

**PAY FOR SUCCESS CONTRACT**

**BY AND BETWEEN**

**THE STATE OF COLORADO**

**AND**

**COLORADO SEMINARY, AS OWNER AND OPERATOR OF**

**THE UNIVERSITY OF DENVER AND**

**ITS CENTER FOR EFFECTIVE INTERVENTIONS**

**AT THE GRADUATE SCHOOL OF SOCIAL WORK**

**Dated as of December 19, 2018**

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**PAY FOR SUCCESS CONTRACT BETWEEN THE STATE OF COLORADO  
AND THE CENTER FOR EFFECTIVE INTERVENTIONS**

THIS **PAY FOR SUCCESS CONTRACT** (this “**Contract**”) is made and entered into as of the 19<sup>th</sup> day of December, 2018, by and between the **STATE OF COLORADO** (the “**State**”) and **COLORADO SEMINARY**, which owns and operates the UNIVERSITY OF DENVER (the “**Project Sponsor**”) and its Center for Effective Interventions at the Graduate School of Social Work (the “**Lead Provider**”). The State and the Lead Provider are referred to collectively herein as the “**Parties**.” Capitalized terms used herein shall have the meaning set forth herein or in **Exhibit A**.

**RECITALS**

**WHEREAS**, in 2015, the Colorado General Assembly enacted the Pay for Success Contracts Act, C.R.S. §§ 24-37-401 to -403 (the “**Act**”), which established the Pay for Success Contracts Program (the “**Program**”) and the Pay for Success Contracts Fund (the “**Fund**”); and

**WHEREAS**, pursuant to the Act, the State, through the Office of State Planning and Budgeting (“**OSPB**”), is authorized to enter into a contract with a lead contractor for the provision of Program-eligible interventions, including interventions designed to support youth who are at high risk for juvenile justice involvement and/or have problems with substance abuse; and

**WHEREAS**, in 2017, Colorado Governor John W. Hickenlooper, through OSPB, issued a request for proposals (the “**Call for Innovation**”) soliciting innovative approaches to improve outcomes for Colorado underserved youth and their families; and

**WHEREAS**, in response to the Call for Innovation, the Lead Provider submitted a proposal (the “**Proposal**”) to provide the evidence-based, Multi-Systemic Therapy (“**MST**”) interventions set forth in the “**Evaluation Plan**”, attached hereto and incorporated herein by reference as **Exhibit B**, for at-risk teens residing in underserved regions of the State of Colorado (the “**MST Project Services**”); and

**WHEREAS**, the State accepted the Proposal and selected the Lead Provider to serve as the fiscal agent for the project and the lead provider of the MST Project Services pursuant to a pay for success contract that meets the requirements of the Act (the “**MST Project**”); and

**WHEREAS**, recent amendments to the Act created the Youth Pay for Success Initiatives Account (the “**Account**”) within the Fund, and require transfers from the State Marijuana Tax Cash Fund to cover the costs associated with the MST Project for State fiscal year 2018-2019 through State fiscal year 2020-2021, resulting in a balance sufficient to fully meet the State’s maximum obligations through the end of State fiscal year 2022-2023 with respect to the Direct Payments (as hereinafter defined), the Success Payments (as hereinafter defined), and the Cross-Collateral Payment (as hereinafter defined); and

**WHEREAS**, the Lead Provider desires to be the lead provider of the MST Project Services and to act as a fiscal agent for the MST Project pursuant to a pay for success contract, and proposes to obtain funding from The Northern Trust Company (“**Northern Trust**”), The Piton Foundation (“**Piton Foundation**”), and The Colorado Health Access Fund at the Denver Foundation (“**CHAF**”) (Northern Trust, Piton Foundation, and CHAF

are collectively referred to herein as the “**Investors**”) to finance the portion of the operating costs of the MST Project not financed with Direct Payments; and

**WHEREAS**, the Lead Provider will contract with qualified providers of MST interventions (the “**Subcontract Service Providers**”) for the provision of some or all of the MST Project Services as set forth in this Contract and the Subcontract Service Provider Agreements (as hereinafter defined); and

**WHEREAS**, the State will contract with the Colorado Evaluation and Action Lab at the University of Denver (the “**Independent Evaluator**”) to evaluate the MST Project by certifying the specific impact threshold met and calculating the Success Payments and Cross-Collateral Payment, if any, as set forth in this Contract and the Independent Evaluator Agreement (as hereinafter defined); and

**WHEREAS**, a portion of the Total Project Costs (as hereinafter defined) will be paid with funds (the “**Investment Funds**”) provided to the Lead Provider by the Investors pursuant to investment documents entered into between the Lead Provider and Investors (the “**Investment Documents**”); and

**WHEREAS**, a portion of the Total Project Costs will be paid with funds provided by the State in the manner set forth in this Contract (the “**Direct Payments**”); and

**WHEREAS**, the State will make payments to the Lead Provider pursuant to this Contract only if specific, measurable outcomes are achieved by the MST Project (the “**Success Payments**”); and

**WHEREAS**, to the extent the MST Project Services contemplated under this Contract and the Subcontract Service Provider Agreements do not yield results such that the State is obligated to make the Success Payments and Cross-Collateral Payment, if any, in a sufficient amount for the Lead Provider to pay all amounts due under the Investment Documents, any resulting shortfall of amounts due will be forgiven, and the Lead Provider will not have any obligation to pay any such shortfall under the Investment Documents, except as set forth under the terms of this Contract and/or the Investment Documents.

**NOW, THEREFORE**, the Parties are entering into this Contract to facilitate the implementation of the MST Project and to set forth the State’s obligations to make Direct Payments and to make the Success Payments and Cross-Collateral Payment, if any, upon the achievement by the MST Project of the outcomes described herein.

## **ARTICLE 1**

### **TERM**

Section 1.01 Obligations Commencing on Performance Start Date. Except as set forth in Section 1.02 and Section 1.03 hereof, the Parties shall start performing their duties and obligations in accordance with the terms and conditions of this Contract upon the Performance Start Date.

Section 1.02 MST Project Launch Conditions. The “**Performance Start Date**” shall be the later of (a) the Effective Date (as defined in Exhibit A), (b) January 1, 2019, and (c) the date on which the Lead Provider and State agree in writing, with Investor Consent (as hereinafter defined) that all of the following conditions have been satisfied or waived (collectively, the “**MST Project Launch Conditions**”):

(a) Each of the following documents (collectively, the “**Transaction Documents**”) shall have been executed and delivered by the parties thereto:

- (i) This Contract;
- (ii) The Investment Documents;
- (iii) The Independent Evaluator Agreement (as defined below);
- (iv) Subcontract Service Provider Agreements (as defined below) with the MST Project Launch Subcontract Service Providers (as defined below); and
- (v) Grant agreement(s) from external funders to fully fund the Independent Evaluation for the MST Project.

(b) All conditions precedent to the effectiveness of the Transaction Documents shall have been satisfied or waived.

Section 1.03 Determination of MST Project Launch. In the event that the Performance Start Date has not occurred within sixty (60) days of the Effective Date, the Governance Committee shall meet on a biweekly basis to facilitate the achievement of the MST Project Launch Conditions. In the event the Parties do not agree in writing, with Investor Consent, that the MST Project Launch Conditions have been satisfied on or before April 1, 2019, this Contract shall automatically terminate and have no further force or effect, and no Party, or any of their respective affiliates or any of their members, managers, officers, or directors will have any liability of any nature whatsoever under this Contract, and the Lead Provider shall return to the Investors in the manner set forth in the Investment Documents any unused Investment Funds provided by Investors to the Lead Provider on or before such date.

Section 1.04 Term of the Contract.

(a) The term of this Contract (the “**Term**”) shall commence on the Effective Date and, unless terminated earlier or extended with Investor Consent pursuant to the terms of this Contract, shall terminate on April 1, 2023 (the “**Expected Termination Date**”).

(b) Except as otherwise set forth in this Contract, all rights and obligations of the Parties shall remain in effect for the duration of the Term, and until such time thereafter that (i) all Success Payments and any Cross-Collateral Payment due from the State have been paid to the Lead Provider, (ii) the Lead Provider has distributed all Success Payments and any Cross-Collateral Payment deposited in the Operating Account (as hereinafter defined) in accordance with this Contract and the Investment Documents, and (iii) any Wind-Down Services (as hereinafter defined) and payments associated therewith have been completed.

(c) The provision of the MST Project Services by the Lead Provider or the Subcontract Service Providers may not exceed a period of seven (7) years unless one or more of the Success Measures (as hereinafter defined) is met within the first seven years in which the MST Project Services are provided, but the evaluation of the MST Project may take into account outcomes that occur at any time after the provision of the MST Project Services has been completed.

Section 1.05 Quarters. For purposes of this Contract, each “**Quarter**” shall coincide with a calendar quarter (beginning on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, or October 1<sup>st</sup>).

## **ARTICLE 2**

### **MST PROJECT SERVICES; EVALUATION**

Section 2.01 MST Project Services. During the Term, the Lead Provider shall directly or indirectly provide the MST Project Services for the Target Population (as hereinafter defined) in accordance with this Contract. The MST Project Services shall not supplant any existing state, local government, or school district employee who is providing the same services that the Lead Provider shall provide under this Contract.

Section 2.02 Subcontract Service Provider Agreements.

(a) On or prior to the Performance Start Date, the Lead Provider shall execute contracts in substantially the form attached hereto as **Exhibit C** and incorporated herein (each a “**Subcontract Service Provider Agreement**” and collectively, the “**Subcontract Service Provider Agreements**”) with at least three Subcontract Service Providers selected by the Lead Provider and approved by the Governance Committee (collectively, the “**MST Project Launch Subcontract Service Providers**”).

(b) On or before July 1, 2019, the Lead Provider shall execute a Subcontract Service Provider Agreement with an additional Subcontract Service Provider selected by the Lead Provider and approved by the Governance Committee.

(c) On or before July 1, 2020, the Lead Provider shall execute Subcontract Service Provider Agreements with two additional Subcontract Service Providers selected by the Lead Provider and approved by the Governance Committee.

Section 2.03 Target Population. The “**Target Population**” shall consist of Colorado youth between the ages of 12 and 17 residing in underserved regions selected by the Lead Provider and the State in accordance with the 2018 OSPB MST Request for Information (“**RFI**”), and in additional regions to be added to the MST Project based on MST therapist capacity (as determined by Approval of the Governance Committee) in accordance with the youth inclusion and exclusion criteria articulated in the Evaluation Plan. Youth enrolled in the MST Project are referred to herein as “**Participants**”.

Section 2.04 Independent Evaluator Agreement.

(a) Prior to the Performance Start Date, the State will execute a contract in substantially the form set forth in **Exhibit D**, attached hereto and incorporated herein (the “**Independent Evaluator Agreement**”), with the Independent Evaluator to perform the scope of work and provide the evaluation findings and deliverables (“**Evaluation Deliverables**”) set forth therein. Pursuant to the Independent Evaluator Agreement, the Independent Evaluator shall execute and submit to the Governance Committee data-sharing or business associate agreements with the Subcontract Service Providers and the State on or before March 31, 2019.

(b) The State shall not modify the Independent Evaluator Agreement, terminate the Independent Evaluator, or replace the Independent Evaluator without Approval of the Governance Committee.



(c) The Independent Evaluator Agreement shall require that the Independent Evaluator deliver the Evaluation Deliverables to all members of the Governance Committee (as defined herein) and the evaluation funder contemporaneously. The Independent Evaluator Agreement shall prohibit the Independent Evaluator from sharing any Evaluation Deliverables with any third party unless such Evaluation Deliverables have first been provided to the Governance Committee in accordance with this Section.

(d) The Independent Evaluator will be paid in accordance with the terms of the Independent Evaluator Agreement using funds that are separate and apart from Investment Funds, Direct Payments, Success Payments, and any Cross-Collateral Payment. Notwithstanding the foregoing, the State shall make a one-time payment to the Independent Evaluator in October 2019, which amount shall not be counted toward the State's contribution to the Total Project Costs.

Section 2.05 Evaluation Plan.

(a) The Independent Evaluator has prepared, and the Parties have hereby incorporated into this Contract, the Evaluation Plan. In the event of any discrepancy between the Evaluation Plan and this Contract, the terms of the Evaluation Plan shall control.

(b) The Evaluation Plan may be amended only with the Approval of the Governance Committee.

Section 2.06 Provision of Information. To the extent permitted by law, each of the Parties hereby agrees to provide such information as is required pursuant to this Contract, including the Evaluation Plan, to each other, the Independent Evaluator, and the Investors, as is necessary for each party to carry out its respective evaluation and other responsibilities in accordance with this Contract and the Evaluation Plan; provided that the Parties agree that the data collected by the Independent Evaluator and the sharing of such data shall be subject to the terms of the Independent Evaluator Agreement and applicable data sharing or business associate agreements. The Independent Evaluator Agreement will require that, upon termination of such agreement, the Independent Evaluator will return to the State and the Lead Provider, and provide an irrevocable license to the State, the Lead Provider, and the Investors to use, all of the data, reports, analyses, work product, and intellectual property provided or acquired by the Independent Evaluator in connection with the MST Project, except for confidential information regarding any Participant, in a format specified by the State, the Lead Provider, and the Investors.

Section 2.07 Acknowledgement. The State acknowledges and agrees that the Lead Provider and the Independent Evaluator are independent institutes within the Project Sponsor and that this does not give rise to a conflict of interest or other breach hereunder for or by the Project Sponsor, the Lead Provider, or the Independent Evaluator. During the term of this Contract, the Lead Provider shall interact with the Independent Evaluator only as necessary to perform its obligations under this Contract and shall not attempt to influence the Independent Evaluator in the performance of its obligations under the Independent Evaluator Agreement.

### ARTICLE 3 MST PROJECT FUNDING

Section 3.01 MST Project Budget; Total Project Costs. The MST Project budget in **Exhibit E** (the “**MST Project Budget**”) sets forth the agreed upon total cost for the delivery of the MST Project Services and certain other costs associated with the administration of the MST Project (such total costs, collectively, “**Total Project Costs**”) over the Term. The MST Project Budget may be amended from time to time during the Term by the Lead Provider with written notice to the Governance Committee, so long as such amendments do not cause the Total Project Costs to change. Notwithstanding the foregoing, the Lead Provider shall not increase the aggregate amount of the Lead Provider’s portion of the MST Project Budget at the expense of the Subcontract Service Provider portions of the MST Project Budget or any other portion of the MST Project Budget, and shall not decrease the aggregate sum of the Subcontract Service Provider portions of the MST Project Budget except with the Approval of the Governance Committee.

Section 3.02 Operating Account. The Lead Provider shall establish and maintain a separate demand deposit account (the “**Operating Account**”) at a financial institution acceptable to the State and the Investors.

Section 3.03 Subaccounts. Within the Operating Account, the Lead Provider shall establish and maintain a separate subaccount for Direct Payments (as hereinafter defined) (the “**Direct Payments Subaccount**”) and a separate subaccount for the Investment Funds, Success Payments, and Cross-Collateral Payment, if any (the “**Investment Funds Subaccount**”) (the Direct Payments Subaccount and the Investment Funds Subaccount are hereinafter referred to individually as “**Subaccount**” and collectively as the “**Subaccounts**”). All Direct Payments received by the Lead Provider from the State pursuant to this Contract shall be deposited into the Direct Payments Subaccount. The Success Payments and Cross-Collateral Payment, if any, received by the Lead Provider from the State and all monies received from the Investors pursuant to the Investment Documents shall be deposited into the Investment Funds Subaccount. Any interest earned on monies within a Subaccount shall be held within such Subaccount. The Lead Provider shall not commingle funds in a Subaccount with funds in the other Subaccount.

(a) Any monies within the Direct Payments Subaccount may be transferred from the Operating Account only to (i) pay the Total Project Costs as set forth in this Contract (including Section 3.04 below) and in accordance with the Investment Documents, and in the amounts and at the times set forth in the MST Project Budget; (ii) at the end of the Term, disburse any funds remaining in the Direct Payments Subaccount in a manner that is consistent with this Contract and the Investment Documents; and (iii) in the event of an Early Termination Event, distribute any funds remaining in the Direct Payments Subaccount as described in Section 8.07(f).

(b) Any monies within the Investment Funds Subaccount may be transferred from the Operating Account only to (i) pay the Total Project Costs as set forth in this Contract (including in Section 3.04 below) and in accordance with the Investment Documents and in the amounts and at the times set forth in the MST Project Budget; (ii) transfer the Success Payments and Cross-Collateral Payment, if any, and make other payments to the Investors in accordance with the Investment Documents; (iii) at the end of the Term, disburse any funds remaining in the Investment Funds Subaccount in a manner that is consistent with this Contract and the Investment Documents; and (iv) in the event of a Termination Event, distribute any funds remaining in the Investment Funds Subaccount as described in Section 8.07(f). The State acknowledges that the Investment

Funds Subaccount will, subject to the terms of this Contract, be collaterally pledged to the Investors pursuant to a collateral assignment and account control agreement. Prior to the date of the first payment that is due to be transferred into the Subaccounts pursuant to this Contract, the Lead Provider shall give notice in the manner set forth in Section 9.03 to the State and the Investors of the account numbers and other relevant transfer instructions to be used for electronic transfers of amounts payable into the Subaccounts pursuant to this Contract. After such notice is given, no change in such account numbers or transfer instructions shall be made without further notice to the Investors and the State.

Section 3.04 Payments from Subaccounts. When both Subaccounts hold funds, the Lead Provider shall pay Total Project Costs, including costs incurred by the Lead Provider to provide the Wind-Down Services (as hereinafter defined), first from the Direct Payments Subaccount and, when the Direct Payments Subaccount reaches a fund balance of \$0.00, then from the Investment Funds Subaccount.

Section 3.05 Investors Prohibited from Dictating Manner of Delivery. The Investors are prohibited from dictating the manner of delivery of those MST Project Services that are not related to the potential for the MST Project to achieve the Success Payments and any Cross-Collateral Payment. This Section 3.05 does not prohibit the Investors from performing due diligence in accordance with the Investment Documents.

#### **ARTICLE 4**

##### **DIRECT PAYMENTS; SUCCESS PAYMENTS; CROSS-COLLATERAL PAYMENT**

Section 4.01 Direct Payments. During the Term of this Contract and subject to annual appropriation, the State shall deposit the Direct Payments into the Direct Payments Subaccount of the Operating Account in accordance with the schedule set forth in **Exhibit F** (the “**Schedule of Direct Payments**”).

Section 4.02 Success Payments. The Lead Provider shall be entitled to receive outcome-based payments from the State in an aggregate amount not to exceed \$1,336,600 for the (a) TAM Score Success Payments (as defined herein), (b) Reductions in Secure Detention Success Payment (as defined herein), and (c) Reductions in Out of Home Placement Success Payment (as defined herein) (collectively, the TAM Score Success Payments, Reductions in Secure Detention Success Payment, and Reductions in Out of Home Placement Success Payment (as defined herein) are referred to herein as the “**Success Payments**”). For the avoidance of doubt, Success Payments shall not include the Cross-Collateral Payment, if any, due hereunder.

