

ADAMS COUNTY, COLORADO  
SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENCE AGREEMENT("Agreement") is made this October 13, 2015 by and between the Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," the Adams County Workforce and Business Center, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as "Licensee," and John Nebel, located at 735 Highland Avenue, Boulder, Colorado 80302, hereinafter referred to as the "Licensor." The Licensee and the Licensor may be collectively referred to herein as the "Parties."

The parties, for the consideration herein set forth, agree as follows:

**1. RESPONSIBILITES OF THE LICENSOR:**

- 1.1 Licensor agrees to provide to the Licensee, at a cost of Four Thousand Eight Hundred dollars (\$4800) per month, an unlimited number of non-exclusive licenses to use software ("Software") developed by the Licensor for the Colorado Department of Labor and Employment ("CDLE") for use by all workforce regions of Colorado.
- 1.2 If the Licensor develops or makes any enhancements, improvements, or upgrades the Software during the initial term of the Agreement or any renewal term, the enhancements, improvements or upgrades will be provides to the Licensee at no additional cost and within a reasonable time after being developed.
- 1.3 The Licensor hereby agrees to provide and maintain the Software described herein, but under this Agreement does not agree to provide or maintain any computer or associated equipment.
- 1.4 The Licensor agrees to provide the Licensee with a list of any third party software license agreements that are relevant to or upon which any software licensing agreements under this Agreement are based.

**2. RESPONSIBILITIES OF THE LICENSEE:**

- 2.1 The Licensee will use the Software only for the purpose of conducting employment and training program activities as prescribed by CDLE in the grant agreement with the Licensor and will make no copies of the Software, or any portion(s) thereof, available to any other persons, agencies or entities without the permission of the Licensor.
- 2.2 The Licensee shall pay the Licensor the sum of Four Thousand Eight Hundred dollars (\$4800) per month, on or by the fifth of each month for the software licenses granted hereunder.
- 2.3 The Licensee shall provide all of the computer hardware or other equipment necessary for the operation of the Software.

**3. TERM:**

- 3.1 Term of Agreement: The term of this Agreement shall be for four (4) years beginning October 1, 2015, ending on September 30, 2019. This Agreement shall be renewable for up to two additional four-year terms upon mutual written agreement of the parties. This Agreement shall not constitute a multi-year fiscal obligation. This Agreement is subject to annual appropriation.

In the event Adams County fails to appropriate money for this Agreement for any given fiscal year, Adams County may terminate this Agreement or amend it accordingly.

**4. SOFTWARE LICENSES AND COPYRIGHT INFRINGEMENT:**

The Licensors is granting the Licensee an unlimited number of non-exclusive, non-transferrable licenses to use the Software only as provided herein. The Licensors shall defend, indemnify, and hold harmless the Licensee, its officers and employees for, from and against any claim(s) alleging that the Software provided by the Licensors hereunder infringes upon or misappropriates any valid and existing United States copyright, trademark, patent or trade secret owned by any third party.

**5. INDEPENDENT CONTRACTOR:**

In providing services under this Agreement, the Licensors acts as an independent contractor and not as an employee of the Licensee. The Licensee shall be solely and entirely responsible for his/her acts and the acts of his/her employees, agents, servants, and subcontractor during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of the Licensors shall be deemed to be an employee, agent, servant of the Licensee because of the performance of any services or work under this Agreement. The Licensors, at its present expense, shall procure and maintain workers' compensation insurance as required by law. **Pursuant to the Worker's Compensation Act § 8-40-202(2) (b) (IV), C.R.S., as amended, the Licensors understands that it and its employees and servants are not entitled to workers' compensation benefits from the Licensee. The Licensors further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.**

**6. NONDISCRIMINATION:**

The Licensors shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex or national origin. The Licensors agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause.

**7. INDEMNIFICATION:**

The Licensors agrees to indemnify and hold harmless the Licensee, its officers, agents, and employees for, from and against and all claims, suits, expenses, damages, or other liabilities, including reasonable attorney fees and court costs arising out of damage or injury to persons, entities, or property, caused or sustained by any person(s) as a result of the Licensors's performance or failure to perform to the terms of this Agreement or as a result of any subcontractor's performance or failure to perform pursuant to the terms of this Agreement.

