



COMMUNITY CONCERT HALL
AT
FORT LEWIS COLLEGE

1000 Rim Drive
Durango, CO 81301-3999

EVENT RENTAL AGREEMENT

Name of Renter:

Name of Event(s):

Representative:

FEIN Number (if applicable) or SSN:

Address:

E-mail(s):

Phone: Cell: Fax:

1) On this date, permission is hereby granted by the Board of Trustees for Fort Lewis College (hereinafter, the College) to (hereinafter, Renter) to use and occupy the COMMUNITY CONCERT HALL AT FORT LEWIS COLLEGE (hereinafter Facility) for the following and for no other purpose (list event name):

USE DATE(S):

- Use of the rented space shall begin at 8:00 a.m. on ... for the purpose of the event, (list event name) ... and shall end at 11:59 p.m. on ...
-Main Event start time:
-Rehearsal date and time (if applicable):

TICKETING REQUIREMENTS FOR THIS EVENT

- Price(s) of tickets? Balcony \$ Orchestra \$ Plaza \$ N/A
Date tickets to go on sale?
Seating: Reserved General Admission
Dance Floor or Sell Pit Seating? (Pit adds another 46 seats.) Dance Floor Sell Pit

CONCESSION REQUIREMENTS FOR THIS EVENT

- Concessions requested for event (no extra charge)? Yes No
Intermission during event? (Recommended for events 90 minutes or longer.) Yes No
Pre/post event reception? Yes No If yes, Start time End time
If liquor is served at the event, Renter is required to use Concert Hall Concessions Bartenders. (See Rental Rates for catering cost). Liquor served? Yes No

- 2) **RETURN OF CONTRACT:** Dates requested by the *Renter* must be at least 90 calendar days prior to the event date and are not considered firm until the *Community Concert Hall at Fort Lewis College* approves the event and the *Renter* returns the signed contract accompanied by the deposit. Contract and deposit must be returned by _____. Tickets will go on sale only after receipt of the Rental Agreement and deposit.
- 3) **PREMISES:** It is agreed that the *Renter* shall take the premises as he finds them and further that *Community Concert Hall* assumes no responsibility for any property placed in the *Facility*. Any discrepancies noted by the *Renter* must be presented in written form, and be approved of, and signed by the *Community Concert Hall's* authorized representative (hereinafter *Director*).
- 4) **SMOKING:** Smoking in the building is strictly prohibited.
- 5) **VENUE RENTAL:** *Renter* agrees to pay the *Community Concert Hall at Fort Lewis College* for the use of *Facility*, the sum of \$ _____. (See Rental Rate Sheet for fees.)
- 6) **DEPOSIT:** *Renter* agrees to pay \$ _____, as a deposit with the return of this signed contract, which will be applied toward rental charge in final billing. *Renter* agrees to make such deposit by check or money order made payable to the *Community Concert Hall at Fort Lewis College*.
- 7) **CANCELLATION BY RENTER:** Should the *Renter* cancel the event covered in this contract, no deposit refund shall be made, and *Renter* also agrees to pay any reimbursable expenses incurred by the *Community Concert Hall at Fort Lewis College* in connection with the event covered by this contract, including but not limited to: advertising, labor and ticketing costs.
- 8) **INSURANCE:** RENTER SHALL PROVIDE LIABILITY INSURANCE OF \$1,000,000 FOR ITSELF, ALL OF ITS PARTICIPANTS AND THE COMMUNITY CONCERT HALL AT FORT LEWIS COLLEGE SHALL ALSO BE NAMED AS ADDITIONALLY INSURED. **The Renter shall provide the College with a certificate of insurance no less than 30 days before the scheduled rental.** The College must be given notice of cancellation/modification of the insurance. NOTE: Events without proof of insurance will be cancelled.
- 9) **SERVICES PROVIDED:** All expenses, including technical labor costs, incurred by the *Community Concert Hall at Fort Lewis College* will be billed to the *Renter*. Detailed list of service and rental options is enclosed on the Rental Rate sheet. As part of the facility rental fee and other charges, the following services shall be provided:
- Facility shall provide trained ushers and a Front of House Manager-if needed-for each event at no extra charge to the *Renter*.
 - Concessions will be provided for each event at no extra charge to the *Renter*; however, the Director has the final decision if Concessions will be provided for each event.
 - The *Renter* shall receive advertising on the Concert Hall's "Coming Soon" web page at no extra charge. It is the *Renter's* responsibility to provide event information and logo/pictures to the Director for the web page posting.
 - Tickets for *Renter's* event will be set up on a 24/7 website so patrons will have access to purchase tickets at their convenience day or night.
 - The Concert Hall provides a phone number for *Renter's* patrons to call and has a staff person located at the Downtown Ticket Office to answer calls and follow up with any messages.

