

Auraria Higher Education Center

FISCAL RULES

Adopted by the Auraria Board: December 12, 2012

Effective: January 1, 2013

Updated and Amended Effective: April 1, 2017

Second Revision Effective: July 1, 2019

Third Revision Effective: November 1, 2019

Fourth Revision Effective: July 1, 2023

Fifth Revision Effective: July 1, 2026

The purpose, statutory authority, definitions, applicability, and responsibility that are contained on the next page of these rules are applicable to each of the Center's Fiscal Rules and should be attached to any rule that is separated from the Center's Fiscal Rules.

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PURPOSE

The purpose of these Fiscal Rules is to set forth the policies and procedures regarding the internal controls, contracting, accounting functions, financial reporting, and other financial transactions and functions of the Auraria Higher Education Center (“AHEC” or the “Center”).

STATUTORY AUTHORITY

Senate Bill 10-003 modified the Colorado Revised Statutes § 24-30-202 to authorize the Center to opt out of the State Fiscal Rules upon adoption of the Center’s own Fiscal Rules that provide adequate safeguards and methods for ensuring fiscal responsibility and accountability. Upon such adoption, the Chief Executive Officer (“CEO”), with the concurrence and approval of the Center’s Chief Financial Officer (“CFO”) and legal counsel, may, from time to time, amend these Rules as reasonable and necessary to continue to provide adequate safeguards for the proper expenditure of agency monies and resources. Any such amendments shall be consistent with the best methods and best business practices when adopted.

DEFINITIONS

The following definitions are incorporated into each of these Fiscal Rules:

1. **Department** - any division, section, or unit that is created and officially recognized by the Center.
2. **Center** – the Auraria Higher Education Center
3. **Center Financial System** - the Center’s official financial system as prescribed by the Chief Financial Officer (“CFO”).

APPLICABILITY

These Fiscal Rules are applicable to all AHEC Departments.

RESPONSIBILITY

It is the responsibility of each Department head to ensure compliance with these Fiscal Rules.

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CHAPTER 1: ACCOUNTING

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Rule 1-1 ACCOUNTING PRINCIPLES AND STANDARDS

AUTHORITY:

§ 24-17-102(1), C.R.S. (Internal Controls)

§ 24-17-103, C.R.S. (Annual Internal Control Report)

RULE:

The accounting principles of the Center shall be based on generally accepted accounting principles (GAAP) as adopted by the Governmental Accounting Standards Board (GASB). In addition, all applicable statutory provisions shall be met.

When a conflict between statutory provisions and generally accepted accounting principles exists, generally accepted accounting principles take precedence in financial reporting.

When it is necessary to report compliance of financial transactions with statutory requirements, supplemental schedules may be used. Preparation of separate statutory based reports may also be necessary.

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Rule 1-2 USE OF THE CENTER FINANCIAL SYSTEM

AUTHORITY:

§ 24-30-202(13), C.R.S. (Higher Education Authority)

RULE:

All Departments of AHEC are required to use the Center Financial System to record their financial transactions and financial information, develop their financial reports and prepare their financial statements.

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Rule 1-3 ACCESS TO THE CENTER FINANCIAL SYSTEM

AUTHORITY:

§ 2-3-107, C.R.S. (State Auditor)

§ 2-3-203(1), C.R.S. (Joint Budget Committee)

RULE:

The Center's Director of Finance and Business Services is the official custodian of the financial portion of the database included within the Center Financial System. The official custodian prescribes the rules and regulations with reference to query, use, or inspection of the financial records.

The Director of Finance and Business Services s, as official custodian of the financial portion of the Center Financial System database, shall approve access and resolve all disputes regarding access to financial information contained in the database.

Electronic Read Only (Query) Access to the Center Financial System Data Base

The Center Financial System records contain both public and confidential information; therefore access to financial data contained on the Center Financial System shall not be granted to anyone for general perusal of a Department's financial records.

Specific request for query access to the financial database of the Center Financial System shall state what information is requested and when the information is desired. The Director of Finance and Business Servicess shall have the discretion of requiring that the request for financial information be in writing.

1. Query access by a citizen or private entity:

Information requested by a citizen or entity other than a Center Department shall be furnished in a timely manner, as provided by statute. The information shall be provided by the Director of Finance and Business Services in the form of a copy or printout, or a computer tape or disc. Actual costs, not to exceed the statutory maximum, may be charged by the Director of Finance and Business Services for providing the information requested.

2. Query access to a Department's own financial information:

Each Department shall be given query access to its own financial information on the Center Financial System upon approved written request.

3. Query access to another Department's financial information:

When a Department desires information from another Department, the Department making the request shall obtain written approval from the owner of the information. Once approval has been granted, the information shall be furnished in a timely manner. Disputes shall be referred to the Director of Finance and Business Services.

4. Query access by the Office of the State Auditor and Contracted Audit Firms:

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The Office of the State Auditor and any contracted audit firm shall have query access to the financial databases of all Departments on the Center Financial System.

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Rule 1-4 AUTOMATED INTERFACES WITH THE CENTER FINANCIAL SYSTEM

AUTHORITY:

§ 24-30-202(13), C.R.S. (Higher Education Authority)

RULE:

Only electronic interfaces approved by the Director of Finance and Business Services shall be allowed to feed data into the Center Financial System.

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Rule 1-5 CENTER FINANCIAL SYSTEM SECURITY

AUTHORITY:

§ 24-30-201(1)(f), C.R.S.

RULE:

The Director of Finance and Business Services is responsible for the overall security of the Center Financial System. The Director of Finance and Business Services may delegate security responsibility to Departments for their portion of the financial database on the Center Financial System.

If it is determined that a Department is not complying with the delegated responsibilities, the Director of Finance and Business Services may withdraw the delegation and assume responsibility of the Center Financial System security administration for that Department.

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Rule 1-6 CENTER'S ACCOUNTING SYSTEMS

AUTHORITY:

§ 24-30-202(13), C.R.S. (Higher Education Authority)

DEFINITIONS:

The "Center Financial System" shall include all data processing software systems applied to general ledgers and subsidiary ledgers, debt collection, accounts payable, accounts receivable, cost distribution, fixed assets, inventory, payroll, purchasing, and time collection.

RULE:

All financial systems that are used to record Center financial information and transactions, or develop financial reports and prepare financial statements for the Center shall be approved by the CFO.

The CFO shall approve the development or acquisition of new or replacement financial systems based upon the uniformity of accounting procedures, account structures, expense, revenue, and other classifying code definitions, as well as the potential benefit and use by Center Departments.

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Rule 1-7 SIGNATURE AUTHORITY

RULE:

Each Department that is assigned a Fund and Cost Center code in the Center's chart of accounts must have an approved signor on file with the Accounting Department. This approved signor will have the responsibility to approve all expense and security requests. It will be the responsibility of each Department to update the approved signor as necessary, as well as ensure the signors are capable of the related responsibility.

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Rule 1-8

PRE-AUDIT RESPONSIBILITY FOR ACCOUNTING DOCUMENTS AND FINANCIAL TRANSACTIONS

AUTHORITY:

§ 24-30-201(1)(h), C.R.S.

DEFINITIONS:

Pre-audit - a review for compliance with applicable statutes, fiscal rules, and other regulations, and an adherence to accepted business practices.

RULE:

All accounting documents and financial transactions shall be subjected to a pre-audit prior to recording the documents on the Center Financial System prior to making payment. Departments shall implement internal accounting and administrative controls that reasonably ensure that financial transactions are accurate, reliable, and conform to these Fiscal Rules before they are remitted to the Accounting Department. The factors of risk, cost, and business requirements shall be considered when establishing these internal controls.

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Rule 1-9 FRAUD, THEFT AND EMBEZZLEMENT

AUTHORITY:

§ 18-4-401, C.R.S. (Theft)
§ 18-5-102, C.R.S. (Forgery)
§ 18-8-407, C.R.S. (Embezzlement of Public Property)
§ 24-17-101, C.R.S. (State Department Financial Responsibility and Accountability Act)

DEFINITIONS:

Fraud includes misstatements arising from fraudulent financial reporting, misstatements arising from intentional misappropriation of assets, and theft or embezzlement of public property.

Misstatements arising from fraudulent financial reporting are intentional misstatements, or omissions of amounts or disclosures in financial statements with the intent to deceive financial statement users.

Misstatements arising from misappropriation of assets involve the theft of an entity's assets where the effect of the theft causes the basic financial statements not to be presented in conformity with accounting principles generally accepted in the United States of America.

RULE:

Departments have the responsibility for the design and implementation of programs and controls to prevent, deter and detect fraud.

Any suspected fraudulent misstatements of the financial statements should be reported to the CFO.

Any suspected theft or embezzlement of Center funds, state funds, federal funds, or assets should be immediately reported to the CEO, or delegate, and the CFO of the Center and appropriate action taken. A suspected theft or embezzlement of Center funds, state funds, federal funds, or assets totaling \$5,000 or more, or such amount as designated by the CFO, per incident shall be reported in writing to the State Controller. Also, the results of any investigation or follow-up including corrective measures implemented to prevent or reduce the likelihood of future occurrences must be reported in writing to the State Controller in a timely manner.

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Rule 1-10

ACCOUNTABILITY AND CAPITALIZATION OF EQUIPMENT

AUTHORITY:

§ 24-30-201(1)(k), C.R.S.

DEFINITIONS:

Equipment - Tangible personal property that has a useful life of more than one year and an acquisition cost of more than \$10,000, which is not a permanent part of a building and does not lose its identity through incorporation into a more complex unit.

RULE:

Each Department is responsible for ensuring that all equipment acquired by the Center is properly accounted for when acquired, inventoried and safeguarded throughout its useful life, and properly accounted for at the time of disposal.

Tangible personal property purchased by the Center shall be either capitalized or expensed in the fiscal year in which it was acquired.

