll in health coverage, both the C4HCO and the Colorado medical assistance eligibility systems are required to operate efficiently, dependably and accurately. The Parties will work to ensure as many applicants as possible can get real-time eligibility determinations.

- c. This MoU establishes a process to ensure and continue to build upon transparent and well-coordinated efforts between C4HCO and HCPF to perform the required functions for a state-based exchange.

## 6. IMPLEMENTATION/OPERATIONS PLAN

- a. The Parties agree to coordinate responsibilities and facilitate the exchange of the mutually agreed upon information as identified in Section 6 for the purpose of establishing and carrying out the provisions of the ACA. Each Party shall work with the other in a fair and transparent manner, and shall participate in regularly scheduled and *ad hoc* coordination meetings as requested by either Party.
- b. During these meetings each Party shall provide progress on assigned activities and milestones including mutually agreed upon applicable metrics. Each Party shall identify critical dependencies. Each Party shall assist the other Party in their duties and tasks, and shall keep the other Party informed of all progress made in implementing the various aspects of the ACA and the terms of this MoU. The Parties recognize and agree to develop shared operational and business procedures that outline the scopes of work by each in key areas including:
  - 1. Individual application processing and eligibility determination protocols and procedures including adhering and abiding by the eligibility policies outlined in Exhibit I.
  - 2. Informal and formal resolution of appeals in Exhibit II.
  - 3. HCPF and C4HCO Customer Service Center roles and responsibilities outlined in Exhibit III.
- c. Reporting Requirements - In order for C4HCO and HCPF to fulfill their obligations under this MoU and to execute required business processes expeditiously, each Party may require reasonable information from the other Party’s system. This information shall be provided through regularly created and transmitted electronic reports as well

as *ad hoc* reports. Requests for reports will be considered first through each Party's designated point of contact (Primary Contact) and then, if additional review or authority is required, through the Executive Steering Committee ("ESC") governance structure. If necessary, costs associated with reporting will be outlined in a separate agreement.

## **7. GOVERNANCE**

- a. The Primary Contacts, defined below, or their designated representatives will meet as needed to discuss whether the delegation of responsibilities or processes established under the MoU should be updated or changed. This may occur at the ESC governance meetings.
- b. Modification of this MoU shall not be effective unless agreed to in writing by the Parties in an amendment to the MoU, properly executed and approved in accordance with applicable Colorado State law.
- c. Both parties agree to use their best efforts to resolve any conflicts or disputes under this MoU, and agree to use the process outlined by the ESC governance documents.
- d. This MoU is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations.

## **8. FUNDING**

The Parties agree to fund the approved projects under this MoU using the approved Cost Allocation Methodology mutually agreeable to both parties and approved by CMS. The funding for these projects will be outlined in a separate agreements(s) between C4HCO and HCPF (commonly referred to as the "Revenue Agreement").

## **9. RIGHTS IN DATA, DOCUMENTS AND INTELLECTUAL PROPERTY**

The Parties will not share confidential or protected intellectual property, whether their own or that of third parties, with the other. If the need arises to share such information in the future, the Parties agree to negotiate the manner in which to share and protect that information at that time, including amendments to this MoU or a separate agreement. The Parties have negotiated terms in a separate agreement regarding the Shared Eligibility Services intellectual property, which supplements this section.

## **10. PRIVACY AND SECURITY OF INFORMATION/HIPAA**

- a. Federal law and regulations governing the privacy of certain health information requires a "Business Associate Contract" between HCPF and C4HCO (45 CFR § 164.504(e)). Attached as Exhibit IV, incorporated by reference, and agreed to by the parties is a HIPAA Business Associate Addendum ("Addendum") for HIPAA

compliance. The terms of the Addendum shall be binding upon execution of this MoU and shall remain in effect during the term of the MoU including any extensions. In the event this MoU terminates, the terms of the Addendum will control as to its subject matter.

b. C4HCO will:

1. 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 CFR Parts 160 and 164 (the “Privacy Rule”) and other applicable laws, as amended.
  2. Comply with program laws to protect confidential addresses of clients participating in the Address Confidentiality Program (“ACP”). Laws governing the program are located at C.R.S. § 24-21-201.
  3. Comply with federal and state law concerning voter registration as determined applicable by C4HCO. At minimum, C4HCO will provide a link on its on-line interface to voter registration information and if any C4HCO or designated sites provide face-to-face application assistance that results in acceptance of a paper application, then that client shall be offered voter registration assistance.
  4. Protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with the MoU and comply with HIPAA rules and regulations. Except as provided by law, no information in possession of C4HCO about any individual client shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor’s parent, or guardian.
  5. Have written policies governing access to, duplication and dissemination of, all such information. C4HCO shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. C4HCO shall provide its employees, agents and subcontractors, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted. No confidentiality requirements contained in this MoU shall negate or supersede the provisions of HIPAA.
  6. Train all of the Department-approved CBMS users on, and comply with, written privacy and security requirements, ACP requirements, HIPAA requirements and privacy and security policies, procedures and processes.
- c. HCPF agrees to treat any Personally Identifiable Information (“PII”) received from C4HCO as Protected Health Information (“PHI”), pursuant to the requirements of applicable state and federal law and regulation.

## **11. SERVICE LEVEL AGREEMENTS**

The Parties incorporate by reference into this MOU the Service Level Agreement Management Process for the purpose of monitoring and reporting protocols for system performance, execution of business processes and customer support as may be modified from time to time as the Parties agree to reflect necessary changes as set out in Exhibit V.

## **12. PRIMARY CONTACTS**

- a. Each Party shall appoint a single staff person responsible for coordination under this MoU and provide contact information for that person to the other Party.
- b. If there is a change in any of the information for the designated contact, the other Party shall be notified promptly of the new contact information.
- c. C4HCO Contact: Chief Executive Officer, or designee.
- d. HCPF Contact: Executive Director, or designee.
- e. The Parties will use a Transmittal to provide clarification, memorialize agreement to implement an action, and affirm official direction within the scope of this MoU and the Revenue Agreement.
  1. A Transmittal shall be a document delivered on the submitting Party's letterhead and that is signed by both Parties.
  2. Transmittals shall contain the date the Transmittal will be effective.
  3. HCPF and C4HCO will designate a person or persons to sign Transmittals on behalf of the each Party through a Transmittal approved by the C4HCO Contact and HCPF Contact.
  4. An electronic signature may be used to sign any Transmittal.
  5. Transmittals may not be used in place of an amendment to this MoU.

