

**ADAMS LICENSEE  
SOFTWARE LICENSE AGREEMENT  
2019.920**

THIS AGREEMENT ("Agreement") is made this 15 day of AUGUST 2019, 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 "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 Licensee and the Licensor, for the consideration herein set forth, agree as follows:

**1. SERVICES OF THE LICENSOR:**

- 1.1. Licensor agrees to provide to the Licensee, at a cost of four thousand eight hundred dollars (\$4800.00) 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 term of the Agreement or any renewal term, the enhancements, improvements or upgrades will be provided 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 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 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 per month, on by the fifth of each month for the software licenses granted hereunder.
- 2.3 The License shall provide all of all computer hardware or the equipment necessary for the operation of the Software.

3. **RESPONSIBILITIES OF THE LICENSEE:** The Licensee shall provide information as necessary or requested by the Licensor to enable the Licensor's performance under this Agreement.

4. **TERM:**

4.1. **Term of Agreement:** The Term of this Agreement shall be from October 1, 2019 through September 30, 2023.

5. **PAYMENT AND FEE SCHEDULE:** The Licensee shall pay the Licensor for services furnished under this Agreement, and the Licensor shall accept as full payment for those services:

2019-2020: \$4800 per month- not to exceed \$57,600.00 annually

2020-2021- \$4800 per month- not to exceed \$57,600.00 annually

2021-2022- \$4800 per month- not to exceed \$57,600.00 annually

2022-2023- \$4800 per month- not to exceed \$57,600.00 annually

5.1 Payment pursuant to this Agreement, whether in full or in part, is subject to and contingent upon the continuing availability of Licensee funds for the purposes hereof. In the event that funds become unavailable, as determined by the Licensee, the Licensee may immediately terminate this Agreement or amend it accordingly.

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

7. **NONDISCRIMINATION:**

7.1. **The Licensor 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 Licensor 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. Adams Licensee is an equal opportunity employer.**

8. **INDEMNIFICATION:** The Licensor agrees to indemnify and hold harmless the Licensee, its officers, agents, and employees for, from, and against any 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 Licensor's performance or failure to perform pursuant 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.

9. **INSURANCE:** The Licensor agrees to maintain insurance of the following types and amounts:

9.1. **Commercial General Liability Insurance:** to include products liability, completed operations, contractual, broad form property damage and personal injury.

9.1.1. Each Occurrence: \$1,000,000

9.1.2. General Aggregate: \$2,000,000

9.2. **Comprehensive Automobile Liability Insurance:** to include all motor vehicles owned, hired, leased, or borrowed.

9.2.1. Bodily Injury/Property Damage: \$1,000,000 (each accident)

9.2.2. Personal Injury Protection: Per Colorado Statutes

9.3. **Workers' Compensation Insurance:** Per Colorado Statutes

9.4. **Professional Liability Insurance:** to include coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, as applicable.

9.4.1. Each Occurrence: \$1,000,000

9.4.2. This insurance requirement applies only to the 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.

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

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

9.5.2. 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.

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

9.6. **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 maintaining 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.

- 9.7. Endorsement: Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the Licensee.
- 9.8. Proof of Insurance: At any time during the term of this Agreement, the Licensee may require the Licensor to provide proof of the insurance coverage or policies required under this Agreement.

## **10. DAMAGES ARISING FROM BREACH OF PERFORMANCE OBLIGATIONS**

- 10.1. Notwithstanding anything else set forth in this Agreement, if Licensor fails to comply with all terms of this contract, including but not limited to, its obligation to perform its work in a workmanlike manner in accordance with all codes, plans, specifications and industry standards, Licensor shall be liable to Licensee for all damages arising from the breach, including but not limited to, all attorney fees, costs and other damages.

## **11. WARRANTY:**

- 11.1. The Licensor warrants and guarantees to the Licensee that all work, equipment, and materials furnished under the Agreement are free from defects in workmanship and materials for a period of one year after final acceptance by the Licensee. The Licensor further warrants and guarantees that the plans and specifications incorporated herein are free of fault and defect sufficient for Licensor to warrant the finished product after completion date. Should the Licensor fail to proceed promptly in accordance with this guarantee, the Licensee may have such work performed at the expense of the Licensor. This section does not relieve the Licensor from liability for defects that become known after one year.