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CHAPTER 2: DISBURSEMENT

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Rule 2-1 PROPRIETY OF EXPENDITURES

AUTHORITY:

§ 24-30-202(2) and (5)(a), C.R.S.

RULE:

All expenditures by Departments shall meet the following standards of propriety:

1. Are for official state and Center business purposes only.
2. Are reasonable and necessary under the circumstances.

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Rule 2-2 COMMITMENT VOUCHERS

1. Authorities
2. Definitions
3. Rule
4. Dollar Limits and Requirements
5. Center Purchase Orders
6. Center Contracts
7. Statutory Violations
8. Advance Payments
9. Emergencies
10. Vendor Agreements
11. Purchase Order Terms and Conditions

1 AUTHORITIES

§ 24-30-1401, et seq., C.R.S., (Professional Services)

2 DEFINITIONS

All references to “contract” or “agreement” refer to contracts, which are formal, legally binding documents. The terms “contract”, and “agreement” are used interchangeably in the following definitions to reflect their common usage and include any amendments and modifications thereto.

2.1 Advance Payment/Pre-Payment – A payment made for goods or services prior to the receipt thereof.

2.2 Commitment Voucher

2.2.1 Elements. A document, the form of which has been approved by the CFO, evidencing the following:

2.2.1.1 A description of goods or services being purchased or other reasons for the disbursement of funds;

2.2.1.2 The amount to be paid;

2.2.1.3 That the obligation is being charged to the appropriate account; and

2.2.1.4 That procurement requirements have been satisfied.

2.2.2 Inclusions. Commitment vouchers include any approved form of purchase order, Center Contract, travel authorization, grant contract, license agreement, parking license agreement, and other written authorizations for disbursement that satisfy the requirements of subsection 2.10.2 (Elements) of this Fiscal Rule.

2.2.3 Exclusion. Procurement cards are not commitment vouchers. Procurement cards are a method of payment, not a method of procurement. Purchases made with a procurement

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card also require the use of an appropriate commitment voucher or small purchase documentation.

2.3 Emergency – An unexpected event creating an immediate threat to the public health, welfare, or safety, the functioning of the Center or the preservation or protection of property, which requires an immediate response.

2.4 Encumbrance - An amount reserved on the Center Financial System to reflect a formal obligation of the Center. When required by this Fiscal Rule, a Department shall encumber funds prior to recording expenditures and disbursing funds.

2.5 Interagency Agreement - An agreement between the Center and another State agency or Institution of Higher Education.

2.6 Interagency Purchase Order - A purchase order issued by the Center to another State agency or Institution of Higher Education.

2.7 Procurement Officer – The head of the procurement function for the Center.

2.8 Purchase Order - A document, in a form prescribed by the Center's CFO, prepared and approved by an authorized employee of the Center for the purpose of encumbering funds and securing goods or services from a vendor. For the purpose of this Fiscal Rule, a purchase order is not a Center Contract.

2.9 Reviewing Attorney – An assistant attorney general, special assistant attorney general, or other attorney authorized by the State Attorney General and employed or retained by the Center.

2.10 Small Purchase Documentation

2.10.1 Applicability. Small purchase documentation is required for purchases of \$15,000 or less.

2.10.2 Elements.

2.10.2.1 Documentation shall include:

2.10.2.1.1 Description of goods or services being purchased or other reasons for the disbursement of funds; and

2.10.2.1.2 The amount to be paid.

2.10.2.2 The Department shall ensure that:

2.10.2.2.1 The obligation is being charged to the appropriate account; and

2.10.2.2.2 Procurement requirements have been satisfied.

2.10.3 Inclusions. Small purchase documentation includes, without limitation, an invoice, billing, receipt, court order, or any other document appropriate to the transaction and approved by the CFO.

2.10.4 Exclusions. Small purchase documentation is not required for purchases that do not require a receipt under Fiscal Rule 5-1(Travel).

2.11 Center Contract – See Fiscal Rule 3-1 (Center Contracts).

2.12 Statutory Violation – A statutory violation occurs when liabilities are incurred or payments are made on the Center's behalf without prior approval of a purchase order or contract by the CFO, when required under this Fiscal Rule.

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2.13 Vendor Agreement – A vendor agreement is any form of agreement provided by a vendor, including an on-line agreement, containing contractual provisions relating to the goods and/or services to be provided by such vendor.

3 RULE

A Department shall not disburse funds unless the disbursement is supported by a commitment voucher or small purchase documentation. With respect to proposed expenditures, Departments shall ensure that the commitment voucher:

- 3.1** Expenditure is authorized by the appropriation and required approvals have been received;
- 3.2** Expenditure is reasonable and necessary;
- 3.3** Prices or rates are fair and reasonable;
- 3.4** Expenditure amount is within the available unencumbered balance;
- 3.5** Adequately defines the requirements, respective performance obligations of the parties, and pricing;
- 3.6** Terms and conditions represent a commercially reasonable allocation of risks between the parties;
- 3.7** Complies with applicable statutes, executive orders, rules and policies; and
- 3.8** Is encumbered, if a purchase order or contract. The encumbrance of funds is not required for interagency agreements between the Center and State agencies and Institutions of Higher Education charged to a special line item appropriation dedicated to that commitment, routine internal services, and other items specified in §4.2 (Exempt Disbursements) of this Fiscal Rule.

4 DOLLAR LIMITS AND REQUIREMENTS

TYPE OF AGREEMENT	DOLLAR LIMIT	REQUIREMENTS
Goods	\$15,000 and less	Small purchase documentation or any commitment voucher
	Above \$15,000	PO or Center contract Create Encumbrance
Services	\$15,000 and less	Small purchase documentation or any commitment voucher
	\$15,001 to \$350,000	PO or Center contract Create Encumbrance
	Above \$350,000	Center contract, Create Encumbrance
Capital Construction / Controlled Maintenance	\$150,000 or less	Construction PO (See Fiscal Rule 4-1)
	More than \$150,000	See Fiscal Rule 4-1 (Capital Construction Administration) and Fiscal Procedures Manual

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Professional Services under C.R.S. § 24-30-1401 , et seq., including architectural, engineering, land surveying, industrial hygienist, and landscape architect services	Any dollar amount	Center contract, Create Encumbrance
Real Property lease or license of land, buildings, or a portion thereof for term of more than 30 days	Any dollar amount	Center contract, Create Encumbrance

4.1 Dollar Limits – The dollar limits shown in the table in §4 of these Fiscal Rules apply to the total term of the Commitment Voucher. If a single Commitment Voucher will be used for a purchase that spans multiple fiscal years, then the total of all fiscal years included in that Commitment Voucher is the amount to which the dollar limit will apply.

4.2 Protecting the Center’s Interests. Center contracts shall be used in situations in addition to those described in this §4 if other commitment vouchers do not adequately protect the Center’s interests. Refer questions regarding the proper form of commitment voucher to the CFO.

4.3 Exempt Disbursements. A purchase order or Center contract is not required for the following types of disbursements regardless of the amount of funds disbursed:

- 4.3.1** Access to internet-based, on-demand training classes and webinars;
- 4.3.2** Calculated payments required under a program within the Center or another State agency or Institution of Higher Education (e.g., formula distributions, other distributions required by regulatory or statutory formulas);
- 4.3.3** Copier rental agreements when the payment is based on cost per copy;
- 4.3.4** Conference registrations;
- 4.3.5** Conference facilities at hotels or other venues that include, but need not be limited to, meeting rooms, AV equipment, catering, and guest accommodation rooms;
- 4.3.6** Financial aid or tuition assistance programs;
- 4.3.7** Membership dues and fees and participation assessments that do not include services or examinations;
- 4.3.8** Insurance purchases;
- 4.3.9** Services needed (with approval of the Department of Law) to seek outside counsel, to support civil or criminal proceedings, civil or criminal enforcement, or legal services (e.g., attorneys, expert consultants, expert witnesses, mediators, and arbitrators);
- 4.3.10** Internal services routinely provided by the Center or another State agency or Institution of Higher Education (e.g., printing services and materials ordered from the Division of Central Services or legal services provided to the Center or another State agency or Institution of Higher Education by the Department of Law);
- 4.3.11** Court orders related to criminal proceedings, civil enforcement, or legal services;
- 4.3.12** Intra-Agency or intra-Institution purchases;

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- 4.3.13** Moving expenses reimbursed to Center employees;
- 4.3.14** Payroll and related disbursements (withholding, authorized benefits, etc.);
- 4.3.15** Postal and other delivery charges, including messenger fees, post office boxes and postage meters;
- 4.3.16** Center or State program payments to or on behalf of individuals qualified for the program's benefits;
- 4.3.17** Subscriptions for journals, informational publications, informational and research databases, or similar materials (electronic or print), which do not include services (such as training or configuration);
- 4.3.18** Utility hookups, relocations, and line extensions performed by a utility company;
- 4.3.19** Water; energy (regulated electric and natural gas, and steam); local, long-distance, wireless, satellite and telephone communication or data services, including pagers, cell phones, and other wireless/communication devices; septic pumping services; regular, non-hazardous trash collection services; and bulk fuel (coal, heating oil, gasoline, propane), which are routinely purchased by the Center;
- 4.3.20** Permits and inspections required by local governments; and
- 4.3.21** Other disbursements approved in writing by the CFO.