**13. EFFECTIVE DATE AND SIGNATURE**

This MoU shall be effective as of the date execution by the Chief Executive Officer of C4HCO and the Executive Director of HCPF.

**COLORADO HEALTH  
BENEFIT EXCHANGE**

By: 

Date: 12/4/14

Name: Gary Drews

Title: Interim, Chief Executive Officer

**DEPARTMENT OF HEALTH CARE  
POLICY AND FINANCING**

By: 

Date: 12/4/14

Name: Susan E. Birch, MBA, BSN, RN

Title: Executive Director

## EXHIBIT I

### 1. THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

The Department of Health Care Policy and Financing (“HCPF”) serves as the Medicaid Single State Agency, as defined by Code of Federal Regulations (“CFR”) Title 45 Section 205.100 (45 CFR § 205.100). HCPF develops and implements policy and financing for Medicaid and the Children’s Health Insurance Program, called Child Health Plan *Plus* (“CHP+”) in Colorado, as well as a variety of other publicly funded health care programs for Coloradans.

HCPF is a Covered Entity under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (42 USC §§ 1320d–1320d-8).

### 2. DEFINITIONS

- a. Child Health Plan *Plus* means health insurance coverage for low income children (18 years of age and younger) and pregnant women (19 years of age and older) who are Colorado residents.
- b. Colorado Benefits Management System (“CBMS”) means the State’s integrated eligibility determination system that processes eligibility for public assistance programs administered by state agencies. CBMS is maintained by the Governor’s Office of Information Technology.
- c. Colorado County Departments of Human/Social Services (“County or Counties”) means agents of HCPF and Department of Human Services (“DHS”) and are charged with the administration of public assistance and related activities in the respective counties in accordance with the rules of the respective departments.
- d. Data Entry Error means any data that is entered into the PEAK and/or Shared Eligibility System (“SES”) incorrectly and may or may not result in an incorrect or pending eligibility determination.
- e. Eligibility Site means all entities certified by DHS and HCPF to process applications and perform case maintenance for the programs administered by both HCPF and DHS.
- f. Insurance Affordability Programs means a program that is one of the following: Medicaid, Child Health Plan *Plus*, or premium and cost-sharing assistance for purchasing coverage in a qualified health plan through the Exchange in accordance with 42 CFR § 435.4.
- g. Medicaid means public health insurance for low-income Colorado residents who qualify.

- h. Medical Assistance Programs mean, collectively, all categories of medical assistance for Colorado residents described in Sections 2.a and 2.g above.
- i. Colorado Program Eligibility and Application Kit (“PEAK”) is a Web-based portal designed to provide applicants the ability to apply for and manage their public assistance benefits. PEAK is supported by HCPF, DHS, Colorado Department of Education, Colorado Department of Public Health and Environment, C4HCO and the Governor’s Office of Information Technology (OIT).
- j. Personal Health Information generally means demographic information, medical history, test and laboratory results, insurance and coverage information and other data that is collected by a health care professional to identify an individual and determine appropriate care.
- k. Protected Health Information means individually identifiable health information held or transmitted by the C4HCO and its business associates, in any form or media, whether electronic, paper, or oral. Both Personal Health Information and Protected Health Information are referred to as PHI herein.
- l. Shared Eligibility System means a single system to capture eligibility information, make eligibility determinations for the Insurance Affordability Programs, transmit the information to C4HCO, and provide consumer noticing.
- m. Timely Processing means an application or redetermination/renewal that does not exceed the processing guidelines established in 42 CFR § 435.911, 42 CFR § 435.912, and 42 CFR § 435.916(a).
- n. System Error means errors caused by the CBMS or PEAK in the determination of eligibility or client application/case during the acceptance or processing of data.

### 3. C4HCO AND HCPF OBLIGATIONS

#### a. Eligibility Operations

- 1. As of November 9, 2014, C4HCO shall have the capacity and capability to process and route, as appropriate, Medical Assistance Program applications. C4HCO shall conduct all eligibility duties and activities as described herein and in accordance with all pertinent federal and state statutes, regulations, rules, and HCPF agency letters, including any supplemental directives issued by the Centers for Medicare and Medicaid Services (“CMS”) or HCPF that pertain to the scope of work under this Agreement. Letters to, or regulations, supplemental directives and/or trainings for eligibility sites that pertain to the scope of work under this agreement shall also apply to C4HCO. All guidance, rules, directives and letters issued by HCPF shall be supplied to C4HCO as soon as it is made available to Eligibility Sites.

2. C4HCO shall maintain a complete file of all records, documents, communications and other material that pertain to work related to Medical Assistance clients under agreement for a period of seven (7) years from the final date of the term of this MoU, unless the Department requests that the records be retained for a longer period.
3. C4HCO shall ensure that the County of Record or HCPF receives the hard copy files and records of cases within five (5) business days of request, when such files and records are needed to complete related cases or for audits conducted by the State or federal government or required by law.
4. HCPF and C4HCO shall follow all federal and state requirements and regulations regarding receipt and processing of applications.

b. Application Processing

1. C4HCO and HCPF shall have written procedures for processing in-person, online, paper and phone Medical Assistance applications. HCPF and C4HCO can request a formal review of application procedures. All written procedures must include provisions for all the following:
  - a. Date stamp all paper applications and supporting documents on the day the site receives the application;
  - b. Data entry into PEAK or the SES and review data entry accuracy;
  - c. Review client correspondence for accuracy from the C4HCO and SES systems; and
  - d. Protection of Federal Tax Information (FTI), PHI, PII, and file access for auditing purposes.
2. C4HCO and HCPF will meet to determine and agree upon the modifications that should be made to procedures, if any.
3. C4HCO shall enter all Medical Assistance applications into PEAK or SES to ensure Timely Processing and accurate eligibility determinations for Medicaid, CHP+, Advance Premium Tax Credits (APTC), and Cost Sharing Reductions (CSR) for each person applying for medical program assistance. C4HCO shall adhere to Timely Processing guidelines.
4. Any applications, or supporting documentation, received that include DHS programs shall be forwarded to the respective HCPF designated organization within two (2) business day of receipt to ensure Timely Processing. All parties agree to the secure and timely transmission of applications and supporting documentation to the HCPF designated organization.