Section 4.03 Success Measures. The following shall be the success measures (each a “**Success Measure**” and, collectively, the “**Success Measures**”) upon which the Success Payments shall be based:

- (a) “**Therapist Adherence Measures (“TAM”) Score**” shall have the meaning set forth in the Evaluation Plan.
- (b) “**Reductions in Secure Detention**” shall have the meaning set forth in the Evaluation Plan.
- (c) “**Reductions in Out of Home Placements**” shall have the meaning set forth in the Evaluation Plan.

Section 4.04 TAM Score Success Payment Calculation and Payment. **“TAM Score Success Payment”** means up to three payments, if any, that will be made by the State to the Lead Provider in calendar years 2020, 2021, and 2022, in accordance with this Section.

(a) **“Percentage of MST Teams with an Average TAM Score of 0.61 or Better”** shall be calculated in accordance with the formula set forth in the Evaluation Plan.

(b) The Independent Evaluator will determine each TAM Score Success Payment by (i) calculating the Percentage of MST Teams with an Average TAM Score of 0.61 or Better and (ii) identifying the corresponding dollar amount identified in the “Success Payment” column of the payment scale set forth below:

Percentage Threshold	Success Payment
Less than 50%	\$0
50%	\$44,553
66%	\$89,107
75%	\$133,660
83%	\$178,213
100%	\$305,190

(c) Notwithstanding the payment scale set forth in Section 4.04(b), the combined maximum amount of the three TAM Scores Success Payments shall not exceed \$668,300. Therefore, the third TAM Score Success Payment, if any, shall be the lesser of (i) the amount calculated using the formula and scale set forth in Section 4.04(b), or (ii) \$668,300 minus the total of TAM Score Success Payments one and two.

(d) The Independent Evaluator shall certify the amount of each TAM Score Success Payment that the State is required to pay in accordance with Section 4.08 in a report to be submitted to the State, the Lead Provider, and the Investors by the dates set forth in the table below (each a **“TAM Score Outcomes Report”**). The Independent Evaluator’s ability to produce a TAM Score Outcomes Report on time is dependent upon receiving the proper information from the Lead Provider and the Subcontract Service Providers. To the extent there are delays in the receipt of such information that affect the ability of the Independent Evaluator to deliver a TAM Score Outcomes Report on a timely basis, the Independent Evaluator shall inform the Governance Committee, and the deadline for that TAM Score Outcomes Report and the payment date of the related TAM Score Success Payment may be extended at the discretion of the Governance Committee.

Period under Review	TAM Scores Reviewed Through	Evaluator Certification Deadline	State Payment Deadline
First 2 MST teams to launch, CY 2019	December 31, 2019	March 15, 2020	April 1, 2020
First 4 MST teams to	December 31, 2020	March 15, 2021	April 1, 2021

launch, CY 2020			
All MST teams funded through MST Project, CY 2021	June 30, 2021 (for MST Teams who cease providing services prior to September 30, 2021) or September 30, 2021 (for MST Teams who provide services through September 30, 2021)	December 15, 2021	January 1, 2022

(e) The Lead Provider, with Investor Consent, may elect to exclude the TAM Scores for the first three (3) months of Calendar Year 2019 for the purpose of calculating the first TAM Score Success Payment, in which case the State shall direct Independent Evaluator to do the same; provided, however, that the Lead Provider shall submit notice of this election and a compelling rationale for doing so to the Governance Committee on or before January 1, 2020. In the event that Lead Provider elects to exclude TAM Scores pursuant to this Section 4.04(e), Investors shall nonetheless receive the full TAM Score Success Payment in 2020 if the target thresholds were achieved based on a nine-month review period rather than a twelve-month review period.

Section 4.05 Reductions in Secure Detention Success Payment Calculation and Payment.

**“Reductions in Secure Detention Success Payment”** means a one-time payment, if any, that will be made by the State to the Lead Provider in accordance with this Section.

(a) **“Percentage Difference in Probability of Secure Detention”** shall be calculated in accordance with the formula set forth in the Evaluation Plan. The parties acknowledge and agree that the Evaluation Plan contains multiple definitions for “Reductions in Secure Detention.” In the event that the Independent Evaluator certifies more than one Percentage Difference in Probability of Secure Detention for Reductions in Secure Detention as a result of such multiple definitions, the Reductions in Secure Detention Success Payment shall be calculated using the highest Percentage Difference in Probability of Secure Detention.

(b) The Reductions in Secure Detention Success Payment will be determined by the Independent Evaluator by calculating the Percentage Difference in Probability of Secure Detention irrespective of statistical significance and multiplying each percentage point at or above ten percent (10%) by the corresponding amounts set forth in the “Payment Per Percentage Point at or above Minimum Threshold” column of the payment scale set forth below, except that the maximum amount of all MST Project Success Payments combined, excluding any Cross-Collateral Payment, shall not exceed \$1,336,600:

Percentage Threshold ( <i>As defined in the Evaluation Plan, the percentage figures in this column refer to percent change in secure detention between treatment and control groups, not percentage point difference between treatment and control groups</i> )	Payment Per Percentage Point at or above Minimum Threshold
Less than 10%	\$0
10% through 28%	\$35,174
29% through 35%	(19 x \$35,174) + (\$35,324 per percentage point above 28% to maximum of 35%)
Greater than 35%	Max payment \$915,571

(c) The Independent Evaluator shall certify the amount of the Reductions in Secure Detention Success Payment that the State is required to pay in accordance with Section 4.08 in a report to be submitted to the Governance Committee and the Investors on or before March 1, 2023 (the “**Reductions in Secure Detention Outcomes Report**”). The Independent Evaluator’s ability to produce the Reductions in Secure Detention Outcomes Report on time is dependent upon receiving proper information from the Lead Provider and the Subcontract Service Providers. To the extent there are delays in the receipt of such information that affect the ability of the Independent Evaluator to deliver the Reductions in Secure Detention Outcomes Report on a timely basis, the Independent Evaluator shall inform the Governance Committee, and the deadline for the Reductions in Secure Detention Outcomes Report and the payment date of the related Reductions in Secure Detention Success Payment may be extended at the discretion of the Governance Committee.

Section 4.06 Reductions in Out of Home Placement Success Payment Calculation. “**Reductions in Out of Home Placement Success Payment**” means a one-time payment, if any, that will be made by the State to the Lead Provider in accordance with this Section.

(a) “**Percentage Difference in Probability of Out of Home Placement**” shall be calculated in accordance with the formula set forth in the Evaluation Plan.

(b) The Reductions in Out of Home Placement Success Payment will be determined by the Independent Evaluator by calculating the Percentage Difference in Probability of Out of Home Placement irrespective of statistical significance and multiplying each percentage point at or above fifteen percent (15%) by the corresponding amounts set forth in the “Payment Per Percentage Point At or Above Minimum Threshold” column of the payment scale set forth below:

Percentage Threshold ( <i>As defined in the Evaluation Plan, the percentage figures in this column refer to percent change in out of home placement between treatment and control groups, <b>not</b> percentage point difference between treatment and control groups</i> )	Payment Per Percentage Point At Or Above Minimum Threshold
Less than 15%	\$0

15% through 30%	\$41,769
31% through 40%	(16 x \$41,769) + (24,727 per percentage point above 30% to a maximum of 40%)
Greater than 40%	Max payment \$915,571

(c) Reserved.

(d) The Independent Evaluator shall certify the amount of the Reductions in Out of Home Placement Success Payment that the State is required to pay in accordance with Section 4.08 in a report to be submitted to the Governance Committee and the Investors on or before March 1, 2023 (the “**Reductions in Out of Home Placement Outcomes Report**”). The Independent Evaluator’s ability to produce the Reductions in Out of Home Placement Outcomes Report on time is dependent upon receiving proper information from the Lead Provider and the Subcontract Service Providers. To the extent there are delays in the receipt of such information that affect the ability of the Independent Evaluator to deliver the Reductions in Out of Home Placement Outcomes Report on a timely basis, the Independent Evaluator shall inform the Governance Committee, and the deadline for the Reductions in Out of Home Placement Outcomes Report and the payment date of the related Reductions in Out of Home Placement Success Payment may be extended at the discretion of the Governance Committee.

Section 4.07 Cross-Collateral Payment. The “**Cross-Collateral Payment**” means an additional outcome-based payment, if any, that will be made by the State to the Lead Provider in accordance with this Section.

(a) If (i) the total amount of the **Denver Project Success Payments** (as defined in Exhibit A and outlined in the Operating Account cash flow (“**Project Cash Flow**” attached hereto and incorporated herein by reference in Exhibit G-3 of **Exhibit G**)) is less than \$931,200, (ii) the Percentage Difference in Probability of Secure Detentions is at or above twenty-nine percent (29%), and (iii) the aggregate amount of the MST Project Success Payments is at or above \$1,301,600, then the Lead Provider shall be entitled to receive a Cross-Collateral Payment in the amount set forth below:

Percentage Threshold <i>(As defined in the Evaluation Plan, the percentage figures in this column refer to percent change in secure detention between treatment and control groups, <b>not</b> percentage point difference between treatment and control groups)</i>	Payment	Maximum
<b>Reduction in Secure Detention Cross Collateral Payment</b>		
29% through 35%	\$35,324 per percentage point above 28% to maximum of 35%	\$247,271 subject to State Maximum for both projects combined.

(b) Notwithstanding the payment scale set forth in Section 4.07(a), the maximum amount of the outcome-based payments (including the MST Project Success Payments, the Denver Project Success Payments, and any Cross-Collateral Payment) that the State will pay for the MST Project and the Denver Project combined shall not exceed \$2,267,800, and the maximum amount that the State will pay for the MST Project and the Denver Project combined in State Fiscal Year 2019 shall not exceed \$453,382. The maximum amounts payable by the State under this Contract are based on pooled funding for the Pay for Success program, with other contractors providing similar services. The State makes payment to all contractors performing services under the program from available pooled funds. There are no guaranteed minimum levels of service or funding for Project Sponsor or Lead Provider or for any of the contractors participating in the program. Payments are limited to the unpaid obligated balance of the pooled fund, on a state fiscal year basis. If analysis of expenditure from the pooled fund indicates the pooled fund is at risk of depletion before the end of the funding period, the State may notify Project Sponsor in writing of suspension of services for a period of time.

(c) The Independent Evaluator shall certify the amount of the Cross-Collateral Payment that the State is required to pay in a report to be submitted to the Governance Committee and the Investors on or before March 1, 2023 (the “**Cross-Collateral Payment Outcomes Report**”). The Independent Evaluator’s ability to produce the Cross-Collateral Payment Outcomes Report on time is dependent upon receiving proper information from the Lead Provider and the Subcontract Service Providers. To the extent there are delays in the receipt of such information that affect the ability of the Independent Evaluator to deliver the Cross-Collateral Payment Outcomes Report on a timely basis, the Independent Evaluator shall inform the Governance Committee, and the deadline for the Cross-Collateral Payment Outcomes Report and the payment date of the related Cross-Collateral Payment may be extended at the discretion of the Governance Committee. The TAM Score Outcomes Report, Reductions in Secure Detention Outcomes Report, Reductions in Out of Home Placement Outcomes Report, and Cross-Collateral Payment Outcomes Report are hereinafter referred to individually as an “**Outcome Report**” and collectively as the “**Outcome Reports**”).

#### Section 4.08 Disbursement of Success Payments and Cross-Collateral Payment.

(a) Within thirty (30) days after receipt of one or more Outcome Reports, and regardless of whether there are any disputes in the calculations of the Independent Evaluator as described in Section 4.09, the State shall deposit into the Investment Funds Subaccount of the Operating Account funds sufficient to pay the Success Payments and Cross-Collateral Payment, if any. Except as otherwise provided in the Investment Documents, within five (5) Business Days of the State’s deposit of the Success Payments and Cross-Collateral Payment, if any, into the Investment Funds Subaccount, the Lead Provider shall disburse such Success Payments and Cross-Collateral Payment to the Investors pursuant to the terms and conditions of the Investment Documents.

(b) Provided the MST Project continues through the Expected Termination Date, if, following the issuance of the Outcome Report issued on or about March 1, 2023, the aggregate Success Payments (not including any Cross-Collateral Payment) to be paid by the State for the MST Project will exceed \$1,301,600, then the State may, in its sole discretion, withhold up to \$35,000 from the final Success Payment; except the State shall not withhold such amounts if funds sufficient to make the final Success Payment have been transferred to the Account and appropriated for the MST Project. This Section 4.08(b) shall have no



impact on the calculation or disbursement of the Cross-Collateral Payment in accordance with Sections 4.07 and 4.08(a).

Section 4.09 Dispute Resolution. In the event of a dispute between the State, the Lead Provider, and the Investors regarding amounts owed under Sections 4.04, 4.05, 4.06, and 4.07, the State shall pay the amount that it acknowledges that the Lead Provider has earned within the timeframes set forth in Section 4.08. The State, the Lead Provider, and the Investors shall first attempt to resolve the dispute among themselves in good faith. If direct negotiation does not resolve the dispute, then the dispute shall be resolved by submission to binding arbitration held in Denver, Colorado before a single neutral arbitrator at the Judicial Arbiter Group, Inc., provided that such arbitration shall be concluded within ninety (90) days after such submission. The State, the Lead Provider, and the Investors shall share equally in the cost of the arbitration.

Section 4.10 State Representations on Direct Payments, Success Payments, and Cross-Collateral Payment.

(a) The State is authorized to enter into this Contract and to carry out its obligations hereunder. The State has duly authorized and approved the creation of the Account within the Fund and the use of a portion of the funds deposited therein to make the Direct Payments, the Success Payments, and the Cross-Collateral Payment, if any.

(b) The State represents that, as of the Performance Start Date, the balance in the Account collectively dedicated to the MST Project and the Denver Project (collectively, the “**PFS Projects**”) is not less than \$989,470, less legal fees paid by the State for the preparation of the transaction and closing documents for the PFS Projects.

Section 4.11 State Financial Obligations Limited to Monies on Deposit in the Account; Deposit of Monies to Account Subject to Annual Appropriation.

(a) The State’s obligation to pay the Direct Payments, the Success Payments, and the Cross-Collateral Payment, if any, shall be limited to monies on deposit in the Account and appropriated for the MST Project, which, subject to annual appropriation by the State, are payable as the Direct Payments, Success Payments, and Cross-Collateral Payment, if any, so long as this Contract is in effect. On and after the Performance Start Date, monies in the Account and appropriated for the MST Project shall be held in cash or, if invested, shall be invested in accordance with applicable law and the State’s investment policy, and earnings shall remain in the Account.

(b) Monies currently held in the Account and appropriated for the MST Project shall remain in the Account. Additional monies appropriated for the MST Project in State fiscal year 2018-2019 and monies appropriated for the MST Project in subsequent fiscal years shall be deposited in the Account.

(c) The State agrees that it shall direct the authorized representative of the State at any time charged with the responsibility of formulating budget proposals to include in the annual budget proposals submitted to the General Assembly, for any State fiscal year in which this Contract shall be in effect, the amounts sufficient to maintain minimum balances for the MST Project in the Account that are set forth in Exhibit F on the dates set forth therein for each State fiscal year in which this Contract is in effect. To the

extent that the minimum balance set forth in Exhibit F for a particular State fiscal year is not maintained by the State, and the Lead Provider has not exercised (including at Investors' direction) its option to terminate this Contract pursuant to Section 8.03(d), the State agrees that it shall direct the authorized representative of the State to include in the annual budget proposal for the succeeding State fiscal year the amount needed to maintain such minimum balance by the State for the prior State fiscal year in addition to the amount needed to maintain the minimum balance for such succeeding State fiscal year. Notwithstanding this directive regarding the formulation of budget proposals, it is the intention of the State that any decision to effect an appropriation shall be made solely by the State and the actions of the officials of the State.

(d) The State's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the General Assembly, paid into the Account, designated for the MST Project, and encumbered for the purpose of this Contract. The State does not by this Contract pledge present cash reserves for payment or performance in future fiscal years. This Contract does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the State.

Section 4.12 State Notification. In the event funds in the amount set forth in Exhibit F are not appropriated for the MST Project with respect to any State fiscal year, the State will notify the Lead Provider and the Investors of such occurrence in writing no later than five (5) days after the adjournment of the regular legislative session of the State fiscal year in which appropriation failed to occur.

Section 4.13 Calculation of Early Success Payments Following an Early Termination Event.

(a) If this Contract is terminated prior to the end of the Term due to an Early Termination Event, the State shall request that, as early as is feasible after the expiration of the Wind-Down Period, and in any event no later than the original due date of the original Outcomes Report for a particular Success Measure, the Independent Evaluator shall submit to the State, the Lead Provider, and the Investors a "**Final Outcomes Report**" calculating the Success Payments and Cross-Collateral Payment, if any, that have accrued as of the expiration of the Wind-Down Period (each an "**Early Success Payment**" and collectively the "**Early Success Payments**") using the following formulas (the "**Early Success Payment Formulas**"):

(i) The Independent Evaluator shall calculate the Early Success Payment for TAM Scores by multiplying the dollar amount identified in accordance with Section 4.04(b) by the Early Termination Reduction Factor. The "**Early Termination Reduction Factor**" shall be determined by dividing the number of calendar days in the Early Termination Review Period by the number of calendar days in the calendar year in which the Early Termination Event occurs. The "**Early Termination Review Period**" means the period of time from January 1 through the expiration of the Wind-Down Period for the calendar year in which the Early Termination Event occurs.

(ii) The Independent Evaluator shall calculate the Early Success Payments for Reductions in Secure Detention and Reductions in Out of Home Placements using the methods set forth in Sections 4.05(b) and 4.06(b) and multiplying the total amount by a percentage representing the number of Quarters in which Participants were served through the expiration of the Wind-Down Services divided by ten (10). Such Early Success Payments shall be further reduced by twenty-five percent (25%) if the Lead Provider, at Investors' direction and without

concurrent State consent, terminates this Contract prior to the eighth Quarter pursuant to Sections 8.02(a) or 8.02(b).

(iii) Except for an Early Termination Event pursuant to Sections 8.03(a)-(c), the Lead Provider shall not be eligible to receive a Cross-Collateral Payment following an Early Termination Event.

(iv) If the Denver Project terminates early in accordance with the terms of the Denver Project pay for success contract and the MST Project does not terminate early, then the Cross-Collateral Payment for the MST Project shall not exceed the Investors' principal loss following Denver Project wind down and disbursement of early success payments, if any, for the Denver Project.