5 CENTER PURCHASE ORDERS

- 5.1 Standard Provisions** – All purchase orders issued by the Center shall include the provisions set forth in §11 (Purchase Order Terms and Conditions) of this Fiscal Rule.
- 5.2 Interagency Purchase Orders** – The Center issuing a purchase order to another State agency or Institution of Higher Education may change or delete any standard provision.
- 5.3 Revision of Standard Terms and Conditions** – A Department issuing a purchase order to a party, other than another State agency or an Institution of Higher Education, shall not change or delete the standard purchase order provisions unless it obtains prior written approval of the Procurement Director or the CFO, except that:
 - 5.3.1** No changes to the provisions governing Changes, Vendor Offset, Assignment and Successor, Independent Contractor, and Funds Availability may be made without the prior approval of the CFO; and
 - 5.3.2** No changes to the Choice of Law provisions may be made without legal review and written approval by the CFO, Attorney General, or a Reviewing Attorney.
- 5.4 Services involving transfer of confidential information** - All purchase orders issued by the Center that involve the transfer of or access to confidential electronic information shall comply with Data Security policies issued by the Governor's Office of Cyber Security or by the Center.

6 CENTER CONTRACTS

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Departments shall use a State or Center contract form as the commitment voucher for all purchases or leases of goods and services as required under Fiscal Rule 3-1 (Center Contracts). Center contracts shall comply with the requirements of Fiscal Rule 3-1 and this Fiscal Rule.

7 STATUTORY VIOLATIONS

A statutory violation occurs when liabilities are incurred or payments are made on the Center's behalf without prior approval of a Center purchase order or contract when required under this Fiscal Rule.

- 7.1 Payment Prohibition.** The Center shall not make payments to a vendor when a statutory violation has occurred, unless the violation has been ratified by the CFO.
- 7.2 Personal Liability.** Under C.R.S. § 24-30-202(3) any person(s) who incurs, orders or votes for an obligation or makes a payment that creates a statutory violation shall be personally liable for such obligation, unless the statutory violation is ratified by the CFO.
- 7.3 Internal Controls.** The Center shall maintain an adequate system of internal controls to identify statutory violations, to prevent or minimize such violations, and to implement the provisions of this section.
- 7.4 Ratification.** The CFO, in his or her sole discretion, may ratify the expenditure or obligation creating a statutory violation, if he or she finds all of the following:
 - 7.4.1** The prices or rates are fair and reasonable;
 - 7.4.2** The amount of the expenditure is within the unencumbered balance;
 - 7.4.3** The Department provides a written explanation in accordance with the CFO Policy entitled "*Statutory Violations*";
 - 7.4.4** The parties did not act in bad faith or in a fraudulent manner; and
 - 7.4.5** The violation is not repeated or part of a consistent pattern of statutory violations.

8 ADVANCE PAYMENTS/PRE-PAYMENTS

An advance payment is a payment made for goods or services prior to the receipt thereof.

- 8.1 General Prohibition.** Center contracts and other commitment vouchers shall not provide for advance payment for goods supplied and/or services performed or for any other contractual obligation, except as permitted in subsection 8.3 of this Fiscal Rule.
- 8.2 Waiver Process.** The CFO, in his or her sole discretion, may grant the request of a Department for a waiver, allowing an advance payment not listed in the exceptions in subsection 8.3. The waiver request shall include evidence that advance payment is an established industry standard and/or provides a benefit to the Center at least equal to the cost and risk of the advance payment.
- 8.3 Exceptions - Prior Approval Not Required.** Advance payments for a period of one year or less are permitted without prior approval of the CFO for the following:
 - 8.3.1** Advertising services and related goods;
 - 8.3.2** Charter transportation;
 - 8.3.3** Construction permits and inspection fees;
 - 8.3.4** Catering for events;

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- 8.3.5** Deposits for conference facilities at hotels or other venues that include, but need not be limited to, meeting rooms, audio visual equipment, catering, and guest accommodation rooms;
- 8.3.6** Federal grants awarded by the Center to sub-grantees (in compliance with Federal requirements) or agreements where the Center is acting as a fiscal agent for the disbursement of Federal funds (in compliance with Federal requirements);
- 8.3.7** Information Technology (IT) service agreements (including internet access, systems and database access),
- 8.3.8** Insurance premiums;
- 8.3.9** Interagency agreements;
- 8.3.10** Licenses, including licenses for software;
- 8.3.11** Maintenance of office equipment or information technology (IT) (software and hardware), and other maintenance agreements;
- 8.3.12** Membership dues and fees, and participation assessments, that do not include services or examinations;
- 8.3.13** Participation in conferences and trade shows as an exhibitor or presenter, including booth rental at those conferences, or events;
- 8.3.14** Personal property leases or rentals;
- 8.3.15** Postal and other delivery charges, including messenger fees, post office boxes and postage meters;
- 8.3.16** Professional services provided by expert witnesses hired for litigation purposes, mediators, entertainers, and speakers;
- 8.3.17** Purchases made with a Procurement card through an online retailer;
- 8.3.18** Real property leases, where the Center is a tenant, and perpetual easements, if the entire interest is purchased and all attendant rights are transferred upon payment;
- 8.3.19** Services, with the approval of the Department of Law, to seek outside counsel, to support criminal or civil proceedings, civil or criminal enforcement, or legal services (e.g. attorneys, expert consultants, expert witnesses, mediators, and arbitrators);
- 8.3.20** Sponsored projects – See Fiscal Rule 3-1 (State Contracts);
- 8.3.21** Subscriptions for journals, informational publications, informational and research databases, or similar materials (electronic or hard copy), which do not include additional services (such as training and configuration);
- 8.3.22** Travel expenses such as hotels, motels, airfare, etc., paid in accordance with Fiscal Rule 5-1;
- 8.3.23** Tuition, registration, and fees charged for trainings, classes, conferences, and seminars;
- 8.3.24** Utility hookups and line extensions performed by a utility company;
- 8.3.25** Utility services including trash and recycling collection, heat, water, and sewer; and

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8.3.26 Water rights purchases or temporary leases, or water storage payments.

8.3.27 Earnest money paid when purchasing real property.

9 EMERGENCIES

Disbursements for emergency procurements may be made upon presentation of invoices, receipts, or other statements describing goods or services purchased and the amount to be paid. Goods and services necessary to respond to an emergency may be procured immediately, without issuing a commitment voucher or obtaining a written waiver from the CFO, where all of the following conditions are met:

- 9.1** The nature of the threat requires an immediate response and there is insufficient time to issue a commitment voucher;
- 9.2** The procurement is authorized by the individual who has final executive authority for the Center;
- 9.3** The procurement is made with such competition as is practicable under the circumstances;
- 9.4** A commitment voucher is executed as soon as possible to define future performance obligations, if any, of the vendor and the Center, as required by Fiscal Rules; and
- 9.5** The Department notifies the CFO in writing, as soon as possible, of the circumstances, goods and services purchased, and the dollar amount of the commitment.

10 VENDOR AGREEMENTS

A vendor agreement is any form of agreement provided by a vendor, including an on-line agreement, containing contractual provisions relating to the goods and/or services to be provided by such vendor.

- 10.1 Prohibited Use.** A vendor agreement shall not be used in lieu of a Center purchase order or contract, where one is required, absent the prior written approval of the CFO. A vendor agreement shall not be used where a Center purchase order or contract is not required, except as provided in this §10.
- 10.2 Permitted Use.** The CFO or Procurement Officer of the Center may authorize the use of vendor agreements up to \$15,000, if a Center contract or purchase order is not required.
- 10.3 Conditions of Use.** All of the conditions set forth in the State Controller Policy entitled “*Vendor Agreements*” shall be met whenever a vendor agreement is used.

11 PURCHASE ORDER TERMS AND CONDITIONS

See next page.

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Auraria Higher Education Center (AHEC) Purchase Order Terms and Conditions

- 1. Offer/Acceptance.** This Purchase Order, together with these terms and conditions (including, if applicable, Addendum 1: Additional Terms and Conditions for Information Technology, below), and any other attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference (collectively the “PO”) shall represent the entire and exclusive agreement between AHEC and the Vendor. If this PO refers to Vendor’s bid or proposal, this PO is an ACCEPTANCE of Vendor’s OFFER TO SELL in accordance with the terms and conditions of this PO. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to Vendor’s acceptance, demonstrated by Vendor’s performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order accepting the counter-offer is issued in accordance with §4 accepting a counter-offer. AHEC shall not be responsible or liable for goods or services delivered or performed prior to issuance of this PO.
- 2. Order of Precedence.** In the event of a conflict or inconsistency within this PO, such conflict or inconsistency shall be resolved by giving preference to the documents in the following order of priority: **(a)** the Purchase Order document; **(b)** these Terms and Conditions (including, if applicable, Addendum 1: Additional Terms and Conditions for Information Technology below); and **(c)** any attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference. Any terms and conditions included on Vendor’s forms or invoices not included in this PO are void.
- 3. Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.
- 4. Changes.** Vendor shall furnish goods or services in strict accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded, or otherwise altered, except in writing signed by AHEC and accepted by Vendor. If this PO is for goods only and Vendor has not delivered the goods prior to the expiration of this PO, but Vendor delivers all of the goods to AHEC only after expiration of this PO, then AHEC, in its sole discretion, may accept the goods under this PO by extending this PO and delivering the modification to Vendor; however, regardless of anything to the contrary, if AHEC does not extend this PO for any reason then the goods delivered after expiration of this PO shall be deemed rejected, Vendor shall arrange the return of all delivered goods at Vendor’s sole expense, and AHEC shall have no liability for any such goods.
- 5. Delivery.** Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. AHEC is relying on the promised delivery date, and any installation or service performance set forth in this PO as material and basic to AHEC’s acceptance. If Vendor fails to deliver or perform as and when promised, AHEC, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge Vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

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6. Rights to Materials. *[Not Applicable to POs issued either in whole or in part for Information Technology, as defined in CRS §24-37.5-102(2); which shall be governed by Addendum 1 §B.]* Unless specifically stated otherwise in this PO, all materials, including without limitation supplies, equipment, documents, content, information, or other material of any type, whether tangible or intangible (collectively “Materials”), furnished by AHEC to Vendor or delivered by Vendor to AHEC in performance of its obligations under this PO shall be the exclusive property of AHEC. Vendor shall return or deliver all Materials to AHEC upon completion or termination of this PO.