c. Data Entry

1. C4HCO will be responsible for the delivery of training (in person/on-line) to Connect for Health Colorado Assistance Network, including certified brokers/agents, Health Coverage Guides and Certified Application Counselors, to avoid data entry errors. Independent, unauthorized screening, pre-screening or eligibility processing or determination is not permitted by C4HCO or its certified brokers/agents, Health Coverage Guides and Application Counselors.
2. C4HCO shall not be liable for incorrect determinations made due to System Errors; however, C4HCO shall report the System Error using the existing help desk process and include detailed comments on the error for audit purposes.
3. For Non-MAGI paper applications (if applicant answers "yes" to the disability questions and/or fills out the additional questions and worksheet related to disability), C4HCO and HCPF will develop a mutually acceptable process for determining eligibility.

d. Case Assignment

1. C4HCO will be assigned all APTC/CSR-only cases and all mixed APTC/CSR and Medicaid and/or CHP+ cases.
2. C4HCO will be responsible for the processing and ongoing maintenance of these cases that includes, but is not limited to, following up on redeterminations, renewals and recertifications. C4HCO will perform all verifications for households containing applicants for MAGI and Non-MAGI-based Medicaid, CHP+, and APTC/CSR.

e. CBMS Access

1. HCPF will facilitate the issuance of CBMS access for C4HCO staff and contractors to C4HCO (e.g., C4HCO mixed case assignment staff). C4HCO will request "write" access for the designated C4HCO contractor and "read" access for designated C4HCO staff contingent of the availability of system licenses. All C4HCO contractors with CBMS access must successfully complete full CBMS security and system training administered by the Health Care and Economic Security Staff Development Center or a C4HCO trainer certified by the Health Care and Economic Security Staff Development Center. As necessary, costs associated with CBMS training and "read and write" access will be agreed upon in a separate agreement.
2. Based on direction by the Social Security Administration, C4HCO staff may not have the ability to access all information within CBMS. HCPF will grant C4HCO access to information within CBMS that allows them to perform necessary job

functions with no unnecessary limitations beyond what is necessary to protect information that is considered prohibited because of Social Security Administration direction provided to HCPF or OIT.

3. At minimum, HCPF will grant C4HCO “read and write” access to CBMS for a single named (qualified) C4HCO staff member, contingent upon direction provided by the Social Security Administration. As necessary, this access will allow C4HCO to document verifications received by C4HCO into CBMS.
4. HCPF will grant C4HCO read-only access to CBMS data to enable:
  - a. C4HCO Service Center staff to review eligibility determinations;
  - b. C4HCO Appeals staff to review eligibility determinations; and
  - c. C4HCO Technical Support staff to perform testing and troubleshooting.
5. C4HCO will contract with HCPF or with an organization already authorized by HCPF to have full “write” access to CBMS to perform necessary functions on behalf of C4HCO within CBMS, as described in Exhibit V of this MOU.

## **EXHIBIT II**

### **Protocols and Open Issues for a Coordinated Informal Resolution (“IR”) Process**

1. C4HCO and HCPF will each establish coordinated units to manage the IR process.
2. These two coordinating IR units will work closely together via a specified set of protocols to facilitate a tightly coordinated IR process that ensures a seamless consumer experience.
3. Each unit will designate an IR Unit staff member who is responsible for ensuring cross-entity coordination mechanisms are in place and functioning appropriately.
4. C4HCO and HCPF agree that consumers who desire to appeal will be provided with an explanation of the IR process and how to initiate it.
5. One entity will have primary responsibility for the IR of any given case at any given time. This will require coordination for both to determine and track which agency is primarily responsible and to resolve issues which may have cross-entity implications.
6. C4HCO and HCPF’s IR unit staff will be trained in the policies and protocols related to the IR process and on the other Party’s program rules such that they will be prepared to assist and advise individuals regarding eligibility criteria, verification requirements, and processes/protocols across the continuum of insurance affordability programs (“IAPs”). While IR unit workers will not have the authority to make eligibility determinations, they will have the training necessary to facilitate the IR process up to the redetermination.
7. C4HCO’s Appeals staff will have read-only access to view cases within the CBMS.

## **EXHIBIT III**

### **HCPF and C4HCO Customer Service Center**

#### **1. Medicaid Customer Contact Center Obligations**

- a. The Medicaid Customer Contact Center will be provided frequently asked questions (FAQs) and sample scripts by C4HCO to help answer basic questions regarding Advance Premium Tax Credits (APTC) and Cost Sharing Reductions (CSR). The Medicaid Customer Contact Center will update their call center FAQs and scripts with content provided by C4HCO quarterly with trended data, policy and program changes as necessary.
- b. The Medicaid Customer Contact Center will be responsible for answering application related questions.
- c. The Medicaid Customer Contact Center will refer calls to C4HCO when caller questions regarding APTC and CSR exceed the expertise of the Medicaid Customer Contact Center. The Medicaid Customer Contact Center will not be able to accept warm transfers from the C4HCO Call Center at this time and warm transfers will only be implemented when feasible and agreed upon by both parties.

#### **2. C4HCO Call Center Obligations**

- a. The C4HCO Call Center will be provided frequently asked questions and sample scripts by HCPF to help answer basic questions regarding Medicaid and Child Health Plan Plus (CHP+). The C4HCO Call Center will update their call center FAQs and scripts with content provided by the Medicaid Customer Contact Center quarterly with trended data, policy and program changes as necessary.
- b. The C4HCO Service Center will be responsible for answering application related questions.
- c. C4HCO will refer callers to the Medicaid Customer Contact Center when caller questions regarding Medicaid and CHP+ exceed the experience of the C4HCO Service Center. The C4HCO Call Center will not be able to accept warm transfers from the Medicaid Customer Contact Center at this time and warm transfers will only be implemented when feasible and agreed upon by both parties.

## EXHIBIT IV

### Business Associate Addendum

This Business Associate Addendum (“Addendum”) is part of the MoU between the State of Colorado, Department of Health Care Policy and Financing and C4HCO. For purposes of this Addendum, the State is referred to as “Department”, “Covered Entity” or “CE” and C4HCO is referred to as “Associate”. Unless the context clearly requires a distinction between the MoU document and this Addendum, all references herein to “the MoU” or “this MoU” include this Addendum. This Addendum shall only apply to the Associate’s activities relating to, being performed on behalf of, or in any other way involving, the Department, the State’s Medicaid program, CHP+ program, and Department Safety Net programs (C.R.S. Title 25.5, Articles 4, 5, and 6).