(b) Within sixty (60) days of receipt of the Final Outcomes Report and subject to then-existing appropriations, the State shall deposit into the Investment Funds Subaccount of the Operating Account funds to pay the Early Success Payments that have accrued as of the expiration of the Wind-Down Period and not previously paid by the State, if any. If the then-existing appropriation is less than the amount of Early Success Payments earned, then the State, acting through OSPB, shall promptly submit a request for appropriation to the General Assembly in the amount of the deficiency. If the Final Outcomes Report is submitted on or before November 15, the request for appropriation shall be a supplemental appropriation for the then-current fiscal year. If the Final Outcomes Report is submitted after November 15, then the request for appropriation shall be for the following fiscal year. Within five (5) Business Days of the State's deposit of any Early Success Payments into the Investment Funds Subaccount, the Lead Provider shall transfer such Early Success Payments to the Investors pursuant to the terms and conditions of the Investment Documents. Notwithstanding this directive regarding the submission of appropriation requests, it is the intention of the State that any decision to effect an appropriation shall be made solely by the State and the actions of the officials of the State.

## **ARTICLE 5 OVERSIGHT AND REPORTING**

Section 5.01 Operating Committee. An operating committee comprised of the parties identified under subsection (b) of this Section (the "**Operating Committee**") shall be established to oversee the day-to-day operations and service delivery of the MST Project, including, but not limited to, making routine decisions about MST Project implementation. The Operating Committee will serve in an advisory capacity to the MST Project to facilitate programmatic adjustments in the interest of improving the provision of MST Project Services and/or the efficiency of the MST Project and will not have any authority to bind the Parties in any way under this Contract or to change any terms of this Contract or the Investment Documents.

(a) The Operating Committee shall hold regular meetings ("**Operational Meetings**") at least twice per month commencing on the Performance Start Date until six (6) months thereafter, and, after such time, at least once a month for the remainder of the Term; provided, however, that the Lead Provider may cancel a regularly scheduled Operational Meeting upon five (5) Business Days' notice to the other Operating Committee Members and the Investors if the Lead Provider determines, in its sole discretion, that

such Operational Meeting is not necessary. The Lead Provider shall provide written notice to the Operating Committee Members (as defined below) and the Investors of regularly scheduled Operational Meetings on an annual basis, any changes to the schedule within at least five (5) Business Days of the change, and each emergency meeting as soon as practicable after the emergency meeting is scheduled. The State and the Lead Provider shall endeavor to schedule Operational Meetings and Governance Committee Meetings back-to-back on the same day for the convenience of the members.

(b) As of the Performance Start Date, the Operating Committee's membership will include, at minimum, the State, the Lead Provider, the Subcontract Service Providers, and the Independent Evaluator (collectively, the "**Operating Committee Members**"). Each Operating Committee Member shall designate one representative to attend Operating Committee meetings on its behalf. The Lead Provider may designate up to three additional members of the Operating Committee who represent key stakeholders, including, but not limited to, families and youth (each a "**Key Stakeholder**"), and may establish a mechanism for rotating membership on the Operating Committee among Key Stakeholders. In addition to adding Key Stakeholders, the Lead Provider may add additional members to the Operating Committee with the Approval of the Governance Committee. Subject to compliance with applicable privacy laws, the Investors may attend all meetings of the Operating Committee. The Lead Provider's designated representative shall serve as the chair of the Operating Committee and shall be responsible for the raising of agenda items identified by the Operating Committee Members and facilitating group discussions at the Operational Meetings. The Lead Provider shall prepare an agenda and circulate the agenda to all Operating Committee Members and the Investors at least two (2) Business Days in advance of any Operational Meeting. The agenda for an Operational Meeting may include, but is not limited to, the following items:

- (i) A discussion of the most recent Outcomes Reports, to the extent such reports have not been discussed at an earlier meeting;
- (ii) A description of any significant changes to the MST Project Services that are being considered or implemented;
- (iii) A discussion of MST Project trends; and
- (iv) A discussion of Participants' progress.

(c) The Lead Provider shall prepare and circulate, by electronic mail, minutes of all Operational Meetings within ten (10) Business Days after the meeting to all Operating Committee Members and the Investors. Minutes shall be deemed approved within two (2) Business Days if no objections have been submitted to the Lead Provider by any of the Operating Committee Members.

(d) Any of the Operating Committee Members may call for a special meeting of the Operating Committee upon one Business Day's notice to discuss an urgent matter. The notice for the special meeting of the Operating Committee shall include the agenda and reason for the special meeting.

(e) All Operational Meetings may be held in person or by phone or similar communication medium.

(f) The Operating Committee may, with the consent of the State and the Lead Provider, establish its own meeting schedule, create sub-committees with selected Subcontract Service Providers, and elect to hold meetings without Subcontract Service Providers in attendance.

(g) Notwithstanding anything in this Contract to the contrary, the preparation and distribution of agenda materials and minutes, and the discussions regarding same at Operational Meetings, shall be in accordance with Sections 6.09(b) and 9.18 of this Contract and applicable privacy laws.

Section 5.02 Governance Committee Meetings.

(a) A governance committee consisting of the parties identified below (the “**Governance Committee**”) shall be established for the purpose of resolving disputes and making certain determinations as outlined in this Contract.

(b) The Governance Committee’s membership will consist of the State, the Lead Provider, the Investors, and the Independent Evaluator. The voting members of the Governance Committee shall be the State, the Lead Provider, and the Investors. Unless otherwise provided in this Contract, matters that require the approval of the Governance Committee under this Contract shall require the vote of both the State and the Investors (which vote of the Investors shall be determined in the same manner as Investor Consent) (“**Approval of the Governance Committee**”) and shall not require votes of any other members of the Governance Committee, except as provided in Section 5.02(j). To the extent other entities attend a Governance Committee Meeting, such entities will not be entitled to a vote. The Parties acknowledge and agree that their attendance at the Governance Committee Meetings is essential to the success of the MST Project and, absent extraordinary circumstances, failure of any authorized representative of the State or the Lead Provider to attend any regularly scheduled or emergency meeting of the Governance Committee shall constitute a Material Breach by the State or the Lead Provider, as the case may be, under this Contract.

(c) The Lead Provider shall provide written notice to all members of the Governance Committee of regularly scheduled Governance Committee Meetings on an annual basis, any changes to the schedule within at least five (5) Business Days of the change, and each emergency meeting as soon as practicable after the emergency meeting is scheduled.

(d) The Governance Committee shall hold regular meetings (“**Governance Committee Meetings**”) once per Quarter or such other schedule as the members of the Governance Committee shall deem appropriate. The State, the Lead Provider, or the Investors may call for an emergency Governance Committee Meeting upon two (2) Business Days’ notice to discuss business of a sufficiently pressing nature that it cannot, in the determination of the entity calling the meeting, wait until the next regularly scheduled Governance Committee Meeting (an “**Emergency Governance Committee Meeting**”). The notice for an Emergency Governance Committee Meeting shall include the agenda and reason for the emergency meeting.

(e) The Lead Provider shall work with the Operating Committee members to prepare an agenda and circulate the agenda and most recent reports on the status of the MST Project, by electronic mail, to all members of the Governance Committee, at least five (5) Business Days in advance of any Governance Committee meeting, except in the case of an Emergency Governance Committee Meeting, in which case the Lead Provider will distribute an agenda as soon as reasonably practicable. The agenda for each Governance

Committee Meeting shall include a report delivered by the Lead Provider regarding the performance of or any issues regarding the Lead Provider. Notwithstanding anything in this Contract to the contrary, the preparation and distribution of agenda materials and minutes, and the discussions regarding same at Governance Committee Meetings, shall be in accordance with Sections 6.09(b) and 9.18 of this Contract and applicable privacy laws.

(f) All Governance Committee Meetings may be held in person or by phone or similar communication medium.

(g) The Lead Provider shall prepare and circulate minutes of all Governance Committee Meetings within five (5) Business Days after the Governance Committee meeting to all Governance Committee members. Meeting participants shall have two (2) Business Days to comment on the draft minutes after which the minutes will be deemed approved.

(h) The Governance Committee, in considering the matter at issue, may seek input from any member of the Operating Committee or any other person or entity it deems useful.

(i) An authorized representative of the State is authorized to take the actions described in this Article 5 of the Contract on behalf of the State.

(j) Notwithstanding Section 5.02(b), changes to the following sections of the Contract shall require approval of the State, the Lead Provider, and the Investors ("**Unanimous Approval of the Governance Committee**"):

(i) Section 5.05.

(ii) Article 6.

(iii) Section 8.02.

(iv) Section 8.03.

(v) Section 8.07(c).

(vi) Section 8.07(g).

(vii) Section 8.08.

(viii) Section 8.10.

Section 5.03 Reporting on the Operating Account. Within forty-five (45) days from the end of each Quarter, the Lead Provider shall provide financial statements for the Operating Account and the Subaccounts to the Operating Committee and to the Investors, which financial statements shall document, in reasonable detail, the nature and amount of all deposits to and disbursements from the Operating Account and Subaccounts during each Quarter, and, to the extent that any such disbursements have been made to reimburse the Lead Provider for expenditures related to the MST Project, an accounting, in reasonable detail, of such expenditures. If the balances in the Operating Account and Subaccounts as of the end of any Quarter reflect a variance by more than thirty percent (30%) from any individual line item set forth in the detailed MST

Project Budget, then the Lead Provider will provide a detailed report to the Operating Committee and the Investors setting forth the reasons for such variance.

Section 5.04 Performance of the Independent Evaluator. The State will be responsible for enforcing the Independent Evaluator Agreement, including ensuring the timing of the Independent Evaluator's reports, analyses, and the performance of the Independent Evaluator's obligations set forth in the Independent Evaluator Agreement and the Evaluation Plan. The State is not required to file any suit in equity or at law to enforce the Independent Evaluator's obligations. Such enforcement rights shall include the termination and replacement of the Independent Evaluator under the Independent Evaluator Agreement for failure to comply with its obligations hereunder or thereunder. Any such termination or replacement is subject to Approval of the Governance Committee. The Independent Evaluator will be permitted to terminate the Independent Evaluator Agreement in accordance with its terms with the effect described in 8.04(e) hereof. The State shall provide written notice to the Lead Provider and the Investors within fifteen (15) days after the voluntary withdrawal or termination of the Independent Evaluator.

Section 5.05 Performance of Subcontract Service Providers. The Lead Provider will be responsible for enforcing the Subcontract Service Provider Agreements; provided, however, that the Lead Provider's resources for enforcing such contracts are limited to the assets within the Operating Account. The Lead Provider is not required to file any suit in equity or at law to enforce the Subcontract Service Provider Agreements. Such enforcement rights shall include the termination and replacement of a Subcontract Service Provider for failure to comply with its obligations thereunder. Any such replacement is subject to Approval of the Governance Committee. A Subcontract Service Provider will be permitted to terminate its Subcontract Service Provider Agreement in accordance with the terms of such agreement with the effect described in Section 8.02(e) hereof. The Lead Provider shall provide written notice to the State and the Investors within fifteen (15) days after the voluntary withdrawal or termination of a Subcontract Service Provider.

Section 5.06 Investor Consent. For purposes of this Contract, "**Investor Consent**" means concurrence of more than sixty-five percent (65%) of the Investors, as measured by each Investor's pro rata share of capital invested in the MST Project. The Lead Provider shall be responsible for notifying the Investors within the time frames set forth in the Investment Documents regarding any matter for which Investor Consent is required under this Contract by providing the Investors with a description of the matter submitted for Investor Consent. The Investors shall provide written notice (including email notice) to the Lead Provider of whether or not Investor Consent has been obtained regarding such matter as soon as possible, but in all events within ten (10) Business Days from the date of receipt of all information that the Investors may reasonably request in order to provide such Investor Consent. The failure of the Investors to provide Investor Consent within such period of time shall constitute withholding of Investor Consent.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES OF THE LEAD PROVIDER**

The Lead Provider hereby represents and warrants to the State as of the date hereof and on the date of each disbursement pursuant to this Contract as follows:

Section 6.01 Organization, Good Standing, and Qualification. The Lead Provider represents and warrants that it is a nonprofit corporation organized, validly existing, and in good standing under the laws of

the State of Colorado, is qualified to conduct business in the State, and has all requisite corporate power and authority to own, operate and lease its properties and assets, to carry on its business as currently conducted, to provide services in accordance with this Contract, and to enter into and perform its obligations under this Contract

Section 6.02 Authorization; Enforceability. The Lead Provider has all requisite power and authority to enter into, execute, and deliver this Contract and perform its obligations hereunder. The execution and delivery of this Contract and the performance hereunder have been duly authorized by all necessary corporate action on the part of the Lead Provider, and no other proceedings or actions on the part of the Lead Provider are necessary to authorize the execution and delivery of this Contract by the Lead Provider. This Contract has been duly and validly executed and delivered by the Lead Provider and constitutes the valid and binding obligation of the Lead Provider, enforceable in accordance with its terms, except as enforcement may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights generally, or (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

Section 6.03 Non-Contravention. The execution and delivery of this Contract by the Lead Provider does not, and the performance by the Lead Provider of its obligations hereunder and the consummation of the transactions contemplated hereby shall not: (a) conflict with, result in any violation of, constitute (with or without notice or lapse of time or both) a default under, result in or give to any person or another party a right of termination, cancellation or acceleration of any obligation under: (i) any provision of the articles of organization, operating agreement, or other applicable organizational documents of the Lead Provider; (ii) any contract, lease, agreement, or instrument by which the Lead Provider is bound or to which the Lead Provider's assets or properties are subject; or (iii) any law or governmental order applicable to or binding on the Lead Provider or any of the Lead Provider's assets and properties (except in each of (i), (ii), or (iii), where such conflict, violation, default, termination, cancellation, acceleration, or loss would not reasonably be expected to have a material adverse effect on the Lead Provider or its ability to perform under this Contract).

Section 6.04 Governmental Consents. No consent, approval, authorization, license, governmental order or permit of, or declaration, filing or registration with, or notification to, any governmental authority is required to be made or obtained, and no consent or approval of any other person is required by the Lead Provider in connection with the execution, delivery, and performance of this Contract or the consummation of the transactions contemplated hereby.

Section 6.05 Compliance with Laws; Litigation.

(a) To the knowledge of the Lead Provider, the Lead Provider is in material compliance with all applicable laws, including, without limitation, laws that are applicable to its properties and assets, the conduct of its operations, and the performance of its services.

(b) There is no action of any nature pending or, to the knowledge of the Lead Provider, threatened, relating to, or affecting the Lead Provider or any of its properties or assets, or that challenges or seeks to prevent, enjoin, or delay the transactions contemplated in this Contract, nor, to the knowledge of the



Lead Provider, is there any reasonable basis therefor or any facts, threats, claims, or allegations that would reasonably be expected to result in any such action.

(c) To the knowledge of the Lead Provider, none of its current officers or directors has been convicted of, or pleaded guilty to, or entered a plea of no contest to, any felony.

Section 6.06 Financial Statements.

(a) Prior to accepting any funds, the Lead Provider will have in place systems and processes that are customary for a non-profit corporation formed under the laws of the State of Colorado, which may include entering into an agreement with a third party to provide such services to the Lead Provider and that are designed to: (i) provide reasonable assurances regarding the reliability of its financial statements, and (ii) in a timely manner accumulate and communicate to the Lead Provider's principal representatives the type of information that is required to be disclosed in its financial statements.

(b) Neither the Lead Provider, nor, to the knowledge of the Lead Provider, any of its affiliates, employees, if any, auditors, accountants or representatives has received or otherwise obtained knowledge of any complaint, allegation, assertion or claim, whether written or oral, regarding the adequacy of the accounting systems and processes described under Section 6.06(a) or the accuracy or integrity of its financial and accounting systems. To the knowledge of the Lead Provider, no employee, if any, has provided or threatened to provide information to any governmental authority regarding the commission of any crime or the violation of any law applicable to the Lead Provider or any part of its operations.

Section 6.07 Disclosure. None of the representations or warranties of the Lead Provider contained herein, and none of the other information or documents furnished or to be furnished to the State or any of its representatives by the Lead Provider on or prior to the Performance Start Date, contains any untrue statement of a material fact.

Section 6.08 Use of Proceeds. The Lead Provider will use the amounts deposited in the Operating Account in the manner specified in Article 3 and Exhibit F of this Contract.

Section 6.09 Covenants. The Lead Provider hereby covenants from and after the Performance Start Date, as follows:

(a) Access to Information. The Lead Provider's books and records shall be maintained at its principal office. The Lead Provider shall and shall cause its officers, employees, auditors, and agents to afford the officers, employees, and authorized agents and representatives of the State and Investors reasonable access, during normal business hours and upon a minimum of five (5) Business Days' notice, to its books and records directly related to this Contract. Furthermore, the Lead Provider shall cause its fiscal agent, if any, to make its management, employees, officers, directors, accountants, and auditors available to State representatives as the State may from time-to-time reasonably request, during normal business hours and upon a minimum of five (5) Business Days' notice; provided that if the Lead Provider is not performing in accordance with this Contract, and such concerns have been raised by the Governance Committee, then the Lead Provider will provide, or will cause its fiscal agent, if any, to provide, the access as described in this Section on one (1) Business Days' notice.

(b) Confidentiality and Non-Disclosure. The Lead Provider hereby agrees to be bound by any applicable confidentiality and non-disclosure terms and conditions of the State set forth in Section 9.18, and in accordance therewith, shall adhere to the requirements and protocols relating to the protection, use, and disclosure of data and information related to the MST Project Services and the Eligible Referrals, although the Parties do not anticipate that the Lead Provider will receive personally identifiable information under this Contract.

(c) Lead Provider's Activities. The Lead Provider's obligations under this Contract are limited to the express requirements of this Contract, and the Lead Provider shall have no obligation to perform any other services or engage in any other activities not set forth herein.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF THE STATE**

The State hereby represents and warrants to the Lead Provider as of the date hereof and on the date of each disbursement pursuant to this Contract as follows:

Section 7.01 Authorization; Enforceability. The State represents and warrants that it has all requisite power and authority to enter into, execute and to deliver this Contract and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Contract, the performance of the obligations hereunder, and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the State, and no other proceedings or actions on the part of the State are necessary to authorize the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Section 7.02 Posting of PFS Contract. Pursuant to C.R.S. § 24-37-403(3), this Contract, in substantially the form executed by the Parties, was posted on the OSPB's website for public comment from November 15 to 27, 2018. This Contract has been duly and validly executed and delivered by the State and constitutes a valid and binding obligation of the State, enforceable in accordance with its terms, except as enforcement may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights generally, or (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

Section 7.03 Non-Contravention. The execution and delivery of this Contract by the State does not, and the performance by the State of its obligations hereunder and the consummation of the transactions contemplated hereby shall not conflict with, result in any violation of, constitute (with or without notice or lapse of time or both) a default under, result in or give to any person or another party a right of termination, cancellation, or acceleration of any obligation or result in a loss of a benefit or an increase in a cost or liability under any provision of the constitution or laws of the State.