7. Reporting. If Vendor is served with a pleading or other document in connection with an action before a court or other administrative decision-making body, and such pleading or document relates to this PO or may affect Vendor’s ability to perform its obligations under this PO, Vendor shall, within 10 days after being served, notify AHEC of such action and deliver copies of such pleading or document to AHEC. Vendor shall disclose, in a timely manner, in writing to AHEC all violations of federal or state criminal law involving fraud, bribery, or gratuity violations potentially affecting this PO. AHEC may impose any remedies available, which may include, without limitation, suspension or debarment.

8. Conflicts of Interest. Vendor acknowledges that with respect to this PO, even the appearance of a conflict of interest is harmful to AHEC’s interests. Absent AHEC’s prior written approval, Vendor shall refrain from any practices, activities, or relationships that reasonably may appear to be in conflict with the full performance of Vendor’s obligations to AHEC hereunder. If a conflict or appearance of a conflict of interest exists, or if Vendor is uncertain as to such, Vendor shall submit to AHEC a disclosure statement setting forth the relevant details for AHEC’s consideration. Failure to promptly submit a disclosure statement or to follow AHEC’s direction with respect to the actual or apparent conflict constitutes a breach of this PO. Vendor acknowledges that all AHEC employees are subject to the ethical principles described in §24-18-105, C.R.S. Vendor further acknowledges that AHEC employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this PO.

9. Warranties. All provisions and remedies of the Colorado Uniform Commercial Code, C.R.S., Title 4 (“UCC”), relating to implied or express warranties are incorporated herein, in addition to any warranties contained in this PO.

10. Inspection and Acceptance. AHEC’s final acceptance is contingent upon completion of all applicable inspection procedures. All goods delivered shall be newly manufactured and the current model, unless otherwise specified. AHEC shall have the right to inspect goods or services provided under this PO at all reasonable times and places. AHEC shall be the sole judge in determining “equals” with regard to conformance with the specifications outlined in this PO for quality, price, and performance. If any of the goods or services do not conform to PO requirements, as determined in AHEC’s sole discretion, AHEC may require Vendor to either (a) replace the goods specified by AHEC or (b) perform the services again, without additional payment from AHEC. When defects in the quality or quantity of goods or services cannot be corrected by replacement or re-performance, AHEC may (c) require Vendor to take necessary action to ensure that future performance conforms to this PO and (d) equitably reduce the payment due Vendor to reflect the reduced value of the goods or services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.

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11. Taxes. AHEC is exempt from federal excise taxes and from State and local sales and use taxes. AHEC shall not be liable for the payment of any excise, sales, or use taxes imposed on Vendor. A tax exemption certificate will be made available upon Vendor's request.

12. Payment. AHEC shall not pay Vendor any amount for performance under this PO in excess of the Total set forth on the Purchase Order document. AHEC shall pay Vendor for all amounts due within 45 days after AHEC's receipt of goods or services and acceptance of a correct invoice of amount due. Amounts not paid by AHEC within 45 days of AHEC's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to AHEC's obligation to pay all or a portion of the amount due. Vendor shall invoice AHEC separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate. AHEC may benefit from any early payment discount offered by Vendor by making payment within the timeframes required by Vendor to be eligible for such discount. If Vendor offers an early payment discount, then the discount shall be shown on Vendor's invoices to AHEC, and if AHEC makes payment on the invoice within the timeframe for the discount, Vendor shall either **(a)** accept the payment amount less the appropriate discount or **(b)** refund the discount back to AHEC. Except as specifically agreed in this PO, Vendor shall be solely responsible for all costs, expenses, and other charges it incurs in connection with its performance under this PO.

13. Assignment. Vendor's rights and obligations under this PO shall not be transferred or assigned without the prior, written consent of AHEC and the execution of a new PO. Any attempt at assignment or transfer without such consent and new PO shall be void. Any new PO approved by AHEC shall be subject to the same terms and conditions as those set forth in this PO.

14. Subcontracts. Unless otherwise specified in this PO, Vendor shall not enter into any subcontract in connection with its obligations under this PO without the prior, written approval of AHEC. Vendor shall submit to AHEC a copy of each such subcontract upon request by AHEC. All subcontracts entered into by Vendor in connection with this PO shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this PO.

15. Severability. The invalidity of or unenforceability of any provision of this PO shall not affect the validity of or enforceability of any other provision of this PO, which shall remain in full force and effect, provided, that the parties can continue to perform their obligations in accordance with the intent of this PO.

16. Survival of Certain PO Terms. Any provision of this PO that imposes an obligation on a party after termination or expiration of this PO shall survive the termination or expiration of this PO and shall be enforceable by the other party.

17. Third Party Beneficiaries. Except for the parties' respective successors and assigns, this PO does not and is not intended to confer any rights or remedies upon any person or entity other than the parties. Enforcement of this PO and all rights and obligations hereunder is reserved solely to the parties. Any services or benefits which third parties receive as a result of this PO are incidental to this PO, and do not create any rights for such third parties.

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18. Waiver. A party's failure or delay in exercising any right, power, or privilege under this PO, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

19. Indemnification [Not Applicable to Intergovernmental POs] Vendor shall indemnify, save, and hold harmless AHEC, its employees, Board members, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Vendor, or its employees, agents, subcontractors, or assignees in connection with this PO. This shall include, without limitation, any and all costs, expenses, claims, damages, liabilities, court awards and other amounts incurred by the Indemnified Parties in relation to any claim that any work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right or any claim for loss or improper disclosure of any confidential information or personally identifiable information.

20. Notice. All notices given under this PO shall be in writing, and shall be delivered to the contacts for each party listed on the Purchase Order document. Either party may change its contact or contact information by notice submitted in writing to the other party without formal modification to this PO.

21. Insurance. Except as otherwise specifically stated in this PO, Vendor shall obtain and maintain insurance as specified in this section at all times during the term of this PO: **(a)** workers' compensation insurance as required by state statute, and employers' liability insurance covering all Vendor employees acting within the course and scope of their employment; **(b)** Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed operations aggregate; and \$50,000 any one fire; and **(c)** 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. If Vendor will or may have access to any protected information, then Vendor shall also obtain and maintain insurance covering loss and disclosure of protected information and claims based on alleged violations of privacy right through improper use and disclosure of protected information with limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate at all times during the term of this PO. Additional insurance may be required as provided elsewhere in this PO. All insurance policies required by this PO shall be issued by insurance companies with an AM Best rating of A-VIII or better. This insurance requirement shall not apply if this PO is solely for goods, as determined by AHEC, unless specifically stated otherwise in this PO or any attachment or exhibit to this PO. If Vendor is a public agency within the meaning of the Colorado Governmental Immunity Act, then this section shall not apply, and Vendor shall instead comply with the Colorado Governmental Immunity Act. AHEC and the State of Colorado shall be named as additional insured on all commercial general liability policies required of Vendor. Coverage required of Vendor shall be primary and noncontributory over any insurance or self-insurance program carried by the Auraria Higher Education Center and the State of Colorado. All insurance policies secured or maintained by Vendor in relation to this PO shall include

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clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Vendor or AHEC and the State of Colorado, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

22. Termination Prior to Vendor Acceptance. If vendor has not begun performance under this PO, AHEC may cancel this PO by providing written notice to the Vendor.

23. Termination for Cause. (a) If Vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified in this PO, AHEC may notify Vendor in writing of nonperformance and, if not corrected by Vendor within the time specified in the notice, terminate Vendor's right to proceed with this PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated. (b) Vendor shall be liable for excess costs incurred by AHEC in procuring similar goods or services and AHEC may withhold such amounts as AHEC deems necessary. (c) If after rejection, revocation, or other termination of Vendor's right to proceed under the UCC or this clause, AHEC determines for any reason that Vendor was not in default or the delay was excusable, the rights and obligations of AHEC and Vendor shall be the same as if the notice of termination had been issued pursuant to termination under §24.

24. Termination in Public Interest. AHEC is entering into this PO for the purpose of carrying out the public policy of the State, as determined by AHEC, its Governor, General Assembly, or Courts. If this PO ceases to further the public policy of AHEC, or the State, as determined by its Governor, General Assembly, or Courts or by AHEC, AHEC, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of AHEC's obligations hereunder. This section shall not apply to a termination for cause, which shall be governed by §23. AHEC shall give written notice of termination to Vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, Vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, AHEC shall pay (a) reasonable settlement expenses, (b) the PO price or rate for supplies and services delivered and accepted, (c) reasonable costs of performance on unaccepted supplies and services, and (d) reasonable profit for the unaccepted work. For existing goods, AHEC shall pay (e) reasonable settlement expenses, (f) the PO price for goods delivered and accepted, (g) reasonable costs incurred in preparation for delivery of the undelivered goods, and (h) a reasonable profit for the preparatory work. AHEC's termination liability under this section shall not exceed the total PO price. As a condition for payment under this section, Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as requested by AHEC.

25. Funds Availability. Financial obligations of AHEC payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. AHEC represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.

26. 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

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Governmental Immunity Act, C.R.S. §24-10-101, et seq., 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, C.R.S. §24-30-1501, et seq. No term or condition of this PO 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.