**8. INSURANCE:**

- 8.1 Commercial General Liability Insurance: To include products liability, completed operations, contractual, broad form property damage and personal injury.

8.1.1	Each Occurrence	\$1,000,000
8.1.2	General Aggregate	\$2,000,000

- 8.2 Comprehensive Automobile Liability Insurance: To include all motor vehicles owned, hired, leased or borrowed.

8.2.1	Bodily Injury/Property Damage	\$1,000,000 (each accident)
8.2.2	Personal Injury Protection	Per Colorado Statutes

8.3 Worker's Compensation Insurance

Per Colorado Statutes

8.4 Professional Liability Insurance: To include coverage for damage or claims for damages arising out the rendering, or failure to render, any professional services.

8.4.1 Each Occurrence \$1,000,000

8.4.2 This insurance requirement applies to Licensors who are performing services under this Agreement as professionals licensed under the laws of the State of Colorado, such as physicians, lawyers, engineers, nurses, mental health providers, and any other licensed professionals,

8.5 Adams County as "Additional Insured"

The Licensor's commercial general liability, comprehensive automobile liability, and professional insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured," and shall include the following provisions:

8.5.1 Underwriters shall have no right of recovery or subrogation against the Licensee, it being the intent of the parties that the parties that the insurance policies so affected shall protect both parties and be privacy coverage for any and all losses resulting from the action or negligence of the Licensor.

8.5.2 The insurance companies issuing the policy or policies shall have no recourse against the Licensee for payment of any premiums due or for any assessments under any form of any policy.

8.5.3 Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Licensor.

8.6 Licensed Insurers:

All insurers of the Licensor must be licensed or approved to do business in the State of Colorado. Upon failure of the Licensor to furnish, deliver, and/or maintain such insurance as provided herein, this Agreement, at the election of the Licensee, may be immediately declared suspended, discontinued, or terminated. Failure of the Licensor in obtaining and/or maintain any required insurance shall not relieve the Licensor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Licensor concerning indemnification.

8.7 Endorsement:

Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or cancelled without thirty (30) days prior written notice by certified mail, return receipt requested to the Licensor.

8.8 Proof of Insurance:

At any time during the term of this Agreement, the Licensee may require the Licensor to provide proof of insurance coverages or policies required under this Agreement.

9. TERMINATION:

9.1 For Cause: If, through any cause, the Licensor fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the Licensor violates any of the covenants, conditions, or stipulations of this Agreement, the licensee shall thereupon have the rights to immediately terminate this Agreement, upon giving written notice to the Licensor of such termination and specifying the effective date thereof.

- 9.2 For Convenience: The Licensee may terminate this Agreement at any time giving written notice as specified herein to the other party, which notice shall be given at least thirty (30) days prior to the effective date of termination. If this Agreement is terminated by the Licensee, the Licenser will be paid the amount that bears the same ratio to the total compensation as the services actually performed bear to the total services the Licenser was to perform under this Agreement, less payments previously made to the Licenser under this Agreement.

## 10. MUTUAL UNDERSTANDINGS:

- 10.1 Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be Adams County, Colorado.
- 10.2 Compliance with Laws: During the performance of this Agreement, the Licenser agrees to strictly adhere to all applicable federal, state and local laws, rules and regulations, including all licensing and permit requirements. The parties hereto aver that they are familiar with §18-8-301, et seq., C.R.S (Bribery and Corrupt Influence), as amended, and §18-8-401, et seq., C.R.S (Abuse of Public Office), as amended, and that no violation of such provisions are present. Without limiting the generality of the foregoing, the Licenser expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPPA) when exposed to or provided with any data or records under this Agreement that are considered to be "Protected Health Information."
- 10.3 OSHA: Licenser shall comply with the requirements of the Occupational Safety and Health Act (OSHA) and shall review and comply with the Licensee's safety regulations while on any Licensee property. Failure to comply with any applicable federal, state or local law, rule or regulation shall give the Licensee the right to terminate this Agreement for cause.
- 10.4 Record Retention: The Licenser shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subjected to all reasonable times to inspection, review, or audit by authorized federal, state or Licensee personnel.
- 10.5 Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferrable by the Licenser without the prior written consent of the Licensee.
- 10.6 Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.
- 10.7 Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.
- 10.8 Notice: Any notices given under this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return