- The **Renter's** patrons will have a "live" person located at the Downtown Ticket Office if they choose to purchase tickets from that location.
- The **Renter's** patrons have the advantage of being able to charge tickets utilizing the Concert Hall's credit card service.
- The Concert Hall provides a ticket machine/printer and ticket stock.
- The Concert Hall's Box office shall be open 1 hour prior to curtain time at the Hall and remain open through intermission.
- Facility staff will put chairs and stands on stage for band and orchestra use but stage set up will be **Renter's** responsibility. Chairs and stands should be re-racked after event.

10) **DAMAGES:** **Renter** shall be responsible for the payment of any and all damages to the building, furnishing, fixtures, or equipment whether caused by **Renter** or his/her employees, agents, representatives or guests. Damage to the premises shall be at the expense of the **Renter**.

During set up, rehearsals and performances:

- No outside food or drinks are allowed in *your Community Concert Hall* seating areas at any time. Only beverages purchased at the Concert Hall Concessions may be allowed in the Hall during performances.
- Confetti, glitter, string or such embellishments are NOT allowed inside the Concert Hall Building. (This includes dressing rooms, bathrooms, lobbies, stage, etc.)
- Resin is not allowed on stage without prior approval from the Technical Director.

A Cleaning Fee of **\$100 per hour** will be charged **to the Renter** if this agreement is violated.

Special Catering for events:

- **Renter** may schedule catering for rehearsals, set up, pre & post receptions without incurring a cleaning fee. Food is to remain in the Concert Hall lobbies, hallways or on stage only as approved by the Concert Hall's Technical Director. No food is to enter the Concert Hall seating areas. If food or drinks are found in the seating areas of the Hall, a cleaning fee of \$100 per hour will be charged to the **Renter**.

11) **STAFFING/SECURITY:** *The Community Concert Hall at Fort Lewis College* shall secure (as deemed necessary by the Concert Hall) and the **Renter** shall pay at the rates included in the attached Rental Rate Sheet, all necessary staffing, including security.

12) **DONATIONS:** No collections of donations, whether for charity or otherwise, shall be made, attempted, or announced on the premises without prior written approval of the **Director**. If applicable, approved Yes No By: _____

13) **SEATING CAPACITY:** Persons will not be permitted inside the **Facility** in excess of the established capacity of 600 seats plus the option for an additional 46 seats in the pit area.

14) **ADVERTISING/EVENT PROGRAMS:** Any advertising or event programs must list the location of the event as, "Community Concert Hall at Fort Lewis College." Ticket information must be listed as, "Tickets may be purchased at the Community Concert Hall's Downtown Ticket Office within the Durango Welcome Center at 8th and main, online at durangoconcerts.com or by calling

(970) 247-7657.” The Concert Hall also requests that you include “*plus applicable service fees” on your marketing materials after your ticket prices.

The **Concert Hall** does not provide printed programs for rental engagements. If the **Renter** provides a program, the House will arrange for its ushers to distribute them, and the House retains the right to insert promotional material for upcoming events into any program. **Any copy concerning the Community Concert Hall at Fort Lewis College printed in the program, posters or advertising must be approved in advance by the facility.**

15) **TICKETING SERVICES:** If an event requires tickets, **In-House Ticketing Services (via tix.com) must be utilized.** Charges include:

- After tickets are set up and placed for sale, a \$75.00 charge will be made for any changes or corrections for tickets.
- The gross dollar value of ALL tickets sold by the renter or the Concert Hall, including those pulled by the **Renter**, is subject to a 6% (non-profits) or 8.5% (commercial) gross ticket fee payable to the Concert Hall. **Renter** shall not be charged for up to 12 tickets which are considered **Renter’s** seats or “comp” tickets.
- A per ticket convenience fee will be charged to the patron for sales made over the telephone, online and in-person.
- A per sale Exchange Fee will be charged to the Ticket Buyer if the **Renter** has multiple events and the Ticket Buyer should need to exchange seats or dates from their original purchase.