## **12. TERMINATION:**

- 12.1. 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 right to immediately terminate this Agreement, upon giving written notice to the Licensor of such termination and specifying the effective date thereof.
- 12.2. For Convenience: The Licensee may terminate this Agreement at any time by 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 the termination. If this Agreement is terminated by the Licensee, the Licensor will be paid an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services the Licensor was to perform under this Agreement, less payments previously made to the Licensor under this Agreement.

## **13. MUTUAL UNDERSTANDINGS:**

- 13.1. 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 with Adams County, Colorado.

- 13.2. Compliance with Laws: During the performance of this Agreement, the Licensor 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 Influences), as amended, and § 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, , the Clean Air Act (42 U.S.C. 7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, and that no violation of such provisions are present. The Licensor warrants that it is in compliance with the residency requirements in §§ 8-17.5-101, et seq., C.R.S. Without limiting the generality of the foregoing, the Licensor expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 13.3. OSHA: The Licensor 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.
- 13.4. Record Retention: The Licensor 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 subject at all reasonable times to inspection, review, or audit by authorized Federal, State, or Licensee personnel.
- 13.5. Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by the Licensor without the prior written consent of the Licensee.
- 13.6. 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.
- 13.7. 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.
- 13.8. 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 an E-mail was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

Department: Adams County Workforce Center  
Contact: Jodie Kammerzell  
Address: 11860 Pecos Street  
City, State, Zip: Westminster, CO 80234  
Phone: 720-523-2481  
E-mail: Jkammerzell@adcogov.org

Department: Adams County Purchasing  
Contact: Bethany Frank  
Address: 4430 South Adams County Parkway  
City, State, Zip: Brighton, Colorado 80601  
Phone: 720-523-6056  
E-mail: bfrank@adcogov.org

Department: Adams County Attorney's Office  
Address: 4430 South Adams County Parkway  
City, State, Zip: Brighton, Colorado 80601  
Phone: 720.523.6116

Licensor: John Nebel  
Address: 735 Highland Avenue  
City, State, Zip: Boulder, CO 80302  
Phone: 303-618-7345  
E-mail: john.nebel@csd.net

13.9. 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 signed by the parties hereto.

13.10. 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.

13.11. 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.

13.12. Confidentiality: All documentation related to this Agreement will become the property of Adams Licensee. All documentation maintained or kept by Adams Licensee shall be subject to the Colorado Open Records Act, C.R.S. 24-72-201 *et seq.* ("CORA"). The Licensee does not guarantee the confidentiality of any records.

#### **14. AMENDMENTS, CHANGE ORDERS OR EXTENSIONS:**

14.1. Amendments or 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. The Licensor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Solicitation, or, if no provision exists, pursuant to the terms of the Amendment or Change Order.

14.2. Extensions: The Licensee may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Licensor.

**15. 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 May 13, 2008, the Licensor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

15.1. The Licensor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or 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.

15.2. The Licensor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

15.3. 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.

15.4. 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.

15.5. 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.

15.6. If the 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 (3) 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 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 Licensor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

15.7. 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).

15.8. 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.

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IN WITNESS WHEREOF, the Parties have caused their names to be affixed hereto:

County Manager

[Signature]  
Raymond H. Gonzales

8.15.19  
Date

John Nebel

[Signature]  
Signature

08-13-2019  
Date

John D. Nebel  
Printed Name

Sole Proprietor  
Title

Attest:

Josh Zygielbaum, Clerk and Recorder

[Signature]  
Deputy Clerk

Approved as to Form:

[Signature]  
Adams County Attorney's Office

NOTARIZATION OF LICENSOR'S SIGNATURE:

COUNTY OF Boulder

STATE OF Colorado )SS.

Signed and sworn to before me this 13<sup>th</sup> day of August, 2019,

by John Nebel

[Signature]  
Notary Public

NICOLE K HORTON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20184012288  
MY COMMISSION EXPIRES MARCH 16, 2022

My commission expires on: March 16, 2022