receipt requested: (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

Adams County Attorney's Office 4430 South Adams County Parkway Brighton, Colorado 80601 Phone: 720.523.6116 Fax: 720.523.6114
Adams County Workforce and Business Center 4430 South Adams County Parkway Brighton, Colorado 80601 Contact: Phillipp Noble Phone: 720.523.6915 Fax: 720.523.6974
John Nebel 735 Highland Avenue Boulder, Colorado 80302 Phone: 303.618.7345 Email: <a href="mailto:john.nebel@csd.net">john.nebel@csd.net</a>

- 10.9 Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations hereunder, may be changed modified, or waived except by an instrument in writing that is assigned by the parties hereto.
- 10.10 Severability: If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.
- 10.11 Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.

## **11. CHANGE ORDERS OR EXTENSIONS:**

- 11.1 Change Orders: The Licensee may, from time to time, require changes in the scope of the services of the Licensor to be performed herein including, but not limited to, additional instructions, additional work, and the omission of work previously ordered. Such changes, including any increases or decreases in the amount of the Licensor's compensation, must be mutually agreed upon in writing by the Licensee and the Licensor. The Licensor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Invitation to Bid, or, if no provision exists, pursuant to the terms of the Change Order.
- 11.2 Extensions: The Licensee may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Licensor.

**12. COMPLIANCE WITH C.R.S. §8-17.5-101, ET. SEQ. AS AMENDED:**

5/13/08: Pursuant to Colorado Revised Statute (C.R.S), § 8-17.5-101, *et. seq.*, as amended 5/13/08, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 12.1 The Licensor shall certify participation in the E-verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 132a and jointly administered by the United States Department of Homeland Security Administration, or in its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102 (5)) on the attached certification.
- 12.2 The Licensor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 12.3 The Licensor shall not enter into a contract with a subcontractor that fails to certify to the Licensor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 12.4 At the time of signing this public contract for services, the Licensor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.
- 12.5 The Licensor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- 12.6 If Licensor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Licensor shall: notify the subcontractor and the Licensee within three days that the Licensor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within the three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien, except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 12.7 Licensor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 12.8 If Licensor violates this Section, of this Agreement, the Licensee may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Licensor shall be liable for actual and consequential damages to the Licensee.



**LAWFUL PRESENCE AFFIDAVIT**

I, John D. Nebel, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):


☒ I am a United States Citizen, or

☐ I am a legal Permanent Resident of the United States, or

☐ I am otherwise lawfully present in the United State pursuant to Federal law

(note: additional verification will be required through the "SAVE" program).

I understand that this sworn statement is requires by law because I have applied for a public health benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of the public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statue 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

  
Signature

11-16-2015  
Date

**COUNTY USE ONLY**

Identification Produced (check one):

☐ Colorado Drivers License

☐ Colorado Identification Card

☐ United States Military Card

☐ United States Military Dependent's Card

☐ United States Coast Guard Merchant Mariner Card

☐ United American Tribal Document

☐ \*Verification to be completed through the "SAVE" Program.

Identification produced to: \_\_\_\_\_, of Adams County \_\_\_\_\_  
Name of County employee Initials

Adams County Board of Commissioners  <u>Steven J. Donio</u> Chair	  <u>1/12/16</u> Date
Approved as to Form  <u>D. East</u> Adams County Attorney's Office	   Date
Adams County Workforce Investment Board  Name: MaryBeth Sharp Title: Adams County Workforce Investment Board Chair <u>Mary Beth Sharp</u> John Nebel	   Date  <u>12-3-15</u>
Name: John Nebel Title: Licensor, Computer Systems Design Company	  <u>11-16-2015</u> Date

COUNTY OF Boulder )  
 )ss.  
STATE OF COLORADO )

Signed and sworn to before me this 16 day of November, 2015 by

Margaret Anderson  
Margaret Anderson  
Notary Public

MAIGEN ANDERSON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144031558  
MY COMMISSION EXPIRES AUGUST 12, 2018

My commission expires on: Aug. 12, 2018