Tickets will be sold through the Community Concert Hall Ticketing Office and website. Money collected for tickets will be deposited into a Fort Lewis College account and will be reimbursed after the date of show. Balance owed for the rental, ticket stock, labor and any other charges will be deducted from ticket revenue prior to reimbursement.

The Concert Hall operates a downtown ticketing office within the Durango Welcome Center which will be open seven days a week. On the day of the event, the campus Box Office will be open one hour prior to show time. Downtown Ticket Office weekday hours of operation are set by the Management and will vary during different periods of the year. Additionally, patrons will have 24/7 ticketing service on the Concert Hall’s website at www.durangoconcerts.com

The ticketing office/box office will only sell tickets by its computerized ticketing network and will not sell hard tickets.

The Hall may not be oversold at any time. The Facility reserves the right to utilize up to, but not more than, 12 seats for its own purposes (but under no condition may these tickets be sold by the Hall). Any of the 12 tickets which are not used will be returned to **Renter** two hours prior to event.

16) **TECHNICAL REQUIREMENT:** **Renter** shall supply the **Community Concert Hall** with all technical requirements, plans, ideas, and program content pertaining to the event as well as a copy of artist contract/rider. All technical requirements and backstage requirements must be delivered to the **Technical Director** no later than four weeks prior to each event.

17) **CONTROL OF BUILDING:** The **Facility** shall be at all times under the control of the **Director**.

18) **DEFAULT:** Should the *Renter* default in the performance of any of the terms and conditions of this contract, the *Director* at his/her option, may terminate the same. Any deposit made by the *Renter* to the *Community Concert Hall* shall be retained and considered as liquidated damages.

19) **PARKING:** *Director* will determine, based upon projected attendance, the need for traffic and parking control. The *Community Concert Hall at Fort Lewis College* reserves the right to control and charge for parking. The Fort Lewis College Campus Police Department does charge for parking from 8 a.m. to 5 p.m., Monday – Friday (September – April). All individuals parking in campus lots during these times will be required to have parking permits (Daily permit machines are located in Lot D, North of the football stadium, and in Lot L, East of Jones Hall).

20) **BILLING:** *Community Concert Hall at Fort Lewis College* will provide the *Renter* with a final settlement statement within thirty (30) days following the event. The *Renter* shall provide the *Community Concert Hall* notice of any claimed error within five (5) days after that. In the absence of such notice, the final settlement statement shall be deemed to be a true and correct statement of the parties' accounts.

The Community Concert Hall or the *Renter*, as the case may be, will make final payment of undisputed amounts within thirty (30) days upon receipt of the invoice. Any disputed amounts will be paid within three (3) business days of the resolution of the dispute.

21) **CATERING/SOFT CONCESSIONS:** Food and drinks will be allowed in designated areas of the Facility only. The right to sell concessions is held by the Facility. All catering costs are the sole responsibility of the *Renter* (see attached Rental Rate Sheet).

22) **ALCOHOL SERVICE:** There is no alcohol beverage service allowed at the Community Concert Hall without permission of the Director.

The right to sell or serve alcoholic beverages and/or any concessions is held by the Facility.

The Community Concert Hall at Fort Lewis College (hereafter referred to as the "Facility") holds a license to serve alcoholic beverages. Where service or sale of alcoholic beverages is requested at a scheduled event, contact the Director. Approval is not automatic; the Director reserves the right to approve or refuse any request for service of alcoholic beverages in the facility. Unless otherwise requested and approved, the Facility will operate a concessions station and bar through intermission. Product costs will be covered by *Renter* (concessions prices) or by customer on a sale-by-sale basis.

23) **ALCOHOL AT FUNDRAISERS/PRIVATE PARTIES:** The following requirements must be met by those requesting service of alcohol in the Facility when concessions are not sold by the Facility (i.e. fundraisers for renters, private parties, etc.):

- Event must be held on a specific day and time. Permission is not transferable, nor is it valid for any event, location, day or time other than the one for which the event is contracted.
- For groups who have donated alcohol as part of a fundraiser: alcohol must be inventoried prior to and after the event by the Concert Hall's Concessions Manager. No remaining alcohol can be taken home after the event; rather *Renter* must arrange for the provider to pick up/return product.
- Any alcoholic beverages sold or served must be sold or served by the drink only.