27. Independent Contractor. Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Vendor nor any agent or employee of Vendor shall be deemed to be an agent or employee of AHEC or the State. Vendor shall not have authorization, express or implied, to bind AHEC to any agreement, liability or understanding, except as expressly set forth herein. **Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through AHEC and AHEC shall not pay for or otherwise provide such coverage for Vendor or any of its agents or employees. Vendor shall pay when due all applicable employment, income taxes, and local head taxes incurred pursuant to this PO. Vendor 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 AHEC, (c) disclose to AHEC if they are a PERA retiree prior to performing contracted duties in order for AHEC to properly report information, and if applicable, withhold contributions from payment of services to PERA, and (d) be solely responsible for its acts and those of its employees and agents.**

28. Compliance with Law. Vendor shall comply with all applicable federal and state laws, rules, and regulations in effect or hereinafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

29. Choice of Law, Jurisdiction and Venue. *[Not Applicable to Inter-governmental POs]* Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this PO. The UCC shall govern this PO in the case of goods unless otherwise agreed in this PO. 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 PO shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO 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. Vendor shall exhaust administrative remedies prior to commencing any judicial action against AHEC.

30. Prohibited Terms. Nothing in this PO shall be construed as a waiver of any provision of CRS §24-106-109. Any term included in this PO that requires AHEC to indemnify or hold Vendor harmless; requires AHEC to agree to binding arbitration; limits Vendor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with that statute in any way shall be void ab initio.

31. CORA Disclosure. To the extent not otherwise prohibited by law, this PO is subject to public release and disclosure through the Colorado Open Records Act, CRS §24-72-101, et seq.

32. Erroneous Payments. AHEC may recover, at AHEC's discretion, payments made to Vendor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended, or excess funds received by Vendor by deduction from subsequent

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payments under this PO, deduction from any payment due under any other contracts, grants or agreements between AHEC and Vendor or by other appropriate method for collecting debts owed to AHEC.

33. Click-Through Agreements. Vendor's software or Vendor's website may contain a "click through" agreement which is integral to that product and/or website and which will require AHEC to click "I agree," or some similar action in order to proceed to use the software and/or website. It is hereby expressly agreed that all such click through, "shrink wrap," and/or online agreements, and any other such agreement mechanisms executed by AHEC in using the software and/or website are void and of no effect, do not create a binding assent by AHEC, do not modify this PO, and do not in themselves create a separate contract of any kind.

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ADDENDUM 1:

Additional Terms & Conditions for Information Technology

IF ANY PART OF THE SUBJECT MATTER OF THIS PO IS INFORMATION TECHNOLOGY, AS DEFINED IN CRS §24-37.5-102 (2), THE FOLLOWING PROVISIONS ALSO APPLY TO THIS PO.

A. Definitions. The following terms shall be construed and interpreted as follows: **(a)** “**Business Day**” means any day in which AHEC is open and conducting business, but shall not include Saturday, Sunday or any day on which AHEC observes one of the holidays listed in CRS §24-11-101(1); **(b)** “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under CRS §24-72-302; **(c)** “**HIPAA**” means the federal Health Information Portability and Accountability Act; **(d)** “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of AHEC, pursuant to CRS §§24-37.5-401 *et seq.*; **(e)** “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law; **(f)** “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual including, without limitation, any information defined as Individually Identifiable Health Information by HIPAA; **(g)** “**PII**” means personally identifiable information including, without limitation, any information maintained by AHEC about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records, including, without limitation, all information defined as personally identifiable information in CRS §24-72-501. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et. seq.*, C.R.S. ; **(h)** “**AHEC Confidential Information**” means any and all AHEC Records not subject to disclosure under the Colorado Open Records Act, CRS §§24-72-200.1, *et seq.* (“CORA”), and includes, without limitation, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA; **(i)** “**AHEC Records**” means any and all AHEC data, information, and records, regardless of physical form; **(j)** “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation, including, without limitation all information defined as federal tax information in Internal Revenue Service Publication 1075; and **(k)** “**Work Product**” means the tangible and intangible results of the delivery of goods and performance of services, whether finished or unfinished, including drafts.

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B. Intellectual Property. Except to the extent specifically provided elsewhere in this PO, AHEC information, including without limitation pre-existing AHEC software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials; or Work Product prepared by Vendor in the performance of its obligations under this PO shall be the exclusive property of AHEC (collectively, “AHEC Materials”). Vendor shall deliver all AHEC Materials to AHEC upon completion or termination of this PO. AHEC’s exclusive rights in any Work Product prepared by Vendor shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Vendor shall not use, willingly allow, cause or permit any AHEC Materials to be used for any purpose other than the performance of Vendor’s obligations hereunder without the prior written consent of AHEC. AHEC shall maintain complete and accurate records relating to (a) its use of all Vendor and third party software licenses and rights to use any Vendor or third party software granted under this PO and its attachments to which AHEC is a party and (b) all amounts payable to Vendor pursuant to this PO and its attachments and AHEC’s obligations under this PO or to any amounts payable to Vendor in relation to this PO, which records shall contain sufficient information to permit Vendor to confirm AHEC’s compliance with the use restrictions and payment obligations under this PO or to any third-party use restrictions to which AHEC is a party. Vendor retains the exclusive rights, title and ownership to any and all pre-existing materials owned by or licensed to Vendor including, but not limited to all pre-existing software, licensed products, associated source code, machine code, text images, audio, video, and third-party materials, delivered by Vendor under this PO, whether incorporated in a deliverable or necessary to use a deliverable (collectively, “Vendor Property”). Vendor Property shall be licensed to AHEC as set forth in an AHEC-approved license agreement: (c) entered into as exhibits or attachments to this PO, (d) obtained by AHEC from the applicable third-party Vendor, or (e) in the case of open source software, the license terms set forth in the applicable open source license agreement. Notwithstanding anything to the contrary herein, AHEC shall not be subject to any provision incorporated in any exhibit or attachment attached hereto, any provision incorporated in any terms and conditions appearing on any website, any provision incorporated into any click through or online agreements, or any provision incorporated into any other document or agreement between the parties that (i) requires the AHEC to indemnify Vendor or any other party, (ii) is in violation of State laws, regulations, rules, fiscal rules, policies, or other AHEC requirements as deemed solely by AHEC, or (iii) is contrary to this PO.

C. License or Use Audit Rights. If this PO includes any license or other right to use Vendor’s intellectual property, Vendor shall have the right, at any time during and throughout the term of this PO, but not more than once during any AHEC fiscal year, to request via written notice in accordance with the notice provisions of this PO that AHEC audit its use of Vendor’s intellectual property and certify as to its compliance with any applicable license or use restrictions and limitations contained in this PO (an “Audit Request”). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. AHEC shall complete the audit and provide certification of its compliance to Vendor (“Audit Certification”) within 120 days following AHEC’s receipt of the Audit Request. If upon receipt of AHEC’s Audit Certification, the parties reasonably determine that: (a) AHEC’s use of licenses, use of

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software, use of programs, or any other use of intellectual property during the audit period exceeded the use restrictions and limitations contained in this PO (“Overuse”) and **(b)** AHEC would have been or is then required to purchase additional rights to use Vendor’s intellectual property (“Additional Rights”), Vendor shall provide written notice to AHEC in accordance with the notice provisions of this PO identifying any Overuse or required Additional Rights and request that AHEC bring its use into compliance with such use restrictions and limitations. Notwithstanding anything to the contrary in this PO, or incorporated as a part of Vendor’s or any subcontractor’s website, click-through or online agreements, third-party agreements, or any other documents or agreements between the parties, AHEC shall not be liable for the costs associated with any Overuse or Additional Rights, during the audit period regardless of whether AHEC may have been notified in advance of such costs.

D. Vendor Records. Vendor shall maintain a file of all documents, records, communications, notes, and other materials relating to the work (the “Vendor Records”). Vendor Records shall include all documents, records, communications, notes and other materials maintained by Vendor that relate to any work performed by Subcontractors, and Vendor shall maintain all records related to the work performed by Subcontractors required to ensure proper performance of that work. Unless a longer period is required in this PO or any attachment or exhibit to this PO, Vendor shall maintain Vendor Records until the last to occur of: **(a)** the date 3 years after the date this Purchase Order expires or is terminated, **(b)** final payment under this Purchase Order is made, **(c)** the resolution of any pending Purchase Order matters, or **(d)** if an audit is occurring, or Vendor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “Record Retention Period”). Vendor shall permit AHEC, the state government, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy, and transcribe Vendor Records during the Record Retention Period. Vendor shall make Vendor Records available during normal business hours at Vendor’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days’ notice from AHEC, unless AHEC determines that a shorter period of notice, or no notice, is necessary to protect the interests of AHEC. AHEC, in its discretion, may monitor Vendor’s performance of its obligations under this Purchase Order using procedures as determined by AHEC. AHEC shall monitor Vendor’s performance in a manner that does not unduly interfere with Vendor’s performance of the work. Vendor shall promptly submit to AHEC a copy of any final audit report of an audit performed on Vendor’s records that relates to or affects this Purchase Order or the work, whether the audit is conducted by Vendor or a third party.

E. Information Confidentiality. Vendor shall keep confidential, and cause all subcontractors to keep confidential, all AHEC Records, unless those AHEC Records are publicly available. Vendor shall not, without prior written approval of AHEC, use, publish, copy, disclose to any third party, or permit the use by any third party of any AHEC Records, except as otherwise stated in this PO, permitted by law, or approved in writing by AHEC. Vendor shall provide for the security of all AHEC Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Vendor or any of its subcontractors will or may have access to any AHEC Confidential Information or any other protected information, Vendor shall comply with all Colorado Office of Information Security

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(OIS) policies and procedures which OIS has issued pursuant to CRS §§24-37.5-401 through 406, and 8 CCR §1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>, all information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as applicable based on the classification of the data relevant to Vendor's performance under this PO. Such obligations may arise from HIPAA; IRS Publication 1075; Payment Card Industry Data Security Standard (PCI-DSS); Federal Bureau of Investigation Criminal Justice Information Service Security Addendum; Centers for Medicare & Medicaid Services (CMS) Minimum Acceptable Risk Standards for Exchanges; and Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information With The Social Security Administration. Vendor shall immediately forward any request or demand for AHEC Records to AHEC's purchasing agent.