#### RECITALS

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the MoU, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this MoU in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §1320d-1320d-8 (“HIPAA”) as amended by the American Recovery and Reinvestment Act of 2009 (“ARRA”)/HITECH Act (P.L. 111-005), and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended.
- C. As part of the HIPAA Rules, the CE is required to enter into an agreement containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

The parties agree as follows:

#### 1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Rules at 45 C.F.R. Parts 160, 162 and 164, as amended. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the provisions of this MoU, the HIPAA Rules shall control. Where the provisions of this MoU differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this MoU shall control.
- b. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or

mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.501.

- c. “Protected Information” shall mean PHI provided by CE to Associate or created, received, maintained or transmitted by Associate on CE’s behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment and health care operations, Protected Information under this MoU does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access and amendment of Associate’s PHI.
- d. “Subcontractor” shall mean a third party to whom Associate delegates a function, activity, or service that involves CE’s Protected Information, in order to carry out the responsibilities of this Agreement.

2. Associate Obligations.

- a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate’s obligations under this MoU and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Rules if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A to this Addendum. Associate agrees to defend and indemnify the Department against third party claims arising from Associate’s breach of this Addendum.
- b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Rules if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this MoU; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 C.F.R. Section 164.5020(1). To the extent that Associate discloses Protected Information to a third party Subcontractor, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances through execution of a written agreement with such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that such third party will notify Associate within five (5) business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing

permitted disclosures of Protected Information are set forth in Attachment A.

- c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this MoU. Associate shall comply with the requirements of the HIPAA Security Rule, at 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Associate shall review, modify, and update documentation of its safeguards as needed to ensure continued provision of reasonable and appropriate protection of Protected Information.
- d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this MoU within five (5) business days of becoming aware of such use or disclosure.
- e. Associate's Agents. If Associate uses one or more Subcontractor or agents to provide services under the MoU, and such Subcontractor or agents receive or have access to Protected Information, each Subcontractor or agent shall sign an agreement with Associate containing substantially the same provisions as this Addendum and further identifying CE as a third party beneficiary with rights of enforcement and indemnification from such Subcontractor or agents in the event of any violation of such Subcontractor or agent agreement. The agreement between the Associate and Subcontractor or agent shall ensure that the Subcontractor or agent agrees to at least the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate shall implement and maintain sanctions against agents and Subcontractor that violate such restrictions and conditions and shall mitigate the effects of any such violation.
- f. Access to Protected Information. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate shall make Protected Information maintained by Associate or its agents or Subcontractor in such Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.524. If such Protected Information is maintained by Associate in an electronic form or format, Associate must make such Protected Information available to CE in a mutually agreed upon electronic form or format.
- g. Amendment of PHI. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate or its agents or Subcontractor shall make such Protected Information available to CE for amendment within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, and shall incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information

directly from Associate or its agents or Subcontractor, Associate must notify CE in writing within five (5) business days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or Subcontractor shall be the responsibility of CE.

- h. Accounting Rights. Associate and its agents or Subcontractor shall make available to CE, within ten (10) business days of notice by CE, the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.528. In the event that the request for an accounting is delivered directly to Associate or its agents or Subcontractor, Associate shall within five (5) business days of the receipt of the request, forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.
- i. Governmental Access to Records. Associate shall keep records and make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's or Associate's compliance with the HIPAA Rules. Associate shall provide to CE a copy of, any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary when the Secretary is investigating CE. Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of Associate's policies, procedures or practices to determine whether Associate is complying with the HIPAA Rules, and permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including Protected Information, that are pertinent to ascertaining compliance.
- j. Minimum Necessary. Associate (and its agents or Subcontractor) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. Sections 164.502(b) and 164.514(d).
- k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.
- l. Retention of Protected Information. Except upon termination of the MoU as provided in Section 4(c) of this Addendum, Associate and its Subcontractor or agents shall retain all Protected Information throughout the term of this MoU and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.
- m. Associate's Insurance. Associate shall maintain insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the

MoU (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status and notice of cancellation).

- n. Notification of Breach. During the term of this MoU, Associate shall notify CE within five (5) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of Protected Information and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall not initiate notification to affected individuals per the HIPAA Rules without prior notification and approval of CE. Information provided to CE shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed during the breach. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  
- o. Audits, Inspection and Enforcement. Within ten (10) business days of a written request by CE, Associate and its agents or Subcontractor shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; and (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the MoU.
  
- p. Safeguards during Transmission. Associate shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity and security of Protected Information transmitted to CE pursuant to the MoU, in accordance with the standards and requirements of the HIPAA Rules.
  
- q. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 C.F.R. Section 164.522, Associate will restrict the use or disclosure of an individual's Protected Information. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of CE.

- a. Safeguards during Transmission. CE shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity and security of Protected Information transmitted pursuant to this MoU, in accordance with the standards and requirements of the HIPAA Rules.
- b. Notice of Changes. CE maintains a copy of its Notice of Privacy Practices on its website. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent that it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of PHI, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 C.F.R. Section 164.522.

4. Termination.

- a. Material Breach. In addition to any other provisions in the MoU regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of this MoU and shall provide grounds for immediate termination of this MoU by CE pursuant to the provisions of the MoU covering termination for cause, if any. If the MoU contains no express provisions regarding termination for cause, the following terms and conditions shall apply:
  - 1) Default. If Associate refuses or fails to timely perform any of the provisions of this MoU, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this MoU. Associate shall continue performance of this MoU to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.
  - 2) Associate's Duties. Notwithstanding termination of this MoU, and subject to any directions from CE, Associate shall take timely, reasonable and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.
- b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement, then CE shall take reasonable steps to cure such breach or end such violation. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall terminate the MoU, if feasible. If Associate knows of a pattern of activity or practice of a Subcontractor or agent that constitutes a material breach or violation of the Subcontractor's or agent's obligations under the written agreement between Associate and the Subcontractor or agent, Associate shall take reasonable steps to cure such breach or end such violation, if feasible.

c. Effect of Termination.