- Only alcoholic beverage(s) permitted for sale or service by the Director may be sold or distributed at the licensed premises.
- Consumption of alcoholic beverage(s) must remain within defined, licensed premises. Alcohol is not allowed outside of the Facility.
- Food and non-alcoholic beverages must also be available. Food and beverages that are not purchased through the Facility will have a service fee of (min. \$25) depending on requirements (linens, set up, cleaning, cups, napkins, recycling, etc.).
- The Facility must purchase the approved beverage(s) and arrange for storage and receipt of delivery prior to the event. The liquor license number must be provided to the distributor when the beverage(s) are purchased. Alcohol must be ordered at least 30 days in advance of event.
- No alcoholic beverage(s) may be served to persons under the age of 21 years.
- The Facility must provide all servers of alcoholic beverages (labor costs will be billed back to the client).

The Concert Hall management retains the exclusive right to operate all liquor sales within the Concert Hall. No liquor will be sold at any event that is produced by students.

24) **VIDEO/FILMING:** Video recording/filming of *Renter's* event is allowed; however the camera and filming individual may not block any aisles or fire exits/lanes. If a professional performing artist has been contracted, the *Renter* must receive artist permission in writing before any video/filming occurs.

25) **EQUIPMENT/MATERIALS:** *Renter* is required to remove any equipment, materials or decorations immediately following the event. If equipment/materials/decorations remain in the Concert Hall a daily storage fee of \$50 per day will be charged to the *Renter*.

26) **MERCHANDISE SALES:** The *Concert Hall* retains exclusive rights concerning the sale of merchandise; including pre-orders for CDs, DVDs, books, etc. The *Concert Hall* shall collect a 15% commission on the gross sale price of each item sold when sold by the *Renter*. The Concert Hall will collect 25% of gross sales if Concert Hall staff sells the merchandise. The *Concert Hall* Management must be given advance notice of any merchandise sales. Merchandise must be available for an inventory count no less than two (2) hours before the doors open to the public. Front of House will also conduct a post-event inventory of merchandise and pre-order sales for reconciliation after the event.

26) **ADDITIONAL REGULATIONS:** *The Community Concert Hall* reserves the right to impose any additional rules or regulations, or to set special rental and use arrangements, whether or not expressly provided herein, which the *Community Concert Hall at Fort Lewis College* deems necessary to protect its interests, and such regulations shall be binding upon the *Renter*

27) **SPECIAL CONDITIONS:** Costs for all technical labor will be billed back to the Renter. A representative of the Hall will be present at all times Renter is occupying the facility (stage hand hourly rate will be charged back to Renter unless specific technical personnel requested). **An in house Audio Engineer will be required for any event requiring more than one microphone.**

Renter will be charged back at the Sound Technician rate. See the enclosed Rental Rate Sheet for labor charges.

28) **ASSIGNMENT BY THE RENTER:** The *Renter* shall not assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the *Community Concert Hall at Fort Lewis College*.

29) **FORCE MAJEURE:** If the *Facility* or any part is destroyed or damaged by fire, the elements, mob, riot, or for any reason is rendered unfit for occupancy either prior to or during the event, or if the *Community Concert Hall* is unable to give the *Renter* possession of the *Facility* during the event because of national or local emergency, calamity, epidemic, strike or war, this Agreement shall be suspended for the period during which the *Facility* cannot be delivered to the *Renter* or, in the *Community Concert Hall's* sole discretion, the *Community Concert Hall at Fort Lewis College* may terminate this Agreement and return to the *Renter* any advanced or unaccrued payments, less Reimbursable Expenses, without any further liability or obligation by the *Community Concert Hall at Fort Lewis College*.

30) **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties. No representations, warranties, conditions or agreements shall be binding on the parties unless incorporated in this Agreement or any attached exhibits. This Agreement may not be amended except by a writing signed by the parties.

31) **SPECIAL PROVISIONS:** The attached Special Provisions are hereby incorporated into this contract.

AGREED

***BOARD OF TRUSTEES FOR FORT LEWIS COLLEGE
DAVID J. MCDERMOTT, CPA
STATE CONTROLLER***

CHARLES LESLIE

Approved by: Charles Leslie
Director, Community Concert Hall

Date

RENTER

Signature

Print Name and Title

**COMMUNITY CONCERT HALL AT FORT LEWIS COLLEGE
CONTACT LIST**

**Director,
Charles Leslie (970) 247-7468, email address: leslie_c@fortlewis.edu**

**Technical Director/Artist and Rental Contracts,
LeAnn Brubaker (970) 247-7232, email address: brubaker_l@fortlewis.edu**