F. Other Entity Access and Nondisclosure Agreements. Vendor may provide AHEC Records to its agents, employees, assigns and subcontractors as necessary to perform the work, but shall restrict access to AHEC Confidential Information to those agents, employees, assigns, and subcontractors who require access to perform their obligations under this PO. Vendor shall ensure all such agents, employees, assigns, and subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this PO, and that the nondisclosure provisions are in force at all times the agent, employee, assign or subcontractor has access to any AHEC Confidential Information. Vendor shall provide copies of those signed nondisclosure provisions to AHEC upon execution of the nondisclosure provisions if requested by AHEC.

G. Use, Security, and Retention. Vendor shall use, hold, and maintain AHEC Confidential Information in compliance with all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all AHEC Confidential Information. Vendor shall provide AHEC with access, subject to Vendor's reasonable security requirements, for purposes of inspecting and monitoring access and use of AHEC Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this PO, Vendor shall return AHEC Records provided to Vendor or destroy such AHEC Records and certify to AHEC that it has done so, as directed by AHEC. If Vendor is prevented by law or regulation from returning or destroying AHEC Confidential Information, Vendor warrants it will guarantee the confidentiality of, and cease to use, such AHEC Confidential Information.

H. Incident Notice and Remediation. If Vendor becomes aware of any Incident, it shall notify AHEC immediately and cooperate with AHEC regarding recovery, remediation, and the necessity to involve law enforcement, as determined by AHEC. Unless Vendor can establish that neither Vendor nor any of its agents, employees, assigns, or subcontractors are the cause or source of the Incident, Vendor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Vendor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by AHEC, which may include, but is not limited to, developing and implementing a remediation plan that is approved by AHEC at no additional cost to AHEC. AHEC may adjust or direct modifications to this plan, in its sole discretion and Vendor shall make all modifications as directed by AHEC. If Vendor cannot produce its analysis and plan within the allotted time,

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AHEC, in its sole discretion, may perform such analysis and produce a remediation plan, and Vendor shall reimburse AHEC for the reasonable actual costs thereof.

I. Data Protection and Handling. Vendor shall ensure that all AHEC Records and Work Product in the possession of Vendor or any subcontractors are protected and handled in accordance with the requirements of this PO at all times. Upon request by AHEC made any time prior to 60 days following the termination of this PO for any reason, whether or not this PO is expiring or terminating, Vendor shall make available to AHEC a complete and secure download file of all data that is encrypted and appropriately authenticated. This download file shall be made available to AHEC within 10 Business Days following AHEC's request, and shall contain, without limitation, all AHEC Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions, and attachments in its native format. Upon the termination of Vendor's services under this PO, Vendor shall, as directed by AHEC, return all AHEC Records provided by AHEC to Vendor, and the copies thereof, to AHEC or destroy all such AHEC Records and certify to AHEC that it has done so. If legal obligations imposed upon Vendor prevent Vendor from returning or destroying all or part of the AHEC Records provided by AHEC, Vendor shall guarantee the confidentiality of all AHEC Records in Vendor's possession and will not actively process such data. AHEC retains the right to use the established operational services to access and retrieve AHEC Records stored on Vendor's infrastructure at its sole discretion and at any time.

J. Compliance with OIS Policies and Procedure. Vendor shall review, on a semi-annual basis, all Colorado Office of Information Security ("OIS") policies and procedures which OIS has promulgated pursuant to CRS §§24-37.5-401 through 406 and 8 CCR §1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>, to ensure compliance with the standards and guidelines published therein. Vendor shall cooperate, and shall cause its subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee.

K. Safeguarding PII. If Vendor or any of its subcontractors will or may receive PII under this PO, Vendor shall provide for the security of such PII, in a manner and form acceptable to AHEC, including, without limitation, all AHEC requirements relating to non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Vendor shall be a "Third-Party Service Provider" as defined in CRS §24-73-103(1)(i) and shall maintain security procedures and practices consistent with CRS §§24-73-101. In addition, as set forth in §24-74-102, et. seq., C.R.S., Vendor, including, but not limited to, Vendor's employees, agents and subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Vendor is given direct access to any AHEC databases containing PII, Vendor shall execute, on behalf of itself and its employees, the certification [PII Individual Certification Form](#) or [PII Entity Certification Form](#) [Download form from Hyperlink] on an annual basis and Vendor's duty and obligation to certify shall continue as long as Vendor has direct access to any AHEC databases containing PII. If Vendor uses any subcontractors to perform services requiring direct access to AHEC databases containing PII, the Vendor shall require such Subcontractors to execute and deliver

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the certification to AHEC on an annual basis, so long as the Subcontractor has access to AHEC databases containing PII.

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

M. Information Technology. To the extent that Vendor provides physical or logical storage of AHEC Records; Vendor creates, uses, processes, discloses, transmits, or disposes of AHEC Records; or Vendor is otherwise given physical or logical access to AHEC Records in order to perform Vendor's obligations under this PO, Vendor shall, and shall cause its subcontractors, to: **(a)** provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this PO; **(b)** maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards; **(c)** comply with AHEC and state and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing; **(d)** provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments; **(e)** promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the OIS; and **(f)** comply with all rules, policies, procedures, and standards issued by the Governor's Office of Information Technology (OIT), including project lifecycle methodology and governance, technical standards, documentation, and other requirements posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>. Vendor shall not allow remote access to AHEC Records from outside the United States, including access by Vendor's employees or agents, without the prior express written consent of AHEC. Vendor shall communicate any request regarding non-U.S. access to AHEC Records to AHEC. AHEC shall have sole discretion to grant or deny any such request.

N. Accessibility. Vendor shall comply with and the Work Product provided under this PO shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Vendor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards. Vendor shall indemnify, save, and hold harmless the Indemnified Parties against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Vendor's failure to comply with §§24-85-101, *et seq.*,

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C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. AHEC may require Vendor's compliance to the State's Accessibility Standards to be determined by a third party selected by AHEC to attest to Vendor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

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Rule 2-3 RECEIVING REPORTS

RULE:

Receiving reports, or other sufficient documentation, shall be prepared for all goods and services received, showing actual quantities, any unsatisfactory condition, and compliance with specifications, prior to processing a voucher for payment.

EXCEPTIONS TO RULE:

1. A receiving report need not be prepared for personal service expenditures.
2. When an adequate system of internal accounting and administrative controls exists to provide sufficient verification that goods or services were received, the Center may not require a certified receiving report. The Director of Finance and Business Services or CFO of the Center must deem whether or not the system is adequate prior to an exception being made.

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Rule 2-4 PURCHASE DISCOUNTS

RULE:

Payments shall be processed in a timely manner and made within the allowable discount period to ensure the Center takes advantage of purchase discounts.

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Rule 2-5

INTEREST PAYMENT ON DELINQUENT PAYABLES

DEFINITIONS:

Payable - A payable is a liability incurred by the Center. A liability shall arise upon receipt of supplies and services and a correct notice of the amount due. A liability shall not arise if a good faith dispute exists as to the Center's obligation to pay all or a portion of the liability.

Delinquent - A payable is delinquent if a disbursement is not made within forty-five days after a liability arises, unless the time of payment has been otherwise provided in the contract or purchase order. A payable being disputed by a vendor shall become delinquent if a disbursement is not made within forty-five days after resolution of the dispute.

RULE:

The Center shall process invoices and other notices of liability as efficiently as possible in order to ensure payment in accordance with contractual or invoice terms, and in the absence of such terms, as soon as possible, or in accordance with statutory provisions. A delinquent payable shall be assessed interest at 1% per month as required by § 24-30-202(24), C.R.S.

All written contracts and purchase orders shall provide for a reasonable time of payment considering the nature of the goods or services provided and review and approval required for payment. If no time for payment has been provided for in writing, interest on the unpaid balance shall be calculated beginning with the forty-sixth day after the liability for such payment arises under this Fiscal Rule. Interest shall be assessed at 1% per month or as stated in the contract or purchase order and, if higher, approved by the Center's CFO.

Payment of the interest liability incurred under this fiscal rule shall be processed on a separate voucher. The voucher shall be supported by a written claim, prepared by the Center or the vendor, referencing the delinquent payment, the number of days of interest to be paid, and the applicable interest rate. Such claims may be modified by the Center to adjust payments to include such items as additional interest due for time required to process interest payments.

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Rule 2-6 INTERAGENCY PURCHASES AND PAYMENTS

RULE:

The Center shall make payment for purchases of goods and services from another State agency or Institution of Higher Education within 30 days after receipt of a valid invoice.

Disputes Arising from Interagency Purchases

If a dispute arises as a result of an interagency purchase, the following steps will be used to resolve the dispute:

1. The party disputing the charge shall notify the party providing the goods or services and attempt to resolve the dispute. If necessary, the chief executive officers of the parties involved shall assist in the resolution.
2. If the parties involved cannot reach a satisfactory resolution, the state agency or institution of higher education disputing the charge shall, within 30 days of the date of the last meeting held to resolve the dispute, petition the State Controller to resolve the dispute.
3. If the State Controller is petitioned to resolve the dispute, the decision of the State Controller will be rendered within a reasonable time and be final and binding on all parties concerned.

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Rule 2-7

OFFICIAL FUNCTIONS AND TRAINING FUNCTIONS

DEFINITIONS:

Official Function - A meeting, conference, meal, or other function that is hosted by the CEO, or representative of the Center, attended by guests and/or Center employees, and held for official Center business purposes.

Training Function - A meeting, conference, or other function which is hosted by the Center, attended by customers of the Center and/or Center employees, and held to enhance staff knowledge or to educate customers of the Center, that are affected by the Center's operations or regulations. Training functions should have a written agenda, study materials, and be led by an identified presenter.