- 1) Except as provided in paragraph (2) of this subsection, upon termination of this MoU, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or Subcontractor still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the Protected Information, Associate shall certify in writing to CE that such Protected Information has been destroyed.
  - 2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d) and 2(e) of this Addendum to such Protected Information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.
5. Injunctive Relief. CE shall have the right to injunctive and other equitable and legal relief against Associate or any of its Subcontractor or agents in the event of any use or disclosure of Protected Information in violation of this MoU or applicable law.
  6. No Waiver of Immunity. No term or condition of this MoU 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, C.R.S. § 24-10-101 *et seq.* or the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* as applicable, as now in effect or hereafter amended.
  7. Limitation of Liability. Any limitation of Associate's liability in the MoU shall be inapplicable to the terms and conditions of this Addendum.
  8. Disclaimer. CE makes no warranty or representation that compliance by Associate with this MoU or the HIPAA Rules will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.
  9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to the HIPAA Rules relating to certification of its security practices, CE or its authorized agents or Subcontractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or Subcontractors to certify to CE the extent to which Associate's security safeguards comply with the HIPAA Rules or this Addendum.
  10. Amendment.
    - a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance

with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules and other applicable laws relating to the confidentiality, integrity, availability and security of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information and that it is Associate's responsibility to receive satisfactory written assurances from Associate's Subcontractor and agents. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Rules or other applicable laws. CE may terminate this MoU upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this MoU when requested by CE pursuant to this Section, or (ii) Associate does not enter into an amendment to this MoU providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules.

- b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.
11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any Subcontractor, employees or agents assisting Associate in the performance of its obligations under the MoU, available to CE, at no cost to CE, up to a maximum of thirty (30) hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of the HIPAA Rules or other laws relating to security and privacy or PHI, in which the actions of Associate are at issue, except where Associate or its Subcontractor, employee or agent is a named adverse party.
12. No Third Party Beneficiaries. Nothing express or implied in this MoU is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the MoU that may conflict or appear inconsistent with any provision in this Addendum. Together, the MoU and this Addendum shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules. The parties agree that any ambiguity in this MoU shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. This MoU supersedes and replaces any previous separately executed HIPAA addendum between the parties.
14. Survival of Certain MoU Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 4(c) ("Effect of Termination") and Section 12 ("No Third Party Beneficiaries") shall survive termination of this MoU and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate. This Addendum shall remain in effect during the term of the MoU including any extensions.

## ATTACHMENT A

This Attachment "A" sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the MoU between the State of Colorado, Department of Health Care Policy and Financing ("HCPF") and the Associate and is effective as of the date of the MoU (the "Attachment Effective Date"). This Attachment may be amended from time to time as provided in Exhibit IV ("Business Associate Addendum"), Section 10(b).

1. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows:
  - a. "No Additional Permitted Uses" or type in additional permitted uses.
2. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows:
  - a. "No additional permitted disclosures" or type any additional permitted disclosures.
3. Subcontractor(s). The parties acknowledge that the following Subcontractor or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this MoU:
  - a. CGI.
4. Receipt. Associate's receipt of Protected Information pursuant to this MoU shall be deemed to occur as follows and Associate's obligations under the Addendum shall commence with respect to such Protected Information upon such receipt:
  - a. Upon receipt of PHI from HCPF.
5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information:
  - a. "No additional restrictions on Use of Data" or type any additional restrictions.
6. Additional Terms. This may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security or privacy specifications, de-identification/re-identification of data, etc.:
  - a. "No additional terms" or type any additional terms.

## **EXHIBIT V**

### **Service Level Agreement Management Process**

For the purpose of monitoring and reporting protocols for system performance, execution of business processes and customer support as may be modified from time to time as the Parties agree:

#### **Defined Tasks**

1. Unless C4HCO contracts independently with a HCPF-approved Medical Assistance site to provide any or all of the services described in this Exhibit, C4HCO will provide funding to HCPF, as outlined in the Revenue Agreement, to support the eligibility application processing team (commonly referred to as “HCPF Backoffice”) to complete the tasks described in this Exhibit.
  - a. The HCPF Backoffice Full-Time Equivalent (FTE) may be either dedicated HCPF employees, independent contractors, or a contracted vendor, as determined appropriate by HCPF. HCPF remains responsible for the management and oversight of all HCPF employees, independent contractors, and contracted vendors.
  - b. The HCPF Backoffice FTE will work the Department’s approved hours and holiday schedule, and no individual of the HCPF Backoffice FTE will be authorized to work overtime.
  - c. The HCPF Backoffice is only responsible for work described in this Exhibit when authorized and funded by C4HCO. The number of HCPF Backoffice FTE will be scaled up and down depending on need and agreed upon by HCPF and C4HCO.
  - d. The need to increase the HCPF Backoffice beyond forty (40) FTE will need to be agreed upon by both parties in writing. Due to space and equipment limitations, the ability to expand the number of FTE beyond forty (40) may not be feasible.
  - e. HCPF will track the number of hours and FTE assigned to work within the HCPF Backoffice, so C4HCO will be charged appropriately.
  - f. C4HCO shall provide HCPF a weekly budget that the HCPF Backoffice will not exceed without written permission from C4HCO. The budget will be updated every 2 (two) weeks by C4HCO so the cost related to the HCPF Backoffice is known to both Parties ahead of time.
  - g. The HCPF Backoffice will not utilize the C4HCO systems, other than to collect client verifications to enter them into CBMS and to access an incident tracking log to identify potential incorrect eligibility determinations and reported consumer application escalations as received through the C4HCO Service Center. The HCPF Back office will not answer direct customer phone calls within the C4HCO Service Center

- h. The HCPF Backoffice will include senior resources to lead and supervise the HCPF Backoffice, which will be included in the FTE charged to C4HCO.
  - i. The HCPF Backoffice will be available to C4HCO during the 2015 open enrollment period, which is between November 15, 2014 to February 15, 2015. The HCPF Backoffice may perform the tasks defined in this Exhibit outside the open enrollment period if agreed by both Parties.
  - j. As approved by both Parties, up to eight (8) HCPF Backoffice FTE may be located at the C4HCO location in Denver. The HCPF Backoffice FTE located at the C4HCO location in Denver, will provide the Defined Tasks in Sections 2, 3, and 4 of this Exhibit.
- 2. The HCPF Backoffice will provide FTE to work on case verifications that are received through the C4HCO systems or C4HCO Service Center. These FTE may be located at the C4HCO location in Denver as agreed by both Parties. If the HCPF Backoffice can access the C4HCO systems to retrieve verifications remotely, the FTE may be located at the HCPF locations as agreed by both Parties.
- 3. The HCPF Backoffice will provide FTE to work potential incorrect eligibility determinations and reported consumer application escalations as received through the C4HCO Service Center. The C4HCO Service Center will provide an incident tracking log that the HCPF Backoffice FTE can access to identify which applications need to be processed. These FTE may be located at the C4HCO location in Denver as agreed by both Parties. If the HCPF Backoffice can access the incident tracking log remotely, the FTE may be located at the HCPF locations as agreed by both Parties.
- 4. The HCPF Backoffice will provide a senior resource to be located at the C4HCO location in Denver to work directly with and help coach the C4HCO Service Center on consumer questions and applications, with a focus on C4HCO's Broker Call Center Team. In addition, this senior resource will lead and direct the workload of any HCPF Backoffice FTE located at the C4HCO location in Denver. This senior resource will assist the C4HCO Service Center as they are working with customers interfacing with PEAK/SES, but the senior resource will not answer direct customer phone calls within the C4HCO Service Center.
- 5. The HCPF Backoffice will process and maintain mixed household cases that are receiving APTC and that have a household member receiving benefits under Medicaid or CHP+, including Non-MAGI Medicaid cases.
- 6. The HCPF Backoffice will process all paper applications that are submitted to C4HCO and transmitted by C4HCO to the HCPF Backoffice. These applications include paper applications that indicate the client has a disability and incomplete paper applications.
- 7. The HCPF Backoffice will research, resolve, and process MAGI cases that do not receive a real-time eligibility (RTE) determination through the SES or PEAK when submitted through the C4HCO website, and are in the queue (commonly referred to as the "PEAK Inbox") waiting to be processed by the Department's Eligibility and Enrollment Contractor, but need to be processed faster than the contracted time period of forty-five (45) calendar days or by the 15<sup>th</sup> of the month to be eligible to shop for coverage that may begin the 1<sup>st</sup> of the next month. These applications are waiting to