Section 7.04 Covenants as to the Account. The State covenants and agrees that the funds annually appropriated by the General Assembly, deposited into the Account, and designated for the MST Project shall be encumbered each Fiscal Year, and the aggregate amount of funds appropriated to the Account and

designated for the MST Project shall be encumbered before the completion of the Term for making the Direct Payments, Success Payments, and Cross-Collateral Payment owing under this Contract in accordance with Article 4. The State agrees not to encumber such funds in favor of any other party or for any purpose other than the payment of the Direct Payments, Success Payments, and Cross-Collateral Payment contemplated hereunder.

Section 7.05 Full Funding for MST Project Evaluation. The State represents and warrants that it has secured in writing a commitment for philanthropic funding sufficient to fully pay for the cost of the MST Project's evaluation, that it will ensure the MST Project evaluation is fully funded per this commitment, that it will confirm this full funding in writing to the Lead Provider by the Performance Start Date of this Contract, and that it will leverage its option to stop payment of grant funding to the evaluator under the Independent Evaluator Agreement to enforce full compliance with the Independent Evaluator Agreement.

## **ARTICLE 8 TERMINATION; REMEDIES**

Section 8.01 Early Termination; Notice; Wind-Down Period. This Contract may be terminated prior to the end of the Term under certain circumstances provided in Sections 8.02, 8.03, 8.04, 8.05, and 8.06 hereof (each, an **"Early Termination Event"**). If a Party desires to exercise its right to terminate the Contract due to an Early Termination Event, it shall provide the other Party and the Governance Committee with ninety (90) days' written notice of termination. Except in the event of an acceptable workout pursuant to Section 8.07(b), during such ninety-day notice period (the **"Wind-Down Period"**), the Lead Provider shall provide MST Project Services essential to complete the wind-down of the MST Project, in accordance with the MST Project Budget (the **"Wind-Down Services"**).

Section 8.02 Termination for Cause. This Contract may be terminated for cause (i) by the State without Investor Consent or (ii) by the Lead Provider with Investor Consent or at the direction of Investors in accordance with the Investment Documents (**"Investor Direction"**) as follows:

(a) TAM Score Deficiency. During the Term, the Lead Provider shall provide regular updates to the Operating Committee regarding TAM Scores and shall promptly notify the Governance Committee if the TAM Score for any MST team is below 0.61 (the **"TAM Score Minimum Threshold"**). If, based on six months of TAM Scores, any MST team is below the TAM Score Minimum Threshold, any voting member of the Governance Committee may request that the Lead Provider submit, within sixty days of such request, a corrective action plan to address the deficiency. On April 1, 2020, the Independent Evaluator shall certify to the Governance Committee average TAM Scores for all MST teams that have been launched as of such date. If, on April 1, 2020, average TAM Scores for two (2) or more teams are below the TAM Score Minimum Threshold, the State without Investor Consent or the Lead Provider with Investor Consent may terminate this Contract, or the Lead Provider at Investor Direction shall terminate this Contract.

(b) Low Enrollment. The minimum enrollment threshold for the MST Project is seventy percent (70%) of the overall MST Project enrollment target based on projected annual enrollment levels shown in the Evaluation Plan (the **"Minimum Enrollment Threshold"**). The Lead Provider shall provide regular updates to the Governance Committee regarding MST Project enrollment, and the Independent Evaluator shall provide periodic updates to the Governance Committee as specified in the Evaluation Plan. If MST Project

enrollment falls below seventy-five percent (75%) of the enrollment target on or after six months after the Performance Start Date, any voting member of the Governance Committee may request the Lead Provider to submit, within sixty (60) days of such request, a corrective action plan to address the deficiency. If MST Project enrollment for calendar year 2019 is below seventy percent (70%) of the enrollment target based on the Independent Evaluator's assessment of project enrollment for that calendar year, then any member of the Governance Committee may request a second assessment of MST Project enrollment for the first six months of calendar year 2020 by the Independent Evaluator, which second assessment shall be submitted to the Governance Committee by August 1, 2020. If, following receipt of a second assessment of MST Project enrollment as set forth herein, the MST Project enrollment is still below seventy percent (70%) of the MST Project enrollment target, the State without Investor Consent or the Lead Provider with Investor Consent may terminate this Contract, or the Lead Provider at Investor Direction shall terminate this Contract.

(c) Failure to Execute Subcontract Service Provider Agreements. If, as of the dates set forth in Sections 2.02(b) and (c), the Lead Provider has failed to execute the required Subcontract Service Provider Agreements, the Lead Provider shall submit to the Governance Committee (i) an explanation for the delay and (ii) a plan to execute the Subcontract Service Provider Agreements, which plan shall be subject to the Approval of the Governance Committee. The Lead Provider shall have sixty (60) days from the date of Approval of the Governance Committee to execute the required Subcontract Service Provider Agreements and submit them to the Governance Committee, which shall use good faith efforts to review the Subcontract Service Provider Agreements expeditiously and shall not unreasonably withhold its approval. If there is no Approval of the Governance Committee, or if the Lead Provider fails to execute the Subcontract Service Provider Agreements within the time frame set forth above, the State without Investor Consent or the Lead Provider with Investor Consent or at Investor Direction may terminate this Contract.

(d) Evaluation Failure. The voluntary withdrawal of the Independent Evaluator in accordance with the Independent Evaluator Agreement or the termination of the Independent Evaluator as a result of Independent Evaluator's uncured default under the Independent Evaluator Agreement, and within ninety (90) days after the voluntary withdrawal or termination of the Independent Evaluator, a replacement independent evaluator has not received the Approval of the Governance Committee.

(e) Subcontract Service Provider Withdrawal or Termination. The voluntary withdrawal by a Subcontract Service Provider under a Subcontract Service Provider Agreement or the termination of a Subcontract Service Provider as a result of such Subcontract Service Provider's uncured default under a Subcontract Service Provider Agreement, and within forty-five (45) days after the voluntary withdrawal or termination of a Subcontract Service Provider, a replacement Subcontract Service Provider has not received the Approval of the Governance Committee.

Section 8.03 Lead Provider Termination for Cause. The Lead Provider may, but is not required to (except at Investor Direction), terminate this Contract for cause by delivery of written notice to the State under the following circumstances, subject to Investor Consent, unless termination is pursuant to Section 8.03(e) or 8.03(g):

(a) Failure of the State to Make Direct Payments, Success Payments, or Cross-Collateral Payment When Due. Provided that the Lead Provider is not in Material Breach under this Contract and an

Early Termination Event has not otherwise taken place, if the State fails to make any Direct Payment, Success Payments, or Cross-Collateral Payment as required by this Contract in accordance with Article 4, the Lead Provider shall provide notice to the State of such failure, and the State will have an additional fifteen (15) days after the giving of such notice to make such payment. Unless the Lead Provider is in Material Breach under this Contract, the State's continued failure to make such a payment after the additional fifteen (15) day period is an Early Termination Event. If the Lead Provider is in Material Breach under this Contract, and the Lead Provider has not cured such default, then failure to make such a payment is not an Early Termination Event. For purposes of this Contract, a "**Material Breach**" means a breach of this Contract (including any exhibits hereto) by a Party that would either (i) reasonably be expected to materially adversely impact transfer to the Investors of the Success Payments or Cross-Collateral Payment, if any, or (ii) be a material violation of applicable law.

(b) Failure of the State to Enforce the Independent Evaluator Agreement. After receiving fifteen (15) days' written notice from the Lead Provider, after expiration of all applicable notice and cure periods, the State fails to enforce the terms of the Independent Evaluator Agreement such that (i) an on-going event of default is continuing under such agreement, and (ii) the State is not diligently exercising its contractual remedies to cure such default.

(c) Material Breach by the State. The State Materially Breaches any of its obligations under this Contract other than those that give rise to an event described in paragraph (a) or (b) above, and fails to cure such breach within thirty (30) days following written notice from the Lead Provider (provided that if such default by nature cannot reasonably be cured with due diligence within thirty (30) days, then the State shall continue to diligently pursue a cure within sixty (60) days of receiving notice).

(d) Transfer or Appropriations Failure. Provided that the Lead Provider is not in Material Breach under this Contract and an Early Termination Event has not otherwise taken place, if (i) the State fails to transfer monies for deposit into the Account for the current State fiscal year in the amount needed to maintain the fund balances described in Exhibit F hereof by August 1 of each State fiscal year or (ii) the State fails by the close of any regular legislative session to appropriate funds in the amount needed to make the Direct Payments, Success Payments, and Cross-Collateral Payment, if any, described in this Contract with respect to the following State fiscal year, then the Lead Provider may terminate this Contract; provided, however, that if the State notifies the Lead Provider in writing on or before the fifth Business Day following June 15 that it intends to request that the amount described in (i) be transferred by July 20 of the State fiscal year in question, then the Lead Provider may not terminate this Contract unless the amount is not transferred or appropriated by such July 20. Such termination is made pursuant to and in accordance with the terms of this Contract, and any such transfer or appropriations failure shall not be considered to be a breach or default on the part of the State, and, except as otherwise set forth herein, shall not result in the State having liability to the Lead Provider or any third party for any penalty, liability, or other expense.

(e) Failure Under the Investment Documents. A failure to fund or an "event of default" by the Investors under the terms of the Investment Documents, after the expiration of any applicable notice and cure provisions. Notwithstanding anything in this Contract to the contrary, an Early Termination Event under this Section 8.03(e) shall not require Investor Consent.

(f) Legislative Change. Amendments, modifications, or repeals to C.R.S. § 24-37-403 materially alter scheduled transfers into the Fund or into the Account such that future Direct Payments, Success Payments, or Cross-Collateral Payment cannot reasonably be made.

(g) Material Change to Contract. The Governance Committee approves a material amendment to this Contract, including, but not limited to, the provisions set forth in Section 5.02(j), without the concurrence of the Lead Provider. Notwithstanding anything in this Contract to the contrary, an Early Termination Event under this Section 8.03(g) shall not require Investor Consent.

Section 8.04 State Termination for Cause. The State may, but is not required, to terminate this Contract for cause under the following circumstances:

(a) Material Breach of this Contract by the Lead Provider. If the Lead Provider Materially Breaches (other than due to a breach by the State of this Contract) any of its obligations under this Contract and fails to cure such breach within forty-five (45) days following receipt of written notice from the State or the Investors (provided that if such default by nature cannot reasonably be cured with due diligence within forty-five (45) days, then the Lead Provider shall continue to diligently pursue a cure within sixty (60) days of receiving the notice), then the State may terminate this Contract.

(b) Failure of the Lead Provider to Enforce a Subcontract Service Provider Agreement. After receiving fifteen (15) days' written notice from the State, after expiration of all applicable notice and cure periods, the Lead Provider fails to enforce the terms of a Subcontract Service Provider Agreement such that (i) an on-going event of default is continuing under such agreement, and (ii) the Lead Provider is not diligently exercising its contractual remedies to cure such default.

Section 8.05 Termination by Either Party of the Contract. With Investor Consent, either Party may, but is not required to, terminate this Contract by delivery of written notice to the other Party under the following circumstances:

(a) Force Majeure. Upon the occurrence of any event which is outside the reasonable control of the Party concerned and is not attributable to any act or failure to take preventative action by that Party, including acts of God or any other disaster, natural or manmade, acts of terrorism or similar cause beyond the reasonable control of the Party affected thereby, union strikes, or any other event which prevents a Party from performing its material obligations under this Contract for a period in excess of three (3) months.

Section 8.06 Automatic Termination of the Contract. Subject to Investor Consent or at Investor Direction, this Contract shall terminate in the event that the State and the Lead Provider mutually consent in writing to terminate this Contract.

Section 8.07 Effect of Termination of the Contract.

(a) The Lead Provider shall provide notice to Investors of the occurrence of an Early Termination Event as follows:

(i) If an Early Termination Event occurs that permits the Lead Provider to terminate this Contract, then, within five (5) Business Days of the occurrence of such Early Termination Event, the Lead Provider shall notify the Investors of

such Early Termination Event and whether or not the Lead Provider desires to terminate this Contract. Except for termination in accordance with Sections 8.03(e) and 8.03(g), the Lead Provider shall not terminate this Contract without Investor Consent. If an Early Termination Event occurs that permits the Lead Provider to terminate this Contract, the Investors shall have the right, pursuant to the Investment Documents, to direct the Lead Provider to terminate this Contract.

- (ii) If an Early Termination Event occurs that permits the State to terminate this Contract, then, within five (5) Business Days of receiving written notice of such Early Termination Event, the Lead Provider shall notify the Investors of such Early Termination Event.

(b) If either Party delivers a written notice of termination as a result of an Early Termination Event, then Investors shall have a period of sixty (60) days following receipt of the Lead Provider's notice of such Early Termination Event to propose a workout by which the MST Project may continue by replacing the Lead Provider as a party to this Contract. If the State consents to the proposed workout (which consent shall not be unreasonably withheld), then the State, the Lead Provider, the Investors, and the Governance Committee shall work in good faith to implement the workout and the Lead Provider shall provide such assistance as shall be reasonably requested, including without limitation:

- (i) Preserving all records relating to the MST Project and, upon the request of the Investors or the State, turning such records over to such successor(s) as may be reasonably requested within forty-five (45) days of the effective date of replacement.
- (ii) Designating one or more representatives to be available to such successor(s) within forty-five (45) days of the effective date of replacement, at such times and with such frequency as may be reasonably requested.
- (iii) Turnover of all remaining funds in the Operating Account and an accounting of all previously-expended funds.

(c) In connection with a proposed workout, the successor to the Lead Provider shall assume all obligations of the Lead Provider arising on and after the effective date of the replacement (but not those arising before the effective date) and shall enter into an assignment with the Lead Provider, in form and substance satisfactory to the Lead Provider, in which the successor shall (i) assume the obligations and succeed to the rights of the Lead Provider and (ii) hold the Lead Provider harmless against any obligations with respect to the MST Project that accrue after the effective date of the replacement. No pre-replacement Material Breach shall be attributed to the successor, but the State may condition the replacement on specific actions that the successor must take in connection with any uncured pre-replacement Material Breach.

(d) Notwithstanding any other provision of this Contract, if the State does not agree to a workout proposed by the Investors, then the determination of Success Payments and any Cross-Collateral Payment shall be made in accordance with Section 4.13 of this Contract and this Contract shall terminate in accordance with this Article 8.

(e) Reserved.

(f) Upon an Early Termination Event that results in termination of this Contract, the Parties shall cooperate in the delivery of the Wind-Down Services.

(i) The Lead Provider shall make the following payments from the Operating Account in the following order of priority:

- (I) First, all Success Payments and any Cross-Collateral Payment earned in accordance with this Contract and deposited into the Investment Funds Subaccount shall be paid to the Investors in accordance with the Investment Documents.
- (II) Second, unreimbursed Total Project Costs or expenses incurred by the Lead Provider prior to an Early Termination Event resulting in termination of this Contract and Approved by the Governance Committee shall be paid to the Lead Provider in accordance with Section 3.04.
- (III) Third, costs and expenses incurred by the Lead Provider for providing the Wind-Down Services during the Wind-Down Period and Approved by the Governance Committee shall be paid to the Lead Provider in accordance with Section 3.04.
- (IV) Fourth, all unspent Investment Funds in the Investment Funds Subaccount shall be paid to the Investors in accordance with the Investment Documents.
- (V) Fifth, any funds remaining in the Direct Payments Subaccount shall either be repaid to the State or, at the State's election, shall be retained by the Lead Provider and used for the purposes identified in writing by the State in the State's sole discretion and delivered to the Lead Provider.

(g) After such time that the Lead Provider disburses all funds from the Operating Account in accordance with Section 8.07(f), this Contract shall be of no further force and effect, and the Parties shall have no liability in connection therewith, except that in the event the State owes additional Early Success Payments based on the formulas set forth in Section 4.13, the Lead Provider shall maintain the Investment Funds Subaccount of the Operating Account until such time as the Early Success Payments, if any, are made to the Lead Provider and disbursed to the Investors.

Section 8.08 Enforcement of Rights. In the event the Lead Provider misappropriates funds hereunder or commits fraud with respect to the handling of funds in the Operating Account, the State may proceed to protect its rights hereunder and may exercise any other right or remedy upon such default as may be granted under any other applicable provisions of law. The State's sole remedy against the Lead Provider under this Contract, in the absence of a misappropriation of funds or the Lead Provider's commission of fraud, is to terminate this Contract. Notwithstanding anything in this Contract to the contrary, and subject to



Investors' rights under the Investment Documents, the State shall not have recourse to any assets of the Lead Provider outside of the Operating Account except to the extent of misappropriation of funds or fraud in handling the funds in the Operating Account.

Section 8.09 Cure. For purposes of this Article 8 and this Contract generally, "cure" means, with respect to a particular set of facts and circumstances constituting an Early Termination Event, that a Party has taken actions such that there is no longer an Early Termination Event, including by implementing or modifying appropriate procedures.

Section 8.10 No Obligation to Compel. Notwithstanding anything in this Contract to the contrary, neither the Lead Provider nor the State shall have an obligation under this Contract to compel compliance by the other Party on behalf of any other party, including, without limitation, the Investors, nor shall the Lead Provider or the State have any obligation to file any suit in equity or at law on behalf of any other party.

## **ARTICLE 9 AMENDMENT; MISCELLANEOUS**

Section 9.01 Amendment. With Investor Consent, this Contract may be amended in writing by the Parties for any reason, including, but, not limited to substitution of one or more of the exhibits hereto, or to extend the term of this Contract.

Section 9.02 Successors and Assigns. The Lead Provider shall not assign its rights, duties, and obligations under this Contract, except to the Investors if an Event of Default has occurred pursuant to a collateral assignment of contract and contract rights from the Lead Provider to the Investors, without the consent of the State and Investor Consent. The rights and obligations of the Lead Provider shall inure to and be binding upon its respective successors and assigns.