RULE:

Official functions and training functions shall be held to achieve program objectives and shall be limited to reasonable and actual costs. The attendance of Center employees at official functions shall be kept to a minimum and shall include only those individuals directly related to the purpose of the function. Expenditures shall be kept to a minimum as they have the potential of being perceived to be for personal benefit and an abuse of public funds. An employee's Division Chief must approve expenditures incurred for official functions up to \$500.00 prior to the event. Any function with estimated expenditures of more than \$500.00 must be approved by the Center's CEO, or delegate, prior to the event.

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Rule 2-8 MISCELLANEOUS COMPENSATION AND OTHER BENEFITS (PERQUISITES)

AUTHORITY:

§ 24-2-103, C.R.S. (Compensation for State Employees)

§ 24-30-202(13), C.R.S. (Higher Education Authority)

DEFINITIONS:

Benefits - Any pecuniary or material advantage provided by the Center to an employee other than salary, leave, incentives, awards, retirement benefits, insurance benefits, and travel and non-travel related reimbursements. Incentive awards, salary increases, fringe benefits established pursuant to C.R.S. § 24-50-104(8) and (9) are not considered benefits under this Fiscal Rule.

Economic Rent Study - A study conducted by the Center to determine the rent to be charged for a state-owned house or dwelling. The purpose of the study is to determine the rental rate the house or dwelling would command if available on the open market.

Limitations Placed on Employees - Limitations placed on a Center employee as a condition of employment may include that the employee is required to live in the state facility, that the employee is required to be available twenty-four hours a day to perform the assigned duties, or that the employee is required to live in close proximity to the state facility in order to provide protection or discourage trespassers from entering the property.

Location of Work Place - The location of the work place assigned may vary from a metropolitan area where housing is readily available to a remote area that is difficult to reach and has no housing other than state furnished housing available.

RULE:

An employee of the Center shall not receive any type of benefit by virtue of their position unless such benefit is provided by state statutes or Center Fiscal Rule. An employee shall not have the authority to grant any perquisites, nor shall any employee receive any perquisite except as provided by state statute or Fiscal Rule. Monetary allowances shall not be given to employees in lieu of benefits, except as provided by statute or approved by the CFO. Where state statutes provide allowances for maintenance and ordinary expenses incurred in the performance of duty, it is the responsibility of the CEO of the Center to establish specific expenses that are covered by the allowance so that the same expenses are not also directly reimbursed.

1. Miscellaneous Compensation

1.1 Honorariums

Employees may be asked to address an audience for which they receive an honorarium. If such speaking engagements occur outside normal working hours, or their normal work load, or while on annual leave, and there is no cost to the Center for travel expenses, the employee

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may retain the honorarium. However, if the engagement occurs during normal working hours, or within their normal workload, as any other duty, the honorarium is to be turned over to the Center. Any travel expenses related to the engagement would then be valid expenses for reimbursement by the Center.

2. Other Benefits (Perquisites)

2.1 Events sponsored by the Center:

The Center may offer a reasonable discount to officials and employees to improve attendance or participation in Center sponsored events. Examples include discounts on admission to athletic games and cultural, educational, recreational, or other events.

Such discounts shall generally be offered on a first-come, first-served basis, except that a state agency or institution of higher education may reserve a specified and reasonable number of admissions to particular events to be distributed on a targeted basis for the purpose of public relations or alumni relations, or for the purpose of student or employee recruitment. The CEO or a delegate shall approve in writing all plans for discounted admissions.

2.2 State owned housing provided to state employees:

The Center may provide housing for a Center employee where state-owned facilities are available and it is in the best interest of the state. The rent charged shall be based on the economic rent determined by the Center and shall take into consideration any limitations placed on the employee as a condition of employment, location of the employee's work place, and other factors deemed appropriate by the Center.

An Economic Rent Study shall be conducted prior to the house or dwelling being offered for rent to a Center employee. A new Economic Rent Study shall be conducted on or before July 1, every three years thereafter. The rent charged shall be reviewed and if necessary, adjusted on an annual basis. The rent charged for each house or dwelling shall be approved in writing on July 1 of each year by the CEO or a delegate of the Center.

The Center shall execute a rental agreement with the employee and make payroll deductions for the rent. If the rented unit does not have separate utility meters, the Center shall also make payroll deductions for the estimated utility costs. The Center shall maintain adequate documentation to support the rent and utility costs assessed for each house or dwelling.

2.3 Temporary housing provided to visitors and guests:

Where space is available, temporary housing may be provided to visitors and guests by the Center with the approval the CEO, or a delegate. The charge for such accommodations shall be set at an amount which will at least recover all direct and indirect costs and be reasonable in comparison to the charge for similar housing, if such housing is available. The Center shall maintain adequate documentation to substantiate the cost charged for the housing provided.

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2.4 Uniforms and maintenance of uniforms:

Uniforms required to be worn by Center employees and the necessary maintenance of these uniforms may be provided to the employee by the Center at no charge, or at a reduced charge, or through a uniform allowance.

2.5 Authorized Commuting

Where Center- or state-owned motor vehicles are used for taxable commuting, the employee must obtain prior written authorization signed by the CEO of the Center based on review and verification of the justification in accordance with § 24-30-1113, C.R.S., and submit the commuting authorization form to Colorado state fleet management. The employee shall be imputed income for the use of the Center or state vehicle at a rate that approximates the benefit derived from the use of the vehicle and that complies with Internal Revenue Service publications and regulations.

3. EXCEPTIONS TO RULE:

3.1 The governing board of AHEC, consistent with policies developed by the Commission on Higher Education and approved by the State Controller, may provide housing or a housing allowance for the CEO as part of his/her employment contract.

3.2 Self-liquidating facilities such as faculty apartments and student housing or trailer houses used as temporary housing at remote work place stations are exempted from this fiscal rule.

3.3 The governing board of AHEC, with prior approval by the State Controller and the Governor or delegate, may authorize a voluntary separation incentive plan for its employees who are exempt from the State Personnel System under Article XII, Section 13(2) of the Colorado Constitution and § 24-50-135, C.R.S. Any such plan shall offer uniform and equitable incentives to all employees similarly situated in defined categories within the institution or agency for which the plan is proposed. All proposed separation incentives in the plan must be justified as reasonable and necessary expenditures.

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Rule 2-9 MOVING AND RELOCATION

AUTHORITY:

§ 24-50-134, C.R.S. (Moving and Relocation Expenses)

DEFINITIONS:

Household Effects - Household or personal effects such as furniture, clothing, musical instruments, household appliances, foods, and other items which are usual and necessary for the maintenance of a household.

Installation - Normal hookup of appliances to existing utilities. It does not include adding wiring, plumbing, or vents.

APPLICABILITY:

This fiscal rule applies only to employees in the Center's personnel system.

RULE:

The Center shall not reimburse or pay moving expenses for an employee when the move is made solely for personal reasons. Moving expenses shall be authorized by the CEO, or a delegate, if the move of residence is occasioned by a change in assignment, a promotion, or for another reason related to the employees' duties. This rule does not apply to new hires. The CEO or his/her designee must approve the reimbursement of moving expenses made to new hires prior to the move.

1. Reimbursement for Moving Expenses and Allowances

1.1 Moving of household effects - commercial mover:

Center payment shall be allowed for the necessary expenses incurred for the packing, insurance, transportation, and storage in transit not to exceed thirty days, unpacking, and installation at the new location of an employee's household effects.

Center payment shall not be made for moving household effects in excess of ten thousand pounds net weight for those with dependents and five thousand pounds net weight for those without dependents. Any expenses, including insurance for household effects exceeding the weight limitations shall be borne by the employee being moved. Claims shall be accompanied by at least two competitive bids and Center payment shall be made at the rates proposed in the lowest responsible bid. If a move is billed at an hourly rate, the carrier shall weigh the items moved and this weight shall be used to apply the above weight limitations.

1.2 Moving mobile homes and house trailers:

Center payment shall be allowed for charges by commercial vendors for towing of mobile homes or house trailers containing the household effects of a Center employee.

Towing charges may include such additional items as labor and incidental material charges for packing, tie down of household effects, removal and reattachment of skirts,

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and utility costs for disconnecting and reconnecting from existing utilities. It does not include the costs of concrete pads or additional labor or supplies to add or modify connections for plumbing or electrical service. Claims shall be accompanied by at least two competitive bids and state payments shall be made at the rates proposed in the lowest responsible bid.

1.3 Employee moves household effects:

A Center employee may prefer to move household effects by rental trailer or truck in lieu of using a commercial mover. Two responsible bids shall be required for reimbursement of the rental trailer or truck if the cost exceeds \$1,000.

If the employee chooses to move household effects and requests reimbursement for moving expenses from the Center, two responsible bids shall be obtained from a commercial mover, prior to the move. The employee shall be reimbursed one-half of the lowest responsible bid for commercial moving not to exceed \$1,500 and be reimbursed for the rental trailer or truck at the lowest responsible bid if required. This provision may also apply in certain circumstances when the employee's mobile home or house trailer cannot be used to move household effects.

Mileage allowance for one personal automobile shall be authorized and reimbursed at the statutory rate.

An employee shall receive the per diem allowance up to a maximum of thirty days for necessary expenses incurred while locating permanent residence at the new location. The employee may exclude interruptions caused by sick leave, vacation, other authorized leave of absence, or ordered travel. Reimbursement shall not exceed the travel rates authorized by the fiscal rules.

Per diem shall consist of lodging, meals, and other miscellaneous allowances as provided in these fiscal rules.

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Rule 2-10 PROCUREMENT CARD (P-Card)

1. Usage

P-Cards may be used to pay for goods and certain services as authorized, in writing by the CFO. Additionally, certain travel expenses, where authorized, are allowable. It is the responsibility of the Center Director of Finance and Business Services to have in place a methodology to identify and report 1099 reportable information.