be processed to receive a medical assistance or IAP eligibility determination and normally are not awaiting the receipt of verification documents. These applications require an eligibility technician with access to CBMS to complete the application process. These cases are commonly referred to as “Escalated APTC/CSR Cases.”

- a. Generally, each Monday (or at the beginning of the work week), HCPF and C4HCO will identify the Escalated APTC/CSR Cases that will be processed by the HCPF Backoffice.
  - i. HCPF and C4HCO will develop a process to securely deliver a report to the C4HCO Service Center with the Escalated APTC/CSR Cases that will be processed by the HCPF Backoffice, so the C4HCO Service Center can notify customers that their applications have been identified to be processed.
  - ii. HCPF will provide the report at least weekly, but more frequently as requested by C4HCO and as determined feasible by HCPF. Providing this report more frequently than weekly will allow C4HCO Service Center to notify customers that their applications have been received by the 15<sup>th</sup> of the month and that coverage may begin the 1<sup>st</sup> of the next month.
- b. Those cases that are not Escalated APTC/CSR Cases will remain in the PEAK Inbox to be processed by the Department’s Eligibility and Enrollment Contractor in the contracted time period of forty-five (45) calendar days.
- c. HCPF and C4HCO will describe this process through a mutually agreed document, with the understanding that the ability to identify these Escalated APTC/CSR Cases is limited to an application aging report that includes any client who applied through the C4HCO website and did not receive a real-time eligibility determination. This identification process and report does not have the ability to identify income or other client information.
  - i. No application will be selected based on the immediate need or through a specific request by C4HCO to process immediately outside of the mutually agreed documented process between HCPF and C4HCO.
  - ii. There is no ability for the HCPF Backoffice to prescreen applications and transfer Escalated APTC/CSR Cases to C4HCO based on income or other client information.
- d. The cases identified as Escalated APTC/CSR Cases will be processed through the HCPF Backoffice with the intent that the cases will be processed by the Friday of that week or the 15<sup>th</sup> of the month, as agreed by HCPF and C4HCO. The ability to complete the processing of Escalated APTC/CSR Cases by the Friday of that week or the 15<sup>th</sup> of the month will be dependent upon the complexity of the case and the number of HCPF Backoffice FTE contracted to process Escalated APTC /CSR Cases.
- e. Once the Escalated APTC/CSR Case’s eligibility is determined in CBMS, the automatic process will transfer the cases to C4HCO Customer Service Center who will handle the client’s selection and enrollment into a Qualified Health

Plan. The HCPF Backoffice FTE will not be responsible for assisting customers through the Qualified Health Plan selection and enrollment process.

- f. The HCPF Backoffice FTE working on Escalated APTC/CSR Cases will process at least thirty (30) Escalated APTC/CSR Cases per FTE per week.
8. To complete the Defined Tasks in Sections 2, 3, 4, 5, 6 and 7 of this Exhibit, the HCPF Backoffice will need to complete the following tasks:
- a. Enter all appropriate verifications, including but not limited to, citizenship/identity, employment income, other income, etc. into CBMS.
  - b. Re-run eligibility (EDBC) in CBMS as required through the verification process.
  - c. Manage cases in CBMS as additional information is required and enter case comments and additional information if/when provided.
  - d. Authorize benefits (either denials or approvals) in CBMS as required through the verification process.
  - e. Attend scheduled meetings with designated C4HCO staff via conference call or webinar.
  - f. Attend specified trainings scheduled by C4HCO via conference call or webinar.
  - g. If necessary, and if access is granted to the HCPF Backoffice, the HCPF Backoffice will utilize C4HCO's customer service center tools for the retrieval of verifications.
  - h. Work closely with C4HCO customer service center leads on process improvement, issue identification and resolution.
9. C4HCO will provide advanced notice to HCPF when the HCPF Backoffice will be needed and not needed to work on Defined Tasks in Sections 2, 3, 4, 5, 6 and 7 of this Exhibit.
- a. C4HCO will provide at least two (2) weeks advanced notice, including the number of FTE, to HCPF when the HCPF Backoffice is needed to work on Defined Tasks in Sections 2, 3, 4, 5, 6 and 7 of this Exhibit. HCPF will provide FTE to the HCPF Backoffice as soon as feasible.
  - b. HCPF's ability to scale up additional personnel beyond twenty (20) FTE assigned to the HCPF Backoffice may be limited and as such requires at least two (2) weeks advanced notice from C4HCO to HCPF so the new personnel can be trained and gain access to CBMS. HCPF will provide additional FTE to the HCPF Backoffice as soon as feasible.
  - c. C4HCO will provide at least two (2) days notice to HCPF when requesting the HCPF Backoffice FTEs prioritize working on the Defined Tasks in Sections 2 and/or 3 of this Exhibit over the Defined Tasks in Sections 5, 6, and 7 of this Exhibit.

- d. C4HCO will provide at least one (1) week notice to HCPF when requesting the HCPF Backoffice provide a senior resource, to be located at the C4HCO location in Denver, to work directly with the C4HCO Service Center on questions and applications, with a focus on C4HCO's Broker Call Center Team. C4HCO will inform HCPF for how long the senior resource will be needed.
- e. C4HCO will provide two (2) weeks advanced notice to HCPF when the HCPF Backoffice will be no longer needed to work on Defined Tasks in Sections 2, 3, 4, 5, 6 and 7 of this Exhibit. This includes reducing the number of FTE assigned to work in the HCPF Backoffice.