Section 9.03 Notices. Any request, authorization, direction, notice, consent, waiver or other document provided by this Contract shall be in writing and shall be deemed sufficiently given, except as otherwise provided in this Contract, when emailed, mailed by registered or certified mail, postage prepaid, sent by reputable overnight courier, subject to recognition or delivered during business hours to the State, the Lead Provider, and the Investors at the addresses as follows:

To the State:                      State of Colorado  
   Attn: Pay for Success MST Project Manager  
   Colorado State Capitol, Room 136  
   Denver, Colorado 80203  
   Email: roger.low@state.co.us

With a Copy To:                      State of Colorado  
   Attn: Deputy Legal Counsel  
   Governor's Office of Legal Counsel  
   Colorado State Capitol, Room 136  
   Denver, Colorado 80203  
   Email: martina.hinojosa@state.co.us

To the Lead Provider: Center for Effective Interventions  
Attn: Suzanne Kerns, Ph.D.  
Craig Hall, 148F  
University of Denver Graduate School of Social Work  
2148 S. High St.  
Denver, CO 80208  
Email: [suzanne.kerns@du.edu](mailto:suzanne.kerns@du.edu)

With a Copy To: Office of Research and Sponsored Programs  
Attn: Gerald Mauck  
Administrative Office Building, 1<sup>st</sup> Floor  
University of Denver  
2601 E. Colorado Ave.  
Denver, CO 80208  
Email: [gmauck@du.edu](mailto:gmauck@du.edu)

With a Copy To: Office of General Counsel  
Attn: Vice Chancellor for Legal Affairs and General Counsel  
Mary Reed Building, Room 101  
University of Denver  
2199 S. University Blvd.  
Denver, CO 80208  
Email: [counsel@du.edu](mailto:counsel@du.edu)

To Investors: Colorado Health Access Fund at the Denver Foundation  
Attn: Cindy Willard  
55 Madison Street, 8<sup>th</sup> Floor  
Denver, CO 80206  
Email: [cwillard@denverfoundation.org](mailto:cwillard@denverfoundation.org)

The Piton Foundation  
Attn: Paul Rosswork  
1705 17<sup>th</sup> Street, Suite 200  
Denver, CO 80202  
Email: [prosswork@garycommunity.org](mailto:prosswork@garycommunity.org)

The Northern Trust Company  
Attn: Deborah Kasemeyer  
50 South LaSalle  
Chicago, IL 60603  
Email: [dkl@ntrs.com](mailto:dkl@ntrs.com)

As to all of the foregoing, to such other address as the addressee shall have given in writing to the one giving notice. Notice hereunder may be waived prospectively or retroactively by the Person entitled to the notice, but no waiver shall affect any notice requirement as to other Persons. Any of the foregoing addressees may change its address by giving notice to the others in accordance with this Section.

Section 9.04 Agreement Not for the Benefit of Other Parties.

(a) Except as set forth in clause (b) of this Section 9.04, this Contract is not intended for the benefit of and shall not be construed to create rights in parties other than the State and the Lead Provider.

(b) The State acknowledges that the Lead Provider may collaterally assign its rights under this Contract to the Investors in accordance with a collateral assignment that may be executed contemporaneously with or subsequent to the date hereinabove (together with their successors and assigns, the “Assignees”) as collateral for the obligations of the Lead Provider to the Assignees, and, provided that the collateral assignment comports with the terms of this Contract, the State hereby consents to such collateral assignment. Whether or not the Lead Provider executes any such collateral assignment, the Parties agree that all of the provisions of this Contract that provide for the disbursement or transfer of funds to or for the benefit of the Investors, the delivery of notice, information, or documents to the Investors, the approval of or consent by the Investors, directions that the Investors are permitted to give, and the Investors’ participation with respect to the Operating Committee and the Governance Committee are intended for the specific and direct benefit of the Investors; that neither the State nor the Lead Provider may modify or terminate such provisions (including this Section 9.04(b)) without Investor Consent; that the Investors shall be deemed third-party beneficiaries of such provisions; and that the Investors shall be entitled to enforce such provisions in the same manner and to the same extent as though the Investors were a party to this Contract for such purposes.

Section 9.05 Severability. In case any provision of this Contract shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, provided that the allocation of benefits and burdens under this Contract shall not thereby be materially altered.

Section 9.06 Counterparts. This Contract may be executed and delivered in any number of counterparts, each of which shall be deemed to be an original, but such counterparts together shall constitute one and the same instrument.

Section 9.07 Captions. The captions and table of contents of this Contract are for convenience only and shall not affect the construction hereof.

Section 9.08 Governing Law. All issues concerning this Contract shall be governed by and construed in accordance with the laws of the State without giving effect to any choice of law or conflict of law provision or rule (whether of the State or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State.

Section 9.09 Extension. Any extensions of this Contract must be approved by the Parties, with Investor Consent.

Section 9.10 Merger; Entire Agreement. The Parties understand and agree that their entire agreement is contained herein and in the documents, exhibits, schedules and plans referenced herein, attached hereto or entered into pursuant hereto. It is further understood and agreed that all prior understandings and agreements heretofore had between the Parties are merged in this Contract which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither Party relying on any statement or representation not explicitly set forth in this Contract.

Section 9.11 Conflicts. In the event any provision of this Contract conflicts with a right or obligation of the State or the Lead Provider, as applicable, in any other related agreement (i.e. the Independent Evaluator Agreement or the Investment Documents), this Contract shall control the rights and obligations as between the State and the Lead Provider.

Section 9.12 Insurance. During the Term of this Contract and any extension thereof, and for three (3) years after the termination or expiration of this Contract, the Lead Provider shall purchase and maintain the insurance coverage set forth in this Section 9.12.

(a) General Conditions. The Lead Provider may provide the required insurance through self-insurance, or through a combination of self-insurance and commercial liability insurance policies, which policies shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as A- or better. The Lead Provider shall notify the State in the event any of the above-described policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Contract. Such notice shall reference the State contract number listed on the signature page of this Contract. Said notice shall be sent ten (10) days prior to such cancellation or non-renewal if due to nonpayment of premiums. The Lead Provider shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Contract are the minimum requirements, and, subject to the terms of this Contract and the Investment Documents, these requirements do not lessen or limit the liability of the Lead Provider. The Lead Provider may maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Contract.

(b) Proof of Insurance. The Lead Provider shall provide a copy of this Contract to its risk manager, insurance agent, or broker. The Lead Provider may not commence the MST Project Services prior to placement of the coverages set forth in this Section 9.12. The Lead Provider certifies that upon the Performance Start Date, it will furnish the State with a certificate of insurance, preferably an ACORD certificate that complies with all insurance requirements of this Contract. The State requests that the contract number for this Contract be referenced on the certificate. The State's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Contract shall not act as a waiver of the Lead Provider's breach of this Contract or of any of the State's rights or remedies under this Contract. The State's Risk Management Office may require additional proof of the insurance required by this Contract, including but not limited to policies and endorsements.

(c) Additional Insureds. For Commercial General Liability, the Lead Provider shall include the State as an additional insured.

(d) Waiver of Subrogation. For all coverages required under this Contract, the Lead Provider's insurer shall waive subrogation rights against the State.

(e) Subcontractors and Subconsultants. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Contract) of the Lead Provider shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Lead Provider. The Lead Provider shall ensure that all such subcontractors and subconsultants maintain the required coverages. The Lead Provider agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the State.

(f) Workers' Compensation. The Lead Provider shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

(g) Commercial General Liability. The Lead Provider shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(h) Business Automobile Liability. The Lead Provider shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Contract.

(i) Professional Liability (Errors & Omissions). If professional services are provided under this Contract, then the Lead Provider shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

Section 9.13 Examination of Records. Any authorized agent of the State has the right to access and the right to examine any pertinent books, documents, papers, and records of the Lead Provider, involving transactions related to the Contract until the latter of three (3) years after the final payment under the Contract or expiration of the applicable statute of limitations.

Section 9.14 No Authority to Bind State to Contracts. The Lead Provider lacks any authority to bind the State on any contractual matters. Final approval of all contractual matters that purport to obligate the State must be executed by an authorized agent of the State.

Section 9.15 No Discrimination in Employment. In connection with the performance of work under the Contract, the Lead Provider may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The Lead Provider shall insert the foregoing provision in all subcontracts.

Section 9.16 Execution of Contract. The Contract will not be effective or binding on the Parties until it has been fully executed by all required signatories of the State and the Lead Provider. This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Section 9.17 No Employment of Illegal Aliens to Perform Work Under the Contract.

- (a) The Lead Provider certifies that:
  - (i) At the time of its execution of this Contract, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract.
  - (ii) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (b) The Lead Provider also agrees and represents that:
  - (i) It shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
  - (ii) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Lead Provider that it shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
  - (iii) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract, through participation in the E-Verify Program.
  - (iv) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Contract, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
  - (v) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Contract knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the State within three (3) days. The Lead Provider shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
  - (vi) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

(c) If the Lead Provider violates any provision of this section, the State may terminate this Contract for a breach of the Contract. If the Contract is so terminated, the Lead Provider shall be liable for actual damages to the State. Any such termination of a contract due to a violation of this section may also, at

the discretion of the State, constitute grounds for disqualifying the Lead Provider from submitting bids or proposals for future contracts with the State.

Section 9.18 Confidential Information. To the extent permitted by law and subject to the data-sharing/business associate agreements to which it is a party, the Lead Provider shall share health records and personally identifiable information of Participants (the “**Confidential Information**”) with the Independent Evaluator to allow the Independent Evaluator to perform the scope of work set forth in the Independent Evaluator Agreement. The Lead Provider shall not share the Confidential Information with the State.

Section 9.19 Compliance with All Laws. The Lead Provider shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and the State of Colorado.

Section 9.20 No Construction Against Drafting Party. The Parties and their respective counsel have had the opportunity to review the Contract, and the Contract will not be construed against any party merely because any provisions of the Contract were prepared by a particular Party.

Section 9.21 Order of Precedence. In the event of conflicts or inconsistencies between this Contract and any Exhibits or attachment, 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
- iii. Exhibit A, Definitions
- iv. Exhibit B, Evaluation Plan
- v. Exhibit C, Form of Subcontract Service Provider Agreement
- vi. Exhibit D, Independent Evaluator Agreement
- vii. Exhibit E, MST Project Budget
- viii. Exhibit F, Schedule of Direct Payments
- ix. Exhibit G, Project Cash Flow

## **ARTICLE 10**

### **COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

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

#### **A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State’s Chief Information Officer or designee.

#### **B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

#### **C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR**

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

**E. COMPLIANCE WITH LAW.**

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in



excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

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

**J. CONTRACTOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

**[Not applicable to intergovernmental agreements]** Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's Contractor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.**

**[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment

eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to 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 §§8-17.5-101, *et seq.*, C.R.S., 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. §§24-76.5-101, *et seq.*, C.R.S.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

[SIGNATURE PAGE IS NEXT PAGE.]

IN WITNESS WHEREOF, the Parties have entered into this Contract as of the Effective Date.

**COLORADO SEMINARY**, which owns and operates the  
University of Denver and its Center for Effective  
Interventions at the Graduate School of Social Work

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

Name: Craig Woody  
Title: Senior Vice Chancellor for Business & Financial  
Affairs

**STATE OF COLORADO**

**John W. Hickenlooper, Governor**

The Office of State Planning and Budgeting

Lauren Larson, Executive Director

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

Name: Jason Schrock  
Title: Deputy Director

In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the  
State Controller or an authorized delegate.

**STATE CONTROLLER**

**Robert Jaros, CPA, MBA, JD**

By:  \_\_\_\_\_  
Office of the Governor, Charles Mitchell, Controller

Effective Date: 12/19/12

IN WITNESS WHEREOF, the Parties have entered into this Contract as of the Effective Date.

**COLORADO SEMINARY**, which owns and operates the  
University of Denver and its Center for Effective  
Interventions at the Graduate School of Social Work

By: 

Name: Craig Woody

Title: Senior Vice Chancellor for Business & Financial  
Affairs

**STATE OF COLORADO**

**John W. Hickenlooper, Governor**

The Office of State Planning and Budgeting

Lauren Larson, Executive Director

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

Name: Jason Schrock

Title: Deputy Director

In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the  
State Controller or an authorized delegate.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_  
Office of the Governor, Charles Mitchell, Controller

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

## **EXHIBIT A**

### **Definitions**

**“Account”** means the Youth Pay for Success Initiatives Account within the Fund.

**“Act”** means the Pay for Success Contracts Act, C.R.S. §§ 24-37-401 to -403, as amended from time to time.

**“Approval of the Governance Committee”** has the meaning set forth in Section 5.02(b) hereof.

**“Assignees”** has the meaning set forth in Section 9.04(b) hereof.

**“Business Day”** means any day other than a Saturday, Sunday, or other day on which the bank that hosts the Operating Account is authorized or required by law to remain closed.

**“Call for Innovation”** has the meaning set forth in the Recitals.

**“CHAF”** means The Colorado Health Access Fund at the Denver Foundation.

**“Confidential Information”** has the meaning set forth in Section 9.19 hereof.

**“Contract”** means this Pay for Success Contract between the State and the Lead Provider as the same may be amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof.

**“Cross-Collateral Payment”** has the meaning set forth in Section 4.07 hereof.

**“Cross-Collateral Payment Outcomes Report”** has the meaning set forth in Section 4.07(c) hereof.

**“Denver Project”** means the Denver Collaborative Partnership’s commitment through its fiscal agent, Savio Management Group, to provide rapid responder teams that will offer community-based services to connect runaway youth and their families with multi-systemic therapy, functional family therapy, strengthening families program, parent connect, high fidelity wrap-around, trauma-focused cognitive behavioral therapy, and other services pursuant to a pay for success contract that meets the requirements of the Act.

**“Denver Project Success Payments”** means the outcome-based payments from the State that the Savio Management Group is entitled to receive for achieving certain success measures in the Denver Project.

**“Direct Payments”** has the meaning set forth in the Recitals.

**“Direct Payments Subaccount”** has the meaning set forth in Section 3.03 hereof.

**“Early Success Payment(s)”** has the meaning set forth in Section 4.13(a) hereof.

**“Early Success Payment Formulas”** has the meaning set forth in Section 4.13(a) hereof.

**“Early Termination Event”** has the meaning set forth in Section 8.01 hereof.

**“Early Termination Reduction Factor”** has the meaning set forth in Section 4.13(a)(i) hereof.

**“Early Termination Review Period”** has the meaning set forth in Section 4.13(a)(i) hereof.

**“Effective Date”** means the date this Contract is signed by the State Controller or authorized delegate; provided that the Contract has also been signed by the Lead Provider.

**“Emergency Governance Committee Meeting”** has the meaning set forth in Section 5.02(d) hereof.

**“Evaluation Deliverables”** has the meaning set forth in Section 2.04(a) hereof.

**“Evaluation Plan”** means the plan attached as Exhibit B.

**“Expected Termination Date”** has the meaning set forth in Section 1.04(a) hereof.

**“Final Outcomes Report”** has the meaning set forth in Section 4.13(a) hereof.

**“Fiscal Year”** means the period of time starting on July 1 and ending on June 30 of the next year.

**“Fund”** means the Pay for Success Contracts Fund established by the Act.

**“Governance Committee”** has the meaning set forth in Section 5.02(a) hereof.

**“Governance Committee Meetings”** has the meaning set forth in Section 5.02(d) hereof.

**“Independent Evaluator”** means the Colorado Evaluation and Action Lab at the University of Denver, or any successor thereto.

**“Independent Evaluator Agreement”** means the agreement attached as Exhibit D, as the same may be amended, supplemented, or otherwise modified from time to time in accordance with the terms thereof.

**“Investment Documents”** means, collectively, all agreements executed by Lead Provider and Investors for funding of the MST Project, as the same may be amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof.

**“Investment Funds”** has the meaning set forth in the Recitals.

**“Investment Funds Subaccount”** has the meaning set forth in Section 3.03 hereof.

**“Investor Consent”** has the meaning set forth in Section 5.06 hereof.

**“Investor Direction”** has the meaning set forth in Section 8.02 hereof.

**“Investors”** means Northern Trust, Piton Foundation, and CHAF.

**“Key Stakeholder”** has the meaning set forth in Section 5.01(b) hereof.

**“Lead Provider”** means the Center for Effective Interventions at the Graduate School of Social Work at the University of Denver.

**“Material Breach”** has the meaning set forth in Section 8.03(a) hereof.

**“Minimum Enrollment Threshold”** has the meaning set forth in Section 8.02(b) hereof.

**“MST”** means the Multi-Systemic Therapy.

**“MST Project”** has the meaning set forth in the Recitals.

**“MST Project Budget”** means the project budget attached as Exhibit E.

**“MST Project Launch Conditions”** has the meaning set forth in Section 1.02 hereof.

**“MST Project Launch Subcontract Service Providers”** has the meaning set forth in Section 2.02(a) hereof.

**“MST Project Services”** means the MST interventions described in the Evaluation Plan directly and indirectly provided by the Lead Provider for at-risk teens residing in underserved regions of the State.

**“Northern Trust”** means The Northern Trust Company.

**“Operating Account”** has the meaning set forth in Section 3.02 hereof.

**“Operating Committee”** has the meaning set forth in Section 5.01 hereof.

**“Operating Committee Members”** has the meaning set forth in Section 5.01(b) hereof.

**“Operating Reserve”** has the meaning set forth in Section 8.06(c)(i)(V) hereof.

**“Operational Meetings”** has the meaning set forth in Section 5.01(a) hereof.

**“Outcome Report(s)”** has the meaning set forth in Section 4.07(c) hereof.

**“OSPB”** means the Office of State Planning and Budgeting.

**“Party”** means the State or the Lead Provider.

**“Participants”** has the meaning set forth in Section 2.03 hereof.

**“Parties”** means, collectively, the State and the Lead Provider.

**“Percentage Difference in Probability of Out of Home Placement”** has the meaning set forth in Section 4.06(a) hereof as calculated in accordance with the formula set forth in the Evaluation Plan.

**“Percentage Difference in Probability of Secure Detention”** has the meaning set forth in Section 4.05(a) hereof as calculated in accordance with the formula set forth in the Evaluation Plan.

**“Percentage of MST Teams with an Average TAM Score of 0.61 or Better”** has the meaning set forth in Section 4.04(a) hereof as calculated in accordance with the formula set forth in the Evaluation Plan.

**“Performance Start Date”** has the meaning set forth in Section 1.02 hereof.

**“PFS Projects”** means the MST Project and the Denver Project.

**“Piton Foundation”** means The Piton Foundation.

**“Program”** means the Pay for Success Contracts Program established by the Act.

**“Project Cash Flow”** means the project cash flows set forth in Exhibit G.

**“Project Budget”** means that budget for the Project set forth in Exhibit F, as the same may be amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof.

**“Project Sponsor”** means Colorado Seminary, which owns and operates the University of Denver and its Center for Effective Interventions at the Graduate School of Social Work.