2. Purchases in Excess of \$15,000

If authorized by the Center CFO, P-Cards may be used to pay invoices in excess of \$15,000. Use of the P-Card is not a substitute for a commitment voucher or encumbrance as required by Fiscal Rule 2-2.

3. Pre-audit Responsibility

Use of the P-Card does not eliminate the need for a pre-audit, which shall be completed when the disbursement is made to the bank or when distributions are made. The Center is responsible for reconciling the disbursements made to the bank with the total of validated individual charges for the Center. The dispute mechanism shall be used when charges from the bank are challenged.

4. Reporting Misuse

All incidents of P-Card misuse that are recurring, significant, or in excess of \$500 should be reported in writing to the Center CFO immediately, as well as annually in a standard report. Reports shall be submitted to the Center's Director of Finance and Business Services by November 1 each year. This report should include results of any investigation or follow-up including corrective measures implemented to prevent or reduce the likelihood of future occurrences.

All incidents of P-Card suspected theft or embezzlement shall be reported immediately according to Fiscal Rule 1-9.

5. Open Charge Accounts

Departments participating in the P-Card program shall use the Center's P-Card for purchases at local vendors in lieu of open or other charge accounts. The Center's P-Card administrator must approve exceptions to this requirement in advance. Open accounts should be closed as soon as P-Cards are available to Departments.

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CHAPTER 3: CENTER CONTRACTS

FISCAL RULE NUMBER

Center Contracts

3-1

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Rule 3-1 CENTER CONTRACTS

1. Authorities
2. Definitions
3. Categories
4. Rule
5. Content of Center Contracts
6. Approved State Contract Forms
7. Center Contract Approvals
8. Center Contract Legal Review
9. Center Chief Financial Officer (CFO) Review and Approval
10. Accounting for Center Contracts
11. Monitoring of Center Contracts
12. Independent Contractor Relationship
13. Exceptions to Fiscal Rule 3-1
14. Special Provisions

1. AUTHORITIES

Article V, Section 33, Constitution of Colorado – Disbursement of public money

Article XI, Constitution of Colorado – Public Indebtedness.

Article XII, Section 13(2), Constitution of Colorado – Personnel system of state – merit system

§ 4-1-101, et seq., C.R.S., (Uniform Commercial Code)

§ 24-2-102(4), C.R.S., (Appointment of officers and employees)

§ 24-17-201, et seq., C.R.S., (State contingency-based contracts)

§ 24-30-202, C.R.S., (State Controller authority)

§ 24-30-1303(1)(a) and (d), C.R.S., (State architect approval authority)

§ 24-30-1404(4), C.R.S., (Prohibition against contingency fees)

§ 24-30-2001, et seq., C.R.S., (Utility cost-savings measures)

§ 24-31-101(1)(c), C.R.S., (State Attorney General -powers and duties)

§ 24-31-104, C.R.S., (Appointment of subordinate officers and employees)

§ 24-37.5-101, et seq., C.R.S., (Office of Information Technology)

§ 24-50-135, C.R.S., (Exemptions from personnel system)

§ 24-50-501, et seq., C.R.S., (Contracts for Personal Services)

§ 24-75-302, C.R.S., (Capital construction fund)

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2. DEFINITIONS All references to “contract” or “agreement” refer to contracts, which are formal, legally binding documents. The terms “contract” and “agreement” are used interchangeably in the following definitions to reflect their common usage and include any amendments to the contract or agreement. The following definitions include terms used in this Fiscal Rule as well as various types of contracts entered into by the Center.

Advice of Employment – A document that includes an offer of employment.

Capital Construction – A capital construction project or controlled maintenance project funded wholly or in part by the State capital construction fund (C.R.S. § 24-75-302) or any cash resources of the Center.

Center Contract – An agreement between the Center and another party. Center contract, as used in this Fiscal Rule, does not include purchase orders.

Central Approver – The CEO or designee.

Contingency-Based Contract – A contract for services between the Center and a vendor where:

1. All or part of the vendor’s compensation is computed by multiplying a stated percentage by the measurable savings in the Center’s expenditures or costs of operation attributable to the vendor’s services under the contract; and
2. The contingency-based contract is not specifically authorized by statute. See C.R.S. § 24-17-203. Contingent fees are prohibited in professional services contracts. See C.R.S. § 24-30-1404(4).

Debt Contract - A financial obligation reported in the Center’s Annual Financial Report under standards promulgated by the Governmental Accounting Standards Board. Debt contracts include without limitation contracts for revenue bonds, tax revenue anticipation notes, lease purchases, certificates of participation, and other multi-year transactions with outside third party facilitators, issued or otherwise incurred by the Center and blended component units.

Employee Voluntary Separation Agreement – A contract between the Center and a Center employee setting forth the terms of the employee’s voluntary separation from Center service.

Expenditure Contract – An agreement between the Center and another party resulting in an expenditure of funds, directly or indirectly, or the creation of an obligation on the part of the Center. Expenditure contracts include non-financial and in-kind contracts where the Center incurs an obligation.

Franchise Agreement – An agreement where the Center grants to a party a concession or right to provide goods or services in a particular market or geographical area controlled by the Center, such as concession stands, hotels, and other services provided on the Auraria campus. The Center may regulate service level, quality and price, but users of the service pay the other party directly and the other party provides the goods or services and exercises control over other management decisions.

Fund Management Services – Professional consulting services regarding the management of Center funds.

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Goods Contract – A contract between the Center and another party for the purchase of goods. The term “goods” includes commodities, supplies, and products as such terms are used in the Procurement Rules and Uniform Commercial Code (C.R.S. § 24-1-201, General Definitions).

Grant Contract – An agreement between the Center and another party where the Center:

1. Receives grant funds from or through the other party to the grant contract. The Center may receive grant funds from or through any contract type, including without limitation, revenue contracts, sponsored project agreements, intergovernmental contracts, and interagency agreements, depending on the nature of the grant; or
2. Provides funds from state, federal, or other sources to the other party to the grant contract. The Center may grant funds to the other party from or through any contract type, including without limitation, personal services contracts or capital construction contracts, depending on the nature of the grant.

Information Technology Contract – A contract between the Center and another party, where the other party provides information technology services or products and services. An information technology contract is a type of personal services contract.

Interagency Agreement – An agreement between the Center and another state agency or an Institution of Higher Education. An interagency agreement is a Center contract, subject to the provisions and requirements of this Fiscal Rule.

Intergovernmental Agreement (“IGA”) – An agreement between the Center and a political subdivision of the State, another state, a political subdivision or public institution of higher education in another state, or an agency of the federal government.

Institution of Higher Education – A public college or university or college or university system established as a part of the State.

Investment Advisory Services -Professional consulting services regarding securities and investments.

License – A grant by the owner of rights in real or personal property to another of a personal privilege to use such property, without the transfer of the underlying ownership interest therein or the creation of a leasehold interest.

Loan Contract – An agreement between the Center and another party, where the Center agrees to lend funds to such other party.

No-Cost/Non-Cash Contract – An agreement, between the Center and another party involving an exchange of resources, goods, or services that does not result in the direct or indirect expenditure of funds.

Outsource Contract-Third Party Payor – An agreement between the Center and another party for personal services, where the Center:

1. Is charged with providing the function or services that are the subject matter of the contract to members of the public; and
2. Delegates performance of a part of the function or service to the other party, but does not dictate the third party’s operations beyond providing limited input regarding the third party’s performance of its obligation.

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Personal Property Lease Agreement – An agreement between the Center, as lessee, and the owner of personal property, as lessor, where the Center pays the lessor for the right to use such personal property for the term of the lease. A personal property lease may be an operating lease or a capital lease.

Personal Services Contract – A contract between the Center and another party, where the other party provides personal services for the benefit of the Center, or a third party. An individual or entity performing services under a personal services contract is an independent contractor and not an employee of the Center or the State.

Personal Services Exempted From Personal Services Review – Personal services that are:

1. Exempted from the State classified personnel system under C.R.S. § 24-31-104; or
2. Non-recurring services lasting six months or less, where the need for such services is not expected to recur on a regular basis. Temporary services that do not meet these criteria are subject to personal services review.

Professional Services Contract – A contract between the Center and another party for the performance of any of the following services: architectural, engineering, land surveying, industrial hygienist, and landscape architect.

Real Property Lease Agreement – An agreement between the Center and another party, where the Center:

1. As landlord, owns the real property subject to the lease and gives the other party to the Lease, as tenant, the right of possession of such property for the lease term; or
2. As tenant, obtains the right of possession of the real property subject to the lease from the owner of such property, as landlord, for the lease term.

Real Property Purchase Agreement – An agreement for the purchase of an interest in land (fee title or lesser interests) and improvements to land, such as buildings and other structures.

Revenue Contract – An agreement between the Center and another party where cash and/or property are paid to the Center, resulting in revenue recognition. Revenue contracts do not require the expenditure of Center funds or create a financial obligation on the part of the Center.

Reviewing Attorney – An assistant attorney general, special assistant attorney general, or other attorney authorized by the State Attorney General and employed or retained by the Center.

Sale of Securities – The offer, issuance or sale of securities by the Center. Securities include certain debt contracts.

Settlement Agreement – A contract between the Center and another party for the purpose of ratifying agreements concerning employment, contractual or other legal disputes.

Sponsored Project Agreement – An agreement between the Center and another party, where the Center receives or expends restricted funding for use in connection with oversight responsibilities for research and development or other specified programmatic activities sponsored by federal, state, or local governments, or private agencies or organizations.

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State – The State of Colorado.

State Price Agreement – A contract between the Department of Personnel and Administration, Office of the State Controller, State Purchasing and Contracts Office, and a vendor, which allows the Center to order goods or services from the vendor, pursuant