### **Deliverables**

- 1. HCPF will provide workload reports for work performed by the HCPF Backoffice working on verifications once a week, or as agreed necessary by HCPF and C4HCO, that will provide the following:
  - a. Number of verifications entered in CBMS.
  - b. Types of verifications entered in CBMS.
- 2. HCPF will provide workload reports for work performed by the HCPF Backoffice for Escalated APTC/CSR Cases worked once a week, or as agreed necessary by HCPF and C4HCO that will provide the following:
  - a. Number of Non-MAGI approvals and denials identified through CBMS.
  - b. Number of Medicaid/CHP+ approvals and denials identified through CBMS.
  - c. Number of pending cases and pending reasons identified through CBMS.
- 3. HCPF will provide workload reports related to paper applications (e.g., logs) for work performed by the HCPF Backoffice for Escalated APTC/CSR Cases worked once a week, or as agreed necessary by HCPF and C4HCO that will provide the following:
  - a. Number of incomplete applications entered in CBMS.
  - b. Number of APTC approvals and denials identified through CBMS.
  - c. Number of Medicaid and CHP+ approval and denials identified through CBMS that are C4HCO case assigned.
  - d. Number of Non-MAGI Medicaid approvals and denials identified through CBMS that are C4HCO case assigned.
  - e. Number of pending cases and pending reasons identified through CBMS that are C4HCO case assigned.
- 4. HCPF will provide workload reports related to accuracy and timeliness reports for processing cases by the HCPF Backoffice for Escalated APTC/CSR Cases worked once a week, or as agreed by HCPF and C4HCO that will provide the following:
  - a. QA reports on each FTE using MEQIP standards of 4 applications per worker per month.
  - b. Adhere to timely processing guidelines established in 42 CFR § 435.911, 42 C.F.R. § 435.912, and 42 CFR § 435.916(a).

**REVENUE AGREEMENT FOR THE JOINT DEVELOPMENT OF A SHARED MEDICAL  
FINANCIAL ASSISTANCE APPLICATION AND SHARED ELIGIBILITY SERVICE**

This Agreement for the Joint Development of a Shared Medical Financial Assistance Application and Shared Eligibility Service (“**Agreement**” or “**Revenue Agreement**”) is entered into between The Colorado Health Benefit Exchange doing business as Connect for Health Colorado (“**C4HCO**”) and the State of Colorado acting by and through the Department of Health Care Policy and Financing (“**HCPF**” and, together with C4HCO, the “**Parties**”) The Agreement shall take effect upon signature by the State Controller or his designee.

**RECITALS**

- A. HCPF is the federally designated single state agency having the responsibility to administer or supervise the administration of Medicaid (Title XIX) and Child Health Insurance Program (operating as Child Health Plan *Plus* or CHP+), as well as a variety of other programs for Colorado’s low-income families and individuals, the elderly and persons with disabilities, as set forth in C.R.S. § 25.5-4-104.
- B. C4HCO was established by C.R.S. § 10-22-101 *et seq.* as a nonprofit unincorporated public entity. C4HCO is an instrumentality but not an agency of the State of Colorado for the purpose of establishing and operating a health benefit exchange (“**Exchange**”) fitting the unique needs of the residents of Colorado. The Executive Director of HCPF is an ex-officio member of the Board of Directors of C4HCO.
- C. Pursuant to C.R.S. § 10-22-106(2), the Board of Directors of C4HCO is authorized to enter into information-sharing agreements with state agencies to carry out its responsibilities so long as the agreements include adequate protections with respect to the confidentiality of the information that is shared and comply with all applicable state and federal Laws.
- D. To obtain approval for the Exchange, the Centers for Medicare and Medicaid Services (“**CMS**”) within the U.S. Department of Health and Human Services has required that the Parties have a fully shared eligibility service by January 1, 2016 consistent with CMS’ Guidance for Exchange and Medicaid IT Systems Version 2.0, and in connection therewith, the Parties have agreed to develop a shared financial and medical assistance application (collectively, the “**Shared Eligibility Services**” and all of the activities defined in this Agreement to complete the development of the Shared Eligibility Services are collectively the “**Shared Eligibility Services Project**”).
- E. The Parties entered into a Memorandum of Understanding effective September 30, 2013 and later revised effective December 6, 2014 (“**MOU**”) pursuant to which they agreed to establish a framework for developing a comprehensive plan to complete the Shared Eligibility Services. Section 8 (Funding) of the MOU provided that the Parties would agree on a separate Revenue Agreement for funding approved projects related to the Shared Eligibility Services.
- F. The Parties desire to set forth in this Agreement the terms upon which they have agreed to develop the Shared Eligibility Services, including sharing the funding required for such development and the intellectual property developed hereunder, and until the Shared Eligibility Services are complete.

NOW THEREFORE, in consideration of the foregoing recitals and the following mutual provisions, the Parties hereby agree as follows:

- 1. **Term.** The term of this Agreement commences on the date of signature by the State Controller or his designee and continues until December 31, 2015. The term may be renewed by written agreement between the parties. The Agreement may be terminated if such termination is acceptable to CMS and in the event (i) termination is required by applicable law; (ii) the Shared Eligibility Services are no

longer required; or (iii) if the other Party breaches the Agreement and fails to cure within sixty (60) days.. If this Agreement terminated, each party shall have continuing Intellectual Property Rights as specified in Section 7 of this MOU.