**“Proposal”** means the proposal submitted by the Lead Provider in response to the Call for Innovation.

**“Quarter”** has the meaning set forth in Section 1.05 hereof.

**“Reduction in Out of Home Placements”** has the meaning set forth in the Evaluation Plan.

**“Reductions in Out of Home Placement Outcomes Report”** has the meaning set forth in Section 4.06(d) hereof.

**“Reductions in Out of Home Placement Success Payment”** has the meaning set forth in Section 4.06 hereof.

**“Reduction in Secure Detention”** has the meaning set forth in the Evaluation Plan.

**“Reductions in Secure Detention Outcomes Report”** has the meaning set forth in Section 4.05(c) hereof.

**“Reductions in Secure Detention Success Payment”** has the meaning set forth in Section 4.05 hereof.

**“Revised Plan”** has the meaning set forth in Section 8.06(c)(i)(VI) hereof.

**“RFI”** means the 2018 OSPB MST Request for Information.

**“Schedule of Direct Payments”** means the schedule attached as Exhibit F.

**“State”** means the State of Colorado.

**“Success Measure(s)”** has the meaning set forth in Section 4.03 hereof.

**“Subaccount(s)”** has the meaning set forth in Section 3.03 hereof.



**“Subcontract Service Providers”** has the meaning set forth in the Recitals.

**“Subcontract Service Provider Agreement(s)”** has the meaning set forth in Section 2.02(a) hereof.

**“Success Payments”** has the meaning set forth in Section 4.02 hereof.

**“TAM”** means Therapist Adherence Measures.

**“TAM Score”** has the meaning set forth in the Evaluation Plan.

**“TAM Score Minimum Threshold”** has the meaning set forth in Section 8.02(a) hereof.

**“TAM Score Outcomes Report”** has the meaning set forth in Section 4.04(d) hereof.

**“TAM Score Success Payment”** has the meaning set forth in Section 4.04 hereof.

**“Target Population”** has the meaning set forth in Section 2.03 hereof.

**“Term”** has the meaning set forth in Section 1.04(a) hereof.

**“Total Project Costs”** has the meaning set forth in Section 3.01 hereof.

**“Transaction Documents”** has the meaning set forth in Section 1.02(a) hereof.

**“Unanimous Approval of the Governance Committee”** has the meaning set forth in Section 5.02(j) hereof.

**“Wind-Down Period”** has the meaning set forth in Section 8.01 hereof.

**“Wind-Down Services”** has the meaning set forth in Section 8.01 hereof.

**EXHIBIT B**  
**Evaluation Plan**

**See attached PDF**

**EXHIBIT C**  
**Form of Subcontract Service Provider Agreement**

**SUBCONTRACT SERVICE PROVIDER AGREEMENT**  
*(Template for One Local MST Site – additional providers to be inserted)*

**THIS SUBCONTRACT SERVICE PROVIDER AGREEMENT** (the “Contract”), is made this \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between Colorado Seminary, a Colorado nonprofit corporation, which owns and operates the University of Denver (the “Project Sponsor”) and its Center for Effective Interventions at the Graduate School of Social Work (the “Lead Provider”), and \_\_\_\_\_ (the “Service Provider”). The Lead Provider and the Service Provider may be referred to herein collectively as the parties or individually as a party. Unless otherwise defined herein, capitalized defined terms shall have the meaning set forth in the primary Pay for Success Contract and its Exhibits as executed by the State of Colorado (the “State”) and the Project Sponsor (referred to herein as the “Primary Contract”) as attached hereto as Exhibit A.

**WHEREAS**, in 2015, the Pay for Success Contracts Act, C.R.S. §§ 24-37-401 to -403 (the “Act”) was enacted, authorizing the State to enter into contracts for the provision of eligible interventions, including interventions designed to support youth who are at high risk for juvenile justice involvement and/or have problems with substance abuse;

**WHEREAS**, the Lead Provider submitted a Proposal to provide evidence-based, Multi-Systemic therapy (“MST”) interventions set forth in the Evaluation Plan, attached hereto and incorporated herein by reference as Exhibit B, for at-risk teens residing in rural Colorado counties and underserved regions (the “Services”);

**WHEREAS**, the State accepted the Proposal and selected the Lead Provider to serve as the fiscal agent for the Project and the Lead Provider of the Services pursuant to the Primary Contract that meets the requirements of the Act;

**WHEREAS**, under the Primary Contract, the Lead Provider shall contract with qualified providers of MST interventions for the provision of some or all of the Services as set forth in the Primary Contract and Subcontract Service Provider Agreements, and the Service Provider has been selected to provide such Services;

**WHEREAS**, the Service Provider provides MST intervention services, as certified by MST Group, LLC and licensed by MST Group, LLC to use MST Manuals and MST Training Materials, and the Service Provider desires to contract with the Lead Provider and to provide the Services contemplated by the Primary Contract.

**NOW THEREFORE**, in consideration of the promises contained herein, the Lead Provider and Service Provider hereby agree as follows:

**1. Scope of Work.**

**A. Target Population.** The “Target Population” shall consist of Colorado youth between the ages of twelve (12) and seventeen (17), residing in underserved regions of Colorado as selected by the Lead Provider and the State in accordance with the 2018 OSPB MST Request

for Information (“RFI”), and in additional regions to be added to the Project based on MST therapist capacity (as determined by Approval of the Governance Committee) in accordance with the youth inclusion and exclusion criteria articulated in the Evaluation Plan. The Target Population may be expanded with Approval of the Governance Committee. The youth enrolled in the Project are each referred to herein as a “Participant.”

**B. Services Provided.** MST clinical “Teams” shall be defined to consist of a minimum of four (4) therapists and at least one (1) part-time supervisor (“Supervisor”), operating together to provide Services to the Target Population. If the number of therapists on a Team drops to three (3) for a period longer than twelve (12) weeks or if the number drops below three (3) at any time, the Governance Committee will review the performance of the Service Provider and may elect to terminate the Contract, unless the reduction in therapists on a Team is approved in advance of such reduction, according to the terms of the Primary Contract.

**C. Success Measures.** The following shall be the success measures (each a “Success Measure” and, collectively, the “Success Measures”) that the Service Provider shall focus upon in providing the Services hereunder:

- i. “Therapist Adherence Measures (“TAM”) Score” shall have the meaning set forth in the Evaluation Plan. Service Provider understands that average TAM Scores for the Teams shall be measured at 0.61 or more (the “TAM Score Minimum Threshold”), pursuant to the Primary Contract. If, any Team falls below the TAM Score Minimum Threshold, based on six (6) months of TAM Scores, any voting member of the Governance Committee may request that the Lead Provider submit a corrective action plan to address the deficiency within sixty (60) days of such request. If such plan fails to improve the TAM scores during a span of six (6) months, the Governance Committee will review the performance of the Service Provider and may vote to terminate the Contract and the Primary Contract. Therefore, if the average TAM Scores for any Team falls below 0.61, based on six (6) months of TAM Scores, Service Provider shall engage in a corrective action plan if determined by the Lead Provider.
- ii. “Reduction in Secure Detention” shall have the meaning set forth in the Evaluation Plan.
- iii. “Reduction in Out of Home Placements” shall have the meaning set forth in the Evaluation Plan.

**D. Supervision of Services.** Service Provider understands and agrees that each Team shall have weekly supervision with the Supervisor and weekly consultation meetings with the Lead Provider and that each Team must participate in this supervision and consultation as a condition of the Contract. Weekly consultation by the Lead Provider shall include but not be limited to the monitoring of: (i) TAM Scores in relation to the TAM Score Minimum Threshold under Section 1.C.; and (ii) the capacity percentage under Section 2.B., below. Weekly consultation by Lead Provider shall also include training in the delivery of MST intervention services, oversight to maintain all MST Group, LLC certifications and licenses, and other support in adhering to MST Training Materials and Manuals. Service Provider agrees to track and report to the Lead Provider all relevant information about each Participant, including all required Participant information at intake and discharge. Service Provider further acknowledges that it shall carry out all clinical supervision responsibilities under this Contract.

**E. Compensation Provisions.**

- i. Lead Provider shall pay the Service Provider pursuant to the terms of the Primary Contract and accordingly, Service Provider may not receive payment, or may receive only a partial payment, depending upon the funds received by Lead Provider pursuant to the Primary Contract. Service Provider shall not bill Lead Provider for any clinical care and services provided by the Service Provider hereunder.
- ii. As further detailed in Exhibit [X] of the Primary Contract, compensation for the Service Provider under this Contract is part of a set budget understood to partially cover the costs incurred by Service Provider in starting and implementing one MST Team. Such costs may be inclusive of the cost of doing business, personnel costs and licensing fees, however the compensation for Service Provider is fixed regardless of Service Provider's allocation of its own budget and its underlying costs.

**2. Service Provider Responsibilities.** The Service Provider agrees to the following:

**A. Provision of Information.** To the extent permitted by law, Service Provider hereby agrees to provide such information to such persons as is required pursuant to the Primary Contract.

**B. Referrals.** Service Provider understands and agrees that referrals for Participants shall solely be made by and at the discretion of community-based stakeholders and that such referrals shall not be the responsibility of the Lead Provider. This Contract does not provide any guarantee of the number of Participants or the level or number of referrals for Participants to be made to the Service Provider. The Service Provider shall engage in reasonable efforts to maintain at least seventy percent (70%) capacity of Participants, which is the equivalent of a minimum of eleven (11) cases on the Team at a given time, and such capacity shall be monitored by Lead Provider under Section I.D., above. If the Service Provider falls below seventy percent (70%) capacity for a period of six (6) months or longer, the Governance Committee will review the performance of the Service Provider and may vote to terminate the Contract and the Primary Contract.

**C. Management and Control by Service Provider.** All Team members are employees, subcontractors, or agents of Service Provider and not of the Lead Provider. Service Provider has full responsibility for all Services provided by its Teams related to the Project. Lead Provider is not responsible for the implementation of the Project or the outcome or results of any counseling or other Services provided by Service Provider and/or its Teams related to the Project.

**3. Performance of Service Provider.** The Lead Provider shall enforce the Contract and such enforcement rights shall include the termination and replacement of a Service Provider for failure to comply with its obligations hereunder. Any such replacement is controlled by the Primary Contract.

**4. Performance Period.** The term of this Contract shall begin on the Effective Date, and unless terminated earlier or extended pursuant to the terms of this Contract or the Primary Contract, shall terminate on April 1, 2023.

**5. Covenants.** The Service Provider hereby covenants from and after the Effective Date, as follows:

**A. Access to Information.** The Service Provider shall make any relevant information, books and records available to the Lead Provider, as necessary to ensure compliance with the terms of the Primary Contract.

**B. Confidentiality and Non-Disclosure.** The Service Provider hereby agrees to be bound by any applicable confidentiality and non-disclosure terms and conditions of the State set forth in the Primary Contract and in accordance therewith, shall adhere to the requirements and protocols relating to the protection, use, and disclosure of data and information related to the Services and the Eligible Referrals.

**6. Termination.** Lead Provider may terminate this Contract based upon any breach by the Service Provider hereunder. All other termination provisions as set forth in the Primary Contract shall be applicable and controlling for purposes of this Contract. Further, from the Effective Date, should any employee, contractor, or agent of Service Provider be charged with any criminal offense related to sexual assault or contributing to delinquency of minors during the term of this Contract, Lead Provider may terminate Service Provider and the Contract for cause without any cure right or advanced written notice. In such case, Lead Provider shall also report all relevant information to the Governance Committee.

**7. Insurance.** The Service Provider shall adhere to all insurance requirements as set forth in the Primary Contract. The Service Provider shall procure and maintain the same coverages required of the Lead Provider pursuant to the Primary Contract and provide proof of insurance by way of a current certificate of insurance to the Lead Provider on or before the Effective Date.

**8. Credentialing.**

**A.** Service Provider warrants that it has currently in effect all necessary licenses, certifications, and approvals required to properly provide the Services under this Contract, including licensing by MST Group, LLC. All employees or agents of Service Provider providing Services under this Contract shall also hold the required licenses and certifications, if any. Service provider further certifies that, if necessary, Service Provider currently as a Certificate of Good Standing or Certificate of Existence to do business in Colorado, and proof of such certification shall be provided to the Lead Provider upon request.

**B.** No later than fifteen (15) calendar days prior to the expiration date of all necessary licenses, certifications, and approvals, Service Provider shall deliver to the Lead Provider evidence of the renewals thereof. In addition, upon request by the Lead Provider at any other time during the term of this Contract, Service Provider shall within ten (10) calendar days of such request, supply to Lead Provider satisfactory evidence of compliance with all necessary licenses, certifications, and approvals. If any necessary licenses, certifications, and approvals are suspended, revoked or cancelled, Service Provider will notify Lead Provider immediately. Any revocation, withdrawal or non-renewal of necessary licenses, certifications, or approvals shall be grounds for immediate termination of this Contract.

9. **Background Checks.** Service Provider shall ensure that all individuals providing Services under this Contract, complete a background check pursuant to the Department of Health and Human Services, including a criminal record check through the Colorado Bureau of Investigation and the Federal Bureau of Investigation, and abide by all self-reporting requirements for future arrest(s), within twenty-four (24) hours of such arrest(s), whether or not the offense is a disqualifying offense. Service Provider agrees to provide proof of completion of the requirements herein, by way of a Personnel Policy, written statement, and records review.
10. **No Employment of Illegal Aliens to Perform Work Under the Contract.** The Service Provider certifies, agrees and represents that:
- A. At the time of its execution of this Contract, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract.
  - B. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.
  - C. It shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
  - D. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Service Provider and the Lead Provider that it shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
  - E. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract, through participation in the E-Verify Program.
  - F. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Contract, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all requirements related to employee notification and preservation of employee rights.
  - G. If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Contract knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the State within three (3) days. The Service Provider shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
  - H. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

If the Service Provider violates any provision of this Section, the Lead Provider may terminate this Contract for a breach of contract. If the Contract is so terminated, the Service Provider shall be liable for actual damages to the Lead Provider.

**11. Compliance with Laws; Litigation.** The Service Provider hereby represents and warrants:

**A.** That it is in material compliance with all applicable laws, including, without limitation, laws that are applicable to its properties and assets, the conduct of its operations, and the performance of its Services.

**B.** That there is no action of any nature pending or, to the knowledge of the Service Provider, threatened, relating to, or affecting the Service Provider or any of its properties or assets, or that challenges or seeks to prevent, enjoin, or delay the transactions contemplated in this Contract, nor, to the knowledge of the Service Provider, is there any reasonable basis therefor or any facts, threats, claims, or allegations that would reasonably be expected to result in any such action.

**C.** To the knowledge of the Service Provider, none of its current officers or directors has been convicted of, or pleaded guilty to, or entered a plea of no contest to, any felony.

**12. Tax-Exempt Status.** The parties acknowledge that Lead Provider is a §501(c)(3) tax-exempt organization. Lead Provider has entered into this Contract based on its existing understanding of the tax laws and regulations. However, if any time during the term of this Contract, this Contract is deemed to be in contravention of any requirement set forth in §501(c)(3) or the Treasury Regulations, Lead Provider shall have the right to amend the Contract or to terminate the Contract immediately. In the event Lead Provider elects to exercise its right to amend, Service Provider may, at its option, within ten (10) days following receipt of notice of an amendment, notify Lead Provider of its disagreement with the amendment. The parties shall then attempt in good faith to resolve the disagreement over such amendment. If after good faith negotiations the parties cannot resolve the matter, Lead Provider may terminate this Contract and shall have no further obligations to Service Provider.

**13. Independent Contractor.** It is understood and agreed that at all times pursuant to this Contract, the Service Provider shall be, and shall perform its duties hereunder, as an independent contractor and not an employee of the Lead Provider. Neither Service Provider nor any agent or employee of the Service Provider shall be, or shall be deemed to be, an agent or employee of Lead Provider. Service Provider shall be responsible for all required employment taxes and income tax withholding in connection with this Contract for itself and for any of its agents, servants, or employees as the case may be.

**14. Representatives and Notice.**

**A. Representatives.** For the purpose of this Contract, the individual identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives:

For the Service Provider:

\_\_\_\_\_

For the Lead Provider:

The Center for Effective Interventions



\_\_\_\_\_  
\_\_\_\_\_  
Graduate School of Social Work  
University of Denver, Attn: Suzanne Kerns  
2148 South High Street  
Denver, CO 80208  
Phone: 303-871-2506  
Fax: 303-871-2845

**B. Authority.** With respect to the representative of the Service Provider, such individual shall have the authority to receive, inspect and reject services, approve or disapprove invoices for payment, and act otherwise for the Service Provider, except with respect to the execution of formal amendments to or termination of this Contract.

**C. Notices.** All notices required to be given by the parties hereunder shall be hand delivered or given by certified or registered mail to the individuals at the addresses set forth above. Either party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

- 15. Modification and Amendment.** This Contract is subject to such modification as may be required by the Primary Contract, changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Contract on the Effective Date of such change as if fully set forth herein. Except as provided above, no modification of this Contract shall be effective unless agreed to in writing by both parties in an amendment to this Contract that is properly executed and approved in accordance with applicable law.
- 16. Federal and State Laws.** The parties agree to comply with all applicable Federal and State laws, regulations and policies, as amended, including without limitation those regarding discrimination, unfair labor practices, anti-kickback, and collusion.
- 17. Governing Law.** The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. The parties do now submit to the exclusive jurisdiction and venue of any court having subject matter jurisdiction located in the City and County of Denver, State of Colorado, in the event of any litigation concerning this Contract and regardless of where this Contract may be executed.
- 18. Entire Understanding.** This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing.
- 19. Assignment.** The rights and obligations of the Lead Provider under this Contract may be assigned but the rights and obligations of the Service Provider may only be assigned with the prior written consent of the Lead Provider
- 20. Binding Effect.** All of the provisions of this Contract shall be binding upon and inure to the benefit of the respective lawful successors and assigns of the parties to this Contract.
- 21. Confidentiality.** Service Provider fully understands the fiduciary and confidential nature of the medical information, medical records and the subject matter that Service Provider may, from time-to-time, encounter in the normal conduct of the Services as described in this Contract. To

the extent permitted by law, Service Provider agrees to keep strictly confidential and hold in trust all confidential information, and not to disclose or reveal such information to any third party except within the restrictions of this Contract or the Primary Contract. Service Provider shall ensure that each of its employees or agents who performs Services under this Contract is aware of this confidentiality requirement and agrees to maintain the confidentiality of this information. This Section shall survive for a period of five (5) years following termination of this Contract.