**Ticketing Manager,
Nancy Ottman (970) 382-6947, email address: ottman_n@fortlewis.edu**

**Downtown Ticket Office, Ticket Office Manager
Deahna Geehan (970) 247-7657, email address: geehan_d@fortlewis.edu**

**Downtown Ticket Office, Ticketing Agent
Linda Fischbach (970) 247-7657, email address: lafischbach@fortlewis.edu**

**Concessions Manager,
Lee Hagar (970) 946-8771, email address: lohagar@gmail.com**

RENTAL RATES
COMMUNITY CONCERT HALL AT FORT LEWIS COLLEGE
Effective May 1, 2012

Sunday-Thursday Rental Rates:

- Campus Users \$700 per day, plus 6% gross ticket sales
- Non-Profit (City of Durango) \$700 per day, plus 6% gross ticket sales
- Non-Profit (Out of Durango City Limits) \$850 per day, plus 6% gross ticket sales
- Commercial \$1,300 per day, plus 8.5% gross ticket sales or a minimum guarantee of \$1,200; whichever is greater

Friday-Saturday Rental Rates:

- Campus Users \$850 per day, plus 6% gross ticket sales
- Non-Profit (City of Durango) \$850 per day, plus 6% gross ticket sales
- Non-Profit (Out of Durango City Limits) \$1,000 per day, plus 6% gross ticket sales
- Commercial \$1,300 per day, plus 8.5% gross ticket sales or a minimum guarantee of \$1,200; whichever is greater

Set up/Rehearsal Rental Rates:

- Technical Set up/Rehearsals $\frac{1}{2}$ Daily Rental Rate listed above, plus clean up fee, if applicable
- Shell Set Up/Tear Down \$200 per day
This fee is only assessed when the renter chooses to split dates and a reset of the shell is necessary. Labor will be charged for the set up of the shell for every event.

Ticketing:

- Changes or corrections to tickets \$75 per change
- Printing Ticket Stock \$25 per 100 tickets printed, plus 6% of gross ticket sales if Concert Hall not selling tickets.

Equipment Rental Rates:

- Dance Floor Maintenance/Set Up \$150 per event
- Steinway Piano Usage \$175 per event
- Projection Screen (In House) \$100 per day
- Projection Screen (Out of House) \$200 per day
- Video Projector (In House) \$200 per day
- Video Projector (Out of House) \$250 per day
- Slide Projector \$50 per day
- Intelligent Lighting \$100 per event
- 6' Rectangular Table \$4.00 per table
- 4' Rectangular Table \$3.00 per table
- 6' Round Table \$4.00 per table

- Tablecloth \$3.00 per table

Additional Labor Charges per Event:

- Sound Technician \$36.00 per hour
- Sound Monitor Technician \$24.00 per hour
- Light Design \$30.00 per hour
- Light Technician \$24.00 per hour
- Spot Light Operators \$21.00 per hour
- Stage Manager \$21.00 per hour
- Stage Hands \$19.00 per hour
- Police Officer \$40.00 per hour
- Security (Head) \$30.00 per hour
- Security Crew \$18.00 per hour

Catering/Soft Concessions/Alcohol Service (Only charged when pre/post receptions or parties):

- Bartender \$18.00 per hour
- Wine Corkage Fee \$5.00 per bottle
- Beer Fee \$1.00 per bottle
- Beer Tap Fee \$50.00 per keg
- If alcohol is donated for event \$25.00 minimum fee (for napkins, cups, etc)

Equipment/Materials/Decorations:

- Storage fee (if not picked up immediately after event) \$50.00 per day

Cleaning Fee

- If glitter, confetti, string or other embellishments are used \$100.00 per hour
- If food or non-approved drinks are brought into the Seating Areas of the Hall \$100.00 per hour

COLORADO GENERAL PROVISIONS

Assignment and Subcontracts

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

Binding Effect

Except as otherwise provided in **§20(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.

Captions

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

Counterparts

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

Entire Understanding

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

Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

Jurisdiction and Venue

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

Modification

By the Parties

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

By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

Order of Precedence

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

- i. Colorado Special Provisions

.ii. The provisions of the main body of this contract

iii. Exhibits (*in order and if applicable*)

A. Severability

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

B. Survival of Certain Contract Terms

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

C. 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 CRS §§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. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

D. Third Party Beneficiaries

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

E. Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, 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.

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COLORADO SPECIAL PROVISIONS

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

1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5).

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

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

7. 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.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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

9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

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

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Contract and shall 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 program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State 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 State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Contract.

SPs Effective 1/1/09