2. **MOU.** The terms of the MOU continue to apply to the Parties except to the extent any subject matter from the MOU is modified by this Agreement, in which case this Agreement controls as to that subject matter.
3. **Purpose.** This Agreement applies to the development of the Shared Eligibility Services scheduled to be implemented in November 2014 through acceptance by both Parties and the first calendar year of business operations (CY 2015).
4. **Federal Government Requirements.** The Shared Eligibility Services will meet all requirements imposed by the federal government on each Party, including federal grant requirements and requirements for data privacy and security.
5. **Assistance with further Projects.** The parties agree they will jointly cooperate developing a Cost Allocation Plan for any further projects related to the Shared Eligibility Services. Additional costs related to further projects not covered in this Agreement shall be approved by the HCPF's Director of the Health Information Office and C4HCO's Chief Technology Officer in writing and incorporated into this Agreement through amendment signed by the appropriate parties.
6. **Payment.**
  - a. C4HCO will pay to HCPF the sum of \$4,707,439. This sum will be due on November 9, 2014 and shall be paid in full no later than February 9, 2015. This payment consists of the following charges:

Project	C4HCO
"Plug and Play" Capabilities with the Exchange	\$290,024
Implementation Infrastructure	\$59,000
Operational Support	\$823,891
Shared Eligibility Service Development	\$2,650,000
Shared Eligibility C4HCO Only (IRS) (Related to single-sign-on, CMS security compliance and vulnerability assessment of Shared Eligibility Service.)	\$780,000
Ongoing Shared Eligibility Service Maintenance for CY 2015	\$250,000
Paper Application Development	\$2,024
<b>Total HCPF Costs to be Paid by C4HCO</b>	<b>\$4,854,939</b>
Minus Costs incurred by C4HCO related to the Shared Eligibility Services	\$147,500
<b>Total Costs to be Paid by C4HCO to HCPF</b>	<b>\$4,707,439</b>

- b. As provided in Exhibit I of the MOU, C4HCO will contract with an organization already authorized by HCPF to have full write access to CBMS to perform necessary functions, as provided in Exhibit V of the MOU, on behalf of C4HCO within CBMS.
      - i. If C4HCO, chooses to contract for these services through HCPF and HCPF uses HCPF employees, or independent contractors, C4HCO will provide services at an hourly rate at

\$20.40 (twenty dollars and forty cents) inclusive of benefits and travel per full-time equivalent (FTE). Expenses for any other purchases shall be approved in advance and submitted for reimbursement at cost

- ii. If C4HCO, chooses to contract for these services through HCPF and HCPF uses a contracted vendor, C4HCO will provide services at an hourly rate at \$27.00 (twenty-seven dollars) inclusive of benefits and travel per full-time equivalent (FTE). Expenses for any other purchases shall be approved in advance and submitted for reimbursement at cost.
  - iii. C4HCO will provide prior written authorization for any FTE authorized through this agreement.
  - iv. The Parties may change the hourly rate through a written notice between the Parties, which will be signed by the Primary Contact as specified in Section 12 (Primary Contacts) of the MOU.
  - v. HCPF will provide a written invoice to C4HCO on a monthly basis for FTE authorized through this agreement. C4HCO will pay the invoice within 45 (forty-five) calendar days upon receipt.
7. **Intellectual Property Rights.** The Parties agree that the State of Colorado will continue to own all software and other items developed under this Agreement including all patent, copyright, trade secret and other intellectual property rights of any nature ("Intellectual Property Rights"). Because C4HCO is contributing to the cost of developing the Shared Eligibility Services, C4HCO shall have, and is hereby granted, a nonexclusive, irrevocable (on any basis whatsoever), perpetual, royalty-free and unrestricted license to use the Share Eligibility Services in connection with the operation of the Exchange and for the business purposes of C4HCO.
8. **Confidential and Proprietary Information.** To the maximum extent permitted by applicable Colorado and federal Law, the information shared by the Parties and developed under this Agreement is confidential and proprietary ("Confidential Information"), and subject to the rights in Section 10 (Privacy and Security of Information/HIPAA) of the MOU and the provisions of the MOU relating thereto, including but not limited to any applicable Addendum. Each Party will take all reasonable efforts to maintain in confidence all of the other Party's Confidential Information and not use or disclose such Confidential Information except as permitted under this Agreement and by applicable Law.
9. **Compliance with Laws.** Each Party agrees it will comply in all respects with all laws, regulations, codes, ordinances and other binding government requirements ("Laws") applicable to it and its activities under this Agreement.
10. **Indemnification.** The Parties contemplate that the development of the Shared Eligibility Services will be a joint process. However, the Parties recognize that certain Deliverables will be the work product of a Party (through its contractor). The Parties do not waive any immunity that each may have with regards to third parties. Neither Party is liable to any third party for any damages for which it enjoys sovereign immunity, and this Agreement is not a waiver of any such immunity.
11. **Limitations.** Except for a breach of applicable Law by a Party, neither Party will be liable to the other for any consequential, incidental, indirect, special, reliance, or exemplary damages.
12. **Complete Agreement.** This Agreement, including the provisions of the MOU incorporated herein and the documents referred to herein, is the complete and final agreement between the Parties regarding the development of the Shared Eligibility Service and may only be modified by a written amendment entered into by both Parties indicating the intention to modify this Agreement. Any dispute between the parties will be escalated to the Executive Steering Committee ("ESC") for resolution discussions.

**COLORADO HEALTH  
BENEFIT EXCHANGE**

By:  \_\_\_\_\_

Name: Gary Drews

Title: Interim, Chief Executive Officer

**DEPARTMENT OF HEALTH CARE  
POLICY AND FINANCING**

By:  \_\_\_\_\_

Name: Susan E. Birch, MBA, BSN, RN

Title: Executive Director

**STATE CONTROLLER**

By:  \_\_\_\_\_

Name: Greg P. Tanner

Title: Controller



**COLORADO**

Department of Health Care  
Policy & Financing

Health Information Office  
1570 Grant Street  
Denver, CO 80203

Transmittal #1

MoU between HCPF and C4 (Contract Number: MOU2015002)

**RE: HCPF and C4HCO Designation to Sign Transmittals**

As specified in Section 12 (Primary Contacts) of the MoU between HCPF and C4 (Contract Number: MOU2015002), HCPF and C4HCO will designate a person or persons to sign Transmittals on behalf of the each Party through a Transmittal approved by the C4HCO Contact and HCPF Contact. This Transmittal is effective on the date the MoU is effective.

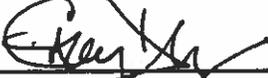
The following people are designated the authority to sign transmittals on behalf of HCPF:

***Susan E. Birch, MBA, BSN, RN***  
***Executive Director***

***Chris Underwood***  
***Director, Heath Information Office***

The following people are designated the authority to sign transmittals on behalf of C4HCO:

***Gary Drews***  
***Interim, Chief Executive Officer***

  
\_\_\_\_\_  
12/4/14

**COLORADO HEALTH  
BENEFIT EXCHANGE**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Gary Drews

Title: Interim, Chief Executive Officer

**DEPARTMENT OF HEALTH CARE  
POLICY AND FINANCING**

By:   
\_\_\_\_\_

Date: 12/4/14

Name: Susan E. Birch, MBA, BSN, RN

Title: Executive Director