22. **Health Insurance Portability and Accountability Act (HIPAA).** Service Provider shall comply with the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Part 160 and Part 164, Subparts A and E, (HIPAA) requiring privacy of individually identifiable health information, as defined in 45 C.F.R. § 160.103. Lead Provider shall not be required hereunder, to execute or provide any further documentation or agreements with the Service Provider or any other third party, in relation to the Protected Health Information. Service Provider shall ensure that all authorizations required under HIPAA and any other laws are obtained from Participants permitting Service Provider to disclose such Participants Protected Health Information to Lead Provider as contemplated by Section 1.D. of this Contract and the Primary Contract. Lead Provider may further disclose such Protected Health Information to the extent permitted under this Contract, the Primary Contract, HIPAA and other applicable law.
23. **Headings.** The captions and headings used in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.
24. **Non-Discrimination.** In connection with the performance of work under this Contract, the parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, against any person otherwise qualified on the basis of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability; and further agree to insert the foregoing provision in all subcontracts related to the performance of this Contract.
25. **Severability.** In the event any provision of this Contract is rendered invalid or unenforceable by law or declared void by any court of any competent jurisdiction, the remainder of the provisions of this Contract shall remain in full force and effect.
26. **Waiver.** No waiver of any term or condition of this Contract shall be deemed to be a subsequent waiver of any other term or condition. No delay or failure of a party to the Contract to exercise a right under the Contract shall constitute a waiver or abandonment of that right. To be effective and binding on a party, a waiver must be in writing and signed by that party.
27. **Legal Authority.** The person or persons signing and executing this Contract on behalf of each party, do hereby warrant and guarantee that he/she or they have been fully authorized by such party to execute this Contract on behalf of the party and to validly and legally bind the party to all terms, performances and provision set forth in the Contract.
28. **Indemnification.** The Service Provider shall indemnify, save, and hold harmless the Lead Provider, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Service Provider, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on the day first above written.

**Service Provider:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Lead Provider:**

Colorado Seminary, which owns and operates the University of Denver and its Center for Effective Interventions at the Graduate School of Social Work

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

\_\_\_\_\_  
By: Craig Woody  
Its: Senior Vice Chancellor for Business & Financial Affairs

**EXHIBIT D**  
**STATE OF COLORADO**  
**The Office of State Planning and Budgeting**  
**Independent Evaluator Agreement**  
**Colorado Seminary, which owns and operates the University of Denver and its Colorado Evaluation**  
**and Action Lab**  
**for**  
**Multi-Systemic Therapy Pay for Success Pilot Program**  
*(Will be inserted as Exhibit D of State of Colorado Pay for Success Contract with the Center for Effective Interventions at the University of Denver)*

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EXHIBIT A: EVALUATION PLAN (SEE EXHIBIT B OF THE PFS CONTRACT WHICH EXHIBIT IS INCORPORATED BY  
REFERENCE HEREIN.) 21

## 2. PARTIES

This Independent Evaluator Agreement (this “**Agreement**”) is entered into by and between Colorado Seminary, which owns and operates the University of Denver, acting by and through the Colorado Evaluation and Action Lab (hereinafter called “**Independent Evaluator**”), and the State of Colorado, acting by and through The Office of State Planning and Budgeting (hereinafter called the “**State**” or “**Department**”). Independent Evaluator and the State hereby agree to the following terms and conditions.

## 3. EFFECTIVE DATE

This Agreement shall not be effective or enforceable until it is approved and signed by each of the State and Independent Evaluator (hereinafter called the “**Effective Date**”).

## 4. RECITALS

### A. Purpose

The purpose of this Agreement is to set forth the terms pursuant to which Independent Evaluator, directly or indirectly through its subcontractors, will perform the Work (as defined below) to evaluate the success of evidence-based, Multi-Systemic Therapy (“**MST**”) interventions (the “**MST Interventions**”) in reducing entries into secure detention and out of home placements for Colorado youth who have already entered secure detention or been identified as at high risk of entering the juvenile justice system (the “**MST Project**”). The Center for Effective Interventions at the University of Denver (“**Lead Provider**”), directly or indirectly through its subcontractors, shall provide the MST Interventions pursuant to a pay for success contract (the “**PFS Contract**”) between the State and Lead Provider that meets the requirements of the Pay for Success Contracts Act, C.R.S. §§ 24-37-401 to -403 (the “**Act**”).

### B. Payment

As described in greater detail below, the Work will be fully funded via grant funds awarded to Independent Evaluator from the Annie E. Casey Foundation (“**Evaluation Funder**”) in the amount of \$124,350.00 (the “**Grant Award**”) and an additional one-time payment of \$15,000.00 from the State, which payment shall be subject to the execution of a State purchase order as set forth in more detail below.

### C. References

All references in this Agreement 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.

## 5. DEFINITIONS AND INTERPRETATION

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

- A. “Evaluation Budget” means the Evaluation Budget attached hereto as **Exhibit B** and incorporated by reference herein.

- B. “Evaluation Deliverables” means deliverables of the Independent Evaluator as set forth in the section of the Evaluation Plan entitled “Evaluation Deliverables”. For the avoidance of doubt, the Evaluation Deliverables include (i) Deliverable 1 – Confirmation of IRB Approval; (ii) Deliverable 2 – Verification of Annual Fidelity Reports Generated by Lead Provider (also referred to as the TAM Score Outcomes Report in the PFS Contract); and (iii) Deliverable 3 – Final Outcomes Report (also referred to as the Reductions in Secure Detention Outcomes Report, and Reductions in Out of Home Placement Outcomes Report as each of those terms are defined in the PFS Contract).
- C. “Evaluation Plan” means the Evaluation Plan attached hereto as **Exhibit A** and incorporated by reference herein.
- D. “Governance Committee” means the committee established in accordance with the terms of the PFS Contract for the purpose of managing the MST Project.
- E. “Party” means the State or Independent Evaluator and “Parties” means both the State and Independent Evaluator.
- F. “Pay for Success” means the model which private or philanthropic upfront capital used to fund preventative programs, and a government (in this case the State) pays subsequently for measurable outcomes.
- G. “Services” means the evaluation, in accordance with the Evaluation Plan, of the MST Interventions and the delivery of the Evaluation Deliverables.
- H. “State Fiscal Year” means the twelve (12) month period beginning on July 1st of a year and ending on June 30th of the following year.
- I. “PFS Contract” means the Pay for Success Contract between the State and the Lead Provider dated December 19, 2018.
- J. “Work” means the tasks and activities Independent Evaluator is required to perform to fulfill its obligations under this Agreement, including the performance of the Services.
- K. “Letter of Agreement” means a grant agreement pursuant to which Independent Evaluator will receive the Grant Award between Independent Evaluator and the Annie E. Casey Foundation, the provider of grant funds for this Work.

Any terms used herein which are defined in Evaluation Plan, shall be construed and interpreted as defined therein.

## 6. **TERM**

The term of this Agreement (the “**Term**”) shall commence on the Effective Date, and unless terminated earlier or extended pursuant to the terms hereof, shall terminate on June 30, 2023.

## 7. **STATEMENT OF WORK**

### A. **Services**

Independent Evaluator shall provide the Services reasonably necessary to complete the Work.

### B. **Independent Contractors**

All individuals engaged by Independent Evaluator or its subcontractors to perform Work under this Agreement, whether as employees or independent contractors, shall be Independent Evaluator's or subcontractors' independent contractors or employees for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Agreement.

## **8. ONE TIME STATE PAYMENT**

In addition to the Grant Award awarded to Independent Evaluator to fund the Work, the State shall make a one-time payment of \$15,000.00 to the Independent Evaluator for the Work, which shall be separately encumbered and paid by the State in State Fiscal Year 2019-2020, subject to the execution of a State purchase order. If the State does not execute a purchase order for such one-time payment, the Independent Evaluator may terminate this Agreement in accordance with Section 15 hereof.

This one-time payment is separate and apart from periodic payments that may be made to Independent Evaluator or its subcontractors between 2019 and 2023 by the Colorado Department of Human Services ("CDHS") to support administrative data extraction, tracking, matching and comparison, which shall be contracted and encumbered separate and apart from this Agreement.

## **9. REPORTING NOTIFICATION**

Reports required under this Agreement shall be made in accordance with the procedures and in such format as set forth herein and as described in the "Evaluation Deliverables" section of the Evaluation Plan. In addition to submitting the Evaluation Deliverables to the Governance Committee in accordance with Section 8.A, the Independent Evaluator shall submit the Evaluation Deliverables to CDHS representatives designated by the Department and provided to Independent Evaluator upon execution of this Agreement.

### **A. Reports**

Subject to timely receipt of information from the Lead Provider and its subcontractors, and other reasonably necessary administrative data from state and local agencies, Independent Evaluator shall submit the Evaluation Deliverables as follows:

- i. Independent Evaluator shall submit Deliverable 1 (as defined in the Evaluation Plan) to the Governance Committee on or before January 1, 2019.
- ii. Independent Evaluator shall submit Deliverable 2 (as defined in the Evaluation Plan) to the Governance Committee on or before March 15, 2020, again on or before March 15, 2021, and finally on December 15, 2021.
- iii. Independent Evaluator shall submit Deliverable 3 (as defined in the Evaluation Plan) on or before March 1, 2023.

### **B. Evaluation Funder Reports and Publication of Reports**

Under no circumstances, prior to Project Completion on April 1, 2023, shall Independent Evaluator release any Evaluation Deliverables or information associated with the MST Project publicly without prior approval of the Governance Committee. Notwithstanding

the foregoing, as part of its reporting requirements for the Evaluation Funder, Independent Evaluator may also submit periodic reports on the status of the Work to the Evaluation Funder ("**Evaluation Funder Reports**"); Evaluation Funder Reports shall be made available to any voting member of the Governance Committee upon request. Evaluation Deliverables shall always be provided to the Governance Committee prior to the release of the Evaluation Deliverables to the Evaluation Funder. No person working for Independent Evaluator shall publish any MST Project results prior to June 1, 2023 without the consent of the Governance Committee.

C. Milestone Payments and Milestone Payment Notifications

Independent Evaluator shall submit, concurrently with its annual reporting to the Governance Committee, a short statement to the State certifying that all Evaluation Deliverables have been submitted on schedule or are anticipated to be submitted on schedule, or a detailed explanation as to why reporting has been delayed, and certifying that all Services are on schedule and will be completed on schedule.

D. 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 Agreement or which may affect Independent Evaluator's ability to perform its obligations hereunder, Independent Evaluator 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 Office of State Planning and Budgeting.

E. Noncompliance.

Independent Evaluator acknowledges that Independent Evaluator's failure to provide reports, notify the State in a timely manner in accordance with this §8, or otherwise comply with this Agreement may result in the delay of Independent Evaluator's ability to draw down or spend funds awarded by the Evaluation Funder under its Letter of Agreement, delay of additional payment owed by the State of Colorado, and/or termination as provided under this Agreement. If the State determines Independent Evaluator is not in compliance with this Agreement and declares Independent Evaluator is not in compliance in writing to Independent Evaluator, notwithstanding the availability of grant funds under the Letter of Agreement, Independent Evaluator shall not use or otherwise spend grant funds for services under this Agreement or for the Work described herein from the Evaluation Funder or State, until any issues are resolved by the State and until the State certifies the Independent Evaluator is in compliance.

F. Data-Sharing/Business Associate Agreements

On or before March 31, 2019, Independent Evaluator shall execute and submit to the Governance Committee data-sharing or business associate agreements with the State, Independent Evaluator, and Subcontractors, as applicable, to permit Contractor to evaluate the Project in accordance with the Evaluation Plan.

G. If Independent Evaluator requests any data elements from Lead Provider or Lead Provider subcontractors involved in the MST Project that have not already been clearly defined and agreed to in either a service agreement or a data sharing agreement with the service provider or clearly required to provided or made available in the Evaluation Plan,



Independent Evaluator shall notify the recipient of the data request that the request should only be granted if it does not impose a burden on the Lead Provider or Lead Provider subcontractor, as applicable, and does not materially interfere with the implementation of the MST Project or delivery of services under the PFS Contract. If the recipient of the data request expresses concerns in writing regarding possible burdens or problems associated with the data request to the Independent Evaluator or to any member of the Governance Committee, the Governance Committee must approve the request as necessary before the Independent Evaluator may proceed with requiring the Lead Provider or Lead Provider subcontractor to process the data request.

## 10. INDEPENDENT EVALUATOR RECORDS

### A. Maintenance

Independent Evaluator 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, primarily pertaining to the Work or the delivery of Services hereunder. Contractor shall maintain such records until the last to occur of: (i) a period of four (4) years after the date this Agreement expires or is sooner terminated, or (ii) a period of four (4) years after final payment is made hereunder, or (iii) a period of four (4) years after the resolution of any pending Agreement 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**”). All such records, documents, communications and other materials shall be the property of the State, and shall be maintained by the Contractor in a central location and the Contractor shall be custodian on behalf of the State.

### B. Inspection and Monitoring

Independent Evaluator shall permit the State and its duly authorized agents to audit, inspect, examine, excerpt, copy and/or transcribe Independent Evaluator's records primarily related to this Agreement during the Record Retention Period, to assure compliance with the terms hereof or to evaluate performance hereunder. Upon delivery of five (5) business days' advanced notice during the term of this Agreement, including any extensions or renewals, and with the consent of Independent Evaluator, not to be unreasonably withheld or delayed, the State shall have the right to inspect the Work during normal business hours, and at places reasonably agreed to by the parties; provided that if Independent Evaluator is not performing in accordance with this Agreement, and such concerns have been raised by the Governance Committee, then the Independent Contractor will provide access on one (1) business day's notice. If State determines in good faith that the Work fails to conform with the requirements of this Agreement, the State may require Independent Evaluator promptly to bring the Work into conformity with Agreement requirements, at Independent Evaluator's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Independent Evaluator to take reasonable action to ensure that future performance conforms to the requirements set forth in this Agreement, and exercise the remedies available under this Agreement, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

Independent Evaluator shall permit the State and any other duly authorized agent of a government agency, in their sole discretion, to monitor all activities conducted by Independent Evaluator pursuant to the terms of this Agreement 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 Independent Evaluator's performance hereunder.

D. Final Audit Report

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

**11. CONFIDENTIAL INFORMATION**

Independent Evaluator 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, C.R.S. §§ 24-72-101, *et seq.*

A. Confidentiality

Independent Evaluator shall keep all State records and information confidential at all times and comply in all material respects 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 Independent Evaluator shall be immediately forwarded to the State's principal representative.

B. Notification

Independent Evaluator 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.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Independent Evaluator or its agents in any way, except as authorized by this Agreement or approved in writing by the State. Independent Evaluator 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 Independent Evaluator or its agents, except as permitted in this Agreement or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Independent Evaluator for any reason may be cause for legal action by third parties against Independent Evaluator, the State or their respective agents. Independent Evaluator 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 Independent Evaluator, or its employees, agents, Subcontractors, or assignees pursuant to this **§10**.

**12. CONFLICTS OF INTEREST**

A. Actual Conflicts of Interest

Independent Evaluator shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Independent Evaluator under this Agreement. Such a conflict of interest would arise when an Independent Evaluator's or a Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Independent Evaluator acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Independent Evaluator shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Independent Evaluator's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Independent Evaluator is uncertain whether a conflict or the appearance of a conflict has arisen, Independent Evaluator shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement. Notwithstanding anything to the contrary contained herein, the State acknowledges and agrees that the Lead Provider and Independent Evaluator are independent institutes within the University of Denver and that this does not give rise to a conflict of interest or other breach hereunder for or by the University of Denver, the Lead Provider or Independent Evaluator. During the term of this Agreement, Independent Evaluator shall interact with the Lead Provider only as reasonably necessary to perform its obligations under this Agreement and shall not attempt to interfere or assist Lead Provider in the performance of its obligations under the PFS Contract.

**13. REPRESENTATIONS AND WARRANTIES**

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

A. Legal Authority – Independent Evaluator Signatory

Independent Evaluator warrants that it possesses the legal authority to enter into this Agreement 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 Agreement, or any part thereof, and to bind to its terms.

B. Licenses, Permits, Etc.

Independent Evaluator 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 material licenses, certifications, approvals, insurance, permits and other authorizations required by law to perform its obligations hereunder.

#### 14. COVENANTS

The Independent Evaluator hereby covenants from and after the Effective Date as follows:

A. If requested by the State, Independent Evaluator shall provide the State with proof of Independent Evaluator's authority to enter into this Agreement within five (5) days of receiving such request.

B. Independent Evaluator agrees to take all reasonable actions to maintain all material licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in the Agreement. Additionally, all employees, agents, and Subcontractors of Independent Evaluator performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Independent Evaluator to properly perform the terms of this Agreement is a material breach by Independent Evaluator and constitutes grounds for termination of this Agreement.

#### 15. INSURANCE

Independent Evaluator and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Independent Evaluator and the State.

A. Independent Contractor

i. Public Entities

If Independent Evaluator is a "public entity" within the meaning of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as amended (the "GIA"), then Independent Evaluator shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Independent Evaluator shall show proof of such insurance satisfactory to the State, if requested by the State. Independent Evaluator shall require each agreement with a Subcontractor that is

a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

ii. Non-Public Entities

If Independent Evaluator is not a "public entity" within the meaning of the GIA, Independent Evaluator shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the requirements set forth in **§14.B**.

B. Independent Evaluator – Subcontractors

Independent Evaluator shall require each agreement with Subcontractors, other than those that are public entities, providing Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Independent Evaluator's or Subcontractor's employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any one fire.

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

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Crime Insurance

Crime Insurance including Employee Dishonesty coverage with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

v. Additional Insured

The State shall be named as additional insured on all Commercial General Liability and protected health information insurance policies (leases and construction

contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Independent Evaluator and any Subcontractors hereunder.

vi. Primacy of Coverage

Coverage required of Independent Evaluator and Subcontractor shall be primary over any insurance or self-insurance program carried by Independent Evaluator or the State.

vii. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Independent Evaluator and Independent Evaluator shall forward such notice to the State in accordance with **§17** (Notices and Representatives) within seven days of Independent Evaluator's receipt of such notice.

viii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by Independent Evaluator or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Independent Evaluator or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Independent Evaluator and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven (7) business days of the Effective Date of this Agreement. No later than fifteen (15) days prior to the expiration date of any such coverage, Independent Evaluator and each Subcontractor shall deliver to the State or Independent Evaluator certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any subcontract, Independent Evaluator and each Subcontractor shall, within ten (10) days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§14**.

**16. TERMINATION**

Either Party may terminate this Agreement for any reason by giving the other Party at least fifteen (15) days' prior written notice of its intent to terminate. The State may terminate this Agreement without prior notice in the event that the State determines that it is in the best interests of State. This Agreement shall automatically terminate upon the termination of the PFS Contract.

**17. 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:** Roger Low, Pay for Success Project Manager  
The Office of State Planning and Budgeting  
111 State Capitol  
Denver, Colorado 80203  
roger.low@state.co.us

**For the Independent Evaluator:** Elysia Clemens, Deputy Director, Colorado Evaluation and Action Lab (CEAL)  
Colorado Seminary (University of Denver)  
2199 S. University Blvd.  
Denver, Colorado 80208  
Elysia.Clemens@du.edu

**With a Copy To:** Gerald Mauck, Executive Director – Research Administration  
Colorado Seminary (University of Denver)  
2601 East Colorado Avenue  
Denver, Colorado 80208  
gmauck@du.edu

**And a Copy To:** Vice Chancellor for Legal Affairs and General Counsel  
Office of General Counsel  
Colorado Seminary (University of Denver)  
2199 S. University Blvd.  
Denver, Colorado 80208  
counsel@du.edu

## **18. PROVISION OF AND RIGHTS IN DELIVERABLES**

To the extent permitted by law, each of the Parties hereby agrees to provide such information as is required pursuant to this Agreement, including the Evaluation Plan, to each other, as is reasonably necessary for each Party to carry out its respective responsibilities in accordance with this Agreement and the Evaluation Plan; provided that the Parties agree that the data collected by the Independent Evaluator and the sharing of such data shall be subject to the terms of the Independent Evaluator Agreement and applicable data sharing or business associate agreements. Upon termination of this Agreement, the Independent Evaluator will deliver to the State and the Lead Provider, and provide an irrevocable license to the State, the Lead Provider, and the investors under the PFS Contract (“**Investors**”) to use all of the Evaluation Deliverables, except for confidential information regarding any MST Project participant, in a format specified by the State, the Lead Provider, or the Investors. Except as provided in a data sharing or business associate agreement or as permitted by law, neither the State, the Investors nor any other third party shall have any right to, and neither the Independent Evaluator, any subcontractors, nor any of their employees, agents, affiliates or representatives shall have any obligation to provide to the State, the Investors nor any other third party, any confidential information of individuals enrolled in the MST Project (including health records and personally identifiable information).

**19. 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, C.R.S. §§ 24-10-101, *et seq.*, and the risk management statutes, C.R.S. §§ 24-30-1501, *et seq.*, as now or hereafter amended.

**20. GENERAL PROVISIONS**

**A. Assignment and Subcontracts**

Independent Evaluator's rights and obligations hereunder are personal and may not be transferred or assigned without the prior, written consent of the State, not to be unreasonably withheld. Any attempt at assignment or transfer without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by the Independent Evaluator or the State are subject to all of the provisions hereof. Independent Evaluator shall be solely responsible for all of the Work performed under this Agreement, regardless of whether Subcontractors are used and for all aspects of subcontracting arrangements and performance. Copies of any and all subcontracts entered into by Independent Evaluator to perform its obligations hereunder shall be in writing and submitted to the State upon request. Any and all subcontracts entered into by Independent Evaluator related to its performance hereunder shall require the Subcontractor to perform in accordance with the terms and conditions of this Agreement and to comply with all applicable federal and state laws. Any and all subcontracts shall include a provision that such subcontracts are governed by the laws of the State of Colorado.

**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. Captions**

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

**D. Counterparts**

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**E. Entire Understanding**

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



F. Indemnification

Independent Evaluator 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 Independent Evaluator, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Agreement; 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, 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 or hereafter amended.

G. Limitation of Liability

In no event shall the Parties be liable to the other Party or any third party for direct, indirect, incidental, special, consequential, or exemplary damages of any kind arising out of or in connection with this Agreement, nor shall the Independent Evaluator be liable to the State for any amount \$[●] in the aggregate, except with respect to claims for intentional misconduct or fraud.

H. Jurisdiction and Venue

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

I. Modification

ix. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both Parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State Law and State Fiscal Rules.

x. By Operation of Law

This Agreement 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 Agreement on the effective date of such change, as if fully set forth herein. Any modifications permitted under this **§I.ii** 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.

J. Order of Precedence

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

- x. Colorado Special Provisions
- xi. The provisions of the main body of this Agreement
- xii. Exhibit A, Evaluation Plan

xiii. Exhibit B, Evaluation Budget

K. Severability

Provided this Agreement 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.

L. Survival

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

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. §§ 39-26-101 and -201, *et seq.* Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided, however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Independent Evaluator shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Independent Evaluator for such taxes.

N. Third Party Beneficiaries

Enforcement of this Agreement 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 Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

P. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under C.R.S. § 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. §§ 24-72-101, *et seq.*

## **21. ADDITIONAL GENERAL PROVISIONS**

### **Q. Compliance with Applicable Law**

Independent Evaluator 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.

### **R. Force Majeure**

Neither the Independent Evaluator 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 Agreement, 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 Agreement, "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.

### **S. Disputes**

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the Parties or their representatives shall be referred in writing to a senior departmental management staff designated by the State and a senior manager designated by the Independent Evaluator. Failing resolution at that level, disputes shall be presented in writing to the Executive Director of the State and the Independent Evaluator's Chief Executive Officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

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## 22. COLORADO SPECIAL PROVISIONS

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

- A. **GOVERNMENTAL IMMUNITY.** No term or condition of this Agreement 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, C.R.S. §§ 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.
- B. **INDEPENDENT CONTRACTOR.** Independent Evaluator shall perform its duties hereunder as an independent contractor and not as an employee. Neither Independent Evaluator nor any agent or employee of Independent Evaluator shall be deemed to be an agent or employee of the State. Independent Evaluator 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 Independent Evaluator or any of its agents or employees. Unemployment insurance benefits will be available to Independent Evaluator and its employees and agents only if such coverage is made available by Independent Evaluator or a third party. Independent Evaluator shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Independent Evaluator shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Independent Evaluator 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.
- C. **COMPLIANCE WITH LAW.** Independent Evaluator 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.
- D. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. 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 Agreement, to the extent capable of execution.
- E. **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.
- F. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Independent Evaluator hereby certifies and warrants that, during the term of this Agreement and any extensions, Independent Evaluator has and shall maintain in place appropriate systems and controls to prevent such improper

use of public funds. If the State determines that Independent Evaluator is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

- G. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. C.R.S. §§ 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 Agreement. Independent Evaluator has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Independent Evaluator's services and Independent Evaluator shall not employ any person having such known interests.
- H. **PUBLIC CONTRACTS FOR SERVICES. C.R.S. § 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.]* Independent Evaluator certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the Department program established pursuant to C.R.S. § 8-17.5-102(5)(c), Independent Evaluator shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an agreement with a subcontractor that fails to certify to Independent Evaluator that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Independent Evaluator (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three (3) days if Independent Evaluator has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. § 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Independent Evaluator participates in the Department program, Independent Evaluator shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Independent Evaluator has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Independent Evaluator fails to comply with any requirement of this provision or C.R.S. §§ 8-17.5-101, *et seq.*, the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Independent Evaluator shall be liable for damages.
- I. **PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. § 24-76.5-101.** Independent Evaluator, 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 C.R.S.

§§ 24-76.5-101, *et seq.*, and **(c)** has produced one form of identification required by C.R.S. § 24-76.5-103 prior to the effective date of this Agreement.

**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

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

**INDEPENDENT EVALUATOR**

Colorado Seminary which owns and operates  
the University of Denver and  
its Colorado Evaluation and Action Lab

**STATE OF COLORADO**

**John W. Hickenlooper, Governor**  
The Office of State Planning and Budgeting  
Lauren Larson, Executive Director

\_\_\_\_\_  
**\*Signature**

\_\_\_\_\_  
**\*Signature**

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

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

**By:** Craig Woody

**By:** Jason Schrock

**Title:** Senior Vice Chancellor for Business & Financial  
Affairs

**Title:** Deputy Director

**EXHIBIT A:**  
**EVALUATION PLAN**

**(See Exhibit B of the PFS Contract which exhibit is incorporated by reference herein.)**



**EXHIBIT B:  
EVALUATION BUDGET**

**MST PROJECT EVALUATION BUDGET**

<b>Legal Name:</b>		Colorado Seminary, which owns and operates the University of Denver							
<b>DUNS #:</b>		007431760	<b>EIN #:</b>	84-0404231	<b>F&amp;A Rates:</b>				
<b>PI:</b>		Kristin Klopfenstein			<input type="checkbox"/> <i>US Government &amp; Non-Profits</i> <input type="checkbox"/> Academic Research (50.7%, Off Campus 26%) <input type="checkbox"/> Other Sponsored Agreements (32.8%) <input type="checkbox"/> <i>For Profit / Foreign</i> <input type="checkbox"/> Academic Research (57.6%, Off Campus 33%) <input type="checkbox"/> Other Sponsored Agreements (49.6%)				
<b>Project Title: MST for underserved communities</b>									
<b>Project Begin: January 1, 2019</b>									
<b>Project End: March 31, 2023</b>									
				<b>2019 (lab 75% in kind staff)</b>	<b>2020 (lab 50% in kind staff)</b>	<b>2021 (0 in kind)</b>	<b>2022 (0 in kind)</b>	<b>2023 (0 in kind)</b>	<b>TOTAL</b>
<b>Salaries</b>		<b>BASE</b>		<b>Full Year</b>	<b>Full Year</b>	<b>Full Year</b>	<b>Full Year</b>	<b>Q1</b>	
		Faculty/Staff	601015	5,736	5,960	17,659	15,069	17,723	62,147
	Summer	Faculty							-
		Non-Appointed	602090	-	-	-	3,788	7,803	11,591
		Student	603030						-
	Summer	Student							-
<b>Fringe</b>	24.60%	Fully Benefited	650220	1,411	1,466	4,344	3,707	4,360	15,288
	7.50%	Non-Appointed	650230	-	-	-	284	585	869
	1.50%	Student	650240	-	-	-	-	-	-
<b>Materials and Supplies</b>			711000	5,000	6,600	5,300	5,000	1,250	23,150
<b>Outside Services</b>			723000						-
<b>Subject Payments</b>			724040						-
<b>Travel</b>			732000						-
<b>Tuition</b>			790310						-
<b>Stipends</b>			731900						-
<b>Equipment</b>			782000						-
<b>Total Direct Costs (excluding all subcontracted costs)</b>				<b>12,147</b>	<b>14,026</b>	<b>27,303</b>	<b>27,848</b>	<b>31,721</b>	<b>113,045</b>
<b>Indirect Costs applied to All Direct Costs (ex 0.1)</b>				<b>1,214.72</b>	<b>1,402.59</b>	<b>2,730.32</b>	<b>2,784.76</b>	<b>3,172.11</b>	<b>11,304.51</b>
<b>Total Costs, including IDC but excluding Subawards (Line 33 + 34)</b>				<b>13,362</b>	<b>15,428</b>	<b>30,034</b>	<b>30,632</b>	<b>34,893</b>	<b>124,350</b>
<b>Subawards Total</b>									-
<b>Indirect Costs based on Subcontract (32.8 on first \$25k of subcontract)</b>				-	-	-	-	-	-
<b>Total Subawards including IDC on subs (Lines 34 +35)</b>				-	-	-	-	-	-
<b>Total Period Request (Line 33 + 38)</b>				<b>13,362</b>	<b>15,428</b>	<b>30,034</b>	<b>30,632</b>	<b>34,893</b>	<b>124,350</b>
<b>Additional Lab Subcontract for Data Handling and Matching</b>				-	15,000	-	-	-	15,000
<b>Total Including \$15,000 payment for subcontract for data handling and matching (no IDC)</b>									<b>\$ 139,350</b>

**EXHIBIT E**  
**MST Project Budget**

**Overall Project Budget**  
***Multi-Systemic Therapy (MST) Pilot for Underserved Regions of Colorado***

	<b><u>Year 1</u></b> <b>FY 2018-19</b> <i>(56 families served)</i> 6 months, from 1/1/19 to 6/30/19, Supporting 2 teams	<b><u>Year 2</u></b> <b>FY 2019-20</b> <i>(224 families served)</i> 7/1/19 to 6/30/20 Supporting 4 teams	<b><u>Year 3</u></b> <b>FY 2020-21</b> <i>(336 families served)</i> 7/1/20 to 6/30/21 Supporting 6 teams	<b>Total</b> <i>(616 families served total)</i>
<b>1. Center for Effective Interventions (CEI) – DU</b>	\$199,305	\$324,840	\$349,705	\$873,850
<b>2. Local provider costs</b>	\$163,565	\$489,275	\$622,444	\$1,275,284
<b>3. Additional pooled support for providers (recruitment &amp; retention)</b>	\$98,594	\$30,000	\$0	\$128,594
<b>4. Total per year per Provider (Line 2, divided by total teams per year).</b>	\$81,782.50	\$122,318.75	\$103,740.67	NA
<b>5. New Team Training Travel</b>	\$12,800	\$12,800	\$12,800	\$38,400
<b>Total project costs (Sum of Lines 1, 2, 3 &amp; 5)</b>	<b>\$474,264</b>	<b>\$856,915</b>	<b>\$984,949</b>	<b>\$2,316,128</b>

**EXHIBIT F**  
**Schedule of Direct Payments**

Schedule of Direct Payments by State for MST Project				
	Year 1	Year 2	Year 3	Total
	FY 18-19	FY 19-20	FY 20-21	
Key Date Funding is available	Jan. 1 2019	Jul. 1 2019	Jul. 1 2020	
<b>State's Direct Spend Share:</b> Amount to be available for immediate appropriation to MST Operating Account	<b>\$213,450*</b>	<b>\$385,668</b>	<b>\$443,291</b>	<b>\$1,042,409</b>

**\*Note:** The state may deduct up to \$17,000 from the first payment, due in January 2019, for the purpose of paying legal fees associated with the contracting and construction of this MST Project. In the event that the State pays less than this amount for all legal and contracting costs associated with this project, then Lead Provider shall be notified of the surplus, in which case Lead Provider shall propose a use for the surplus funds no later than April 1, 2019, which Governance Committee Shall approve.

**EXHIBIT G**  
**Project Cash Flow**

<b>MST Exhibit G-1: Annual State Appropriations and Minimum State Account Balances Dedicated to MST Project</b>						
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Total</b>
	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>	<b>FY 22-23</b>	
<b>Date Funding available</b>	<b>Jan. 1 2018</b>	<b>Jul. 1 2019</b>	<b>Jul. 1 2020</b>	<b>Jul. 1 2021</b>	<b>Jul. 1 2022</b>	
<b>State's Direct Spend Share:</b> Amount to be available for immediate appropriation to MST Operating Account	\$213,450	\$385,668	\$443,291	\$0	\$0	<b>\$1,042,409</b>
<b>State Total Annual Transfer from Marijuana Cash Fund dedicated to MST Project</b>	\$488,492	\$888,570	\$990,085	\$0	\$0	<b>\$2,367,147</b>
<b>Minimum Balance State Maintains in State Account Dedicated to MST Project Success Payments</b> , as of July of each fiscal year, <i>less State Direct Spend for that year</i>	<b>\$275,042</b>	<b>\$777,944</b>	<b>\$1,324,738</b>	<b>\$1,324,738</b>	<b>\$1,324,738</b>	<b>NA</b>
<b>Max. State Success Payment to be appropriated for that fiscal year</b> (Max. front-loaded schedule)	\$0	\$305,190	\$305,190	\$57,920	\$668,300	<b>\$1,336,600</b>
<b>Additional State Payments (Misc.) for Staff + Evaluation</b> (not part of either State Direct Payments or Success Payments)	\$8,138	\$15,000	\$0	\$0	\$0	<b>\$23,138</b>
<b>Total State Appropriation expected for that fiscal year</b> (including 50% annual "Direct Spend" and additional success payment, + Misc)	\$221,588	\$705,858	\$748,481	\$57,920	\$668,300	<b>\$2,402,147</b>
<b>Minimum Balance State Maintains in State Account Dedicated to MST Project</b> as of July of each fiscal year, <i>less all State Spending</i>	<b>\$266,904</b>	<b>\$449,616</b>	<b>\$691,220</b>	<b>\$633,300</b>	<b>(\$35,000)*</b>	

*\*Note: The Final \$35,000 shortfall noted here will be taken out of the final anticipated MST Project Sustainability payment (\$15K for evaluation + \$20K contingency) as provided for in the text of the PFS Contract. We expect interest accrued on the State account will be more than sufficient to make up the \$20,000 shortfall but this is built in as a contingency.*

MST Exhibit G-2: MST Project Operating Account Cash Flow, and Minimum Quarterly Balance of Operating Account					
Fiscal Year	Project Quarter	Quarterly Balance (end of quarter)	Investment Proceeds	State Direct Payments	Interest Earnings (assumes .15%)
2018-19	Q1	\$ 494,150	\$ 517,833	\$ 213,450	\$ -
	Q2	\$ 257,204	\$ -	\$ -	\$ 185
2019-20	Q3	\$ 428,739	\$ -	\$ 385,668	\$ 96
	Q4	\$ 214,671	\$ -	\$ -	\$ 161
	Q5	\$ 510,172	\$ 509,649	\$ -	\$ 81
	Q6	\$ 296,135	\$ -	\$ -	\$ 191
2020-21	Q7	\$ 493,300	\$ -	\$ 443,291	\$ 111
	Q8	\$ 247,248	\$ -	\$ -	\$ 185
	Q9	\$ 247,340	\$ 246,237	\$ -	\$ 93
	Q10	\$ 1,196	\$ -	\$ -	\$ 93
2021-22	Q11	\$ 1,196	\$ -	\$ -	\$ 0
	Q12	\$ 1,197	\$ -	\$ -	\$ 0
	Q13	\$ 1,197	\$ -	\$ -	\$ 0
	Q14	\$ 1,198	\$ -	\$ -	\$ 0
2022-23	Q15	\$ 1,198	\$ -	\$ -	\$ 0
	Q16	\$ 1,198	\$ -	\$ -	
	Q17	\$ 1,198	\$ -	\$ -	
	Q18	\$ 1,198	\$ -	\$ -	
	Total		\$1,273,719	\$ 1,042,409	\$ 1,198

<b>MST Exhibit G-3:</b> <b>Annual State Appropriations and Minimum State Account Balances Dedicated to <u>Denver Project</u></b> <b>(Information provided below is identical to that provided in Denver Exhibit G-1 in a separate Denver Project Contract, provided here for purposes of referencing Maximum State Success Payments for Denver Project In Order to Calculate Any Cross Collateral Payment Set Forth in Section 4.07)</b>						
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Total Over 4.5 years</b>
	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>	<b>FY 22-23</b>	
<b>Key Date Funding is available</b>	<b>January 1 2018</b>	<b>Jul. 1 2019</b>	<b>Jul. 1 2020</b>	<b>Jul. 1 2021</b>	<b>Jul 1 2020</b>	
<b>State Total Annual Transfer from Marijuana Cash Fund dedicated to Denver Project</b>	\$500,978	\$829,194	\$734,981	\$0	\$0	<b>\$2,065,153</b>
<b>Max. State Success Payment to be appropriated for that fiscal year (Max. front-loaded schedule).</b> <i>The total provided here is the total referenced with respect to Cross-Collateral Payments in Section 4.07</i>	\$0	\$203,312	\$203,312	\$58,976	\$465,600	<b>\$931,200</b>
<b>Minimum Balance State Maintains in State Account Dedicated to Denver Project</b> as of July of each fiscal year, <i>less all State Spending Possible Success Payment for that year</i>	<b>\$252,663</b>	<b>\$419,188</b>	<b>\$524,576</b>	<b>\$465,600</b>	<b>\$0</b>	<b>NA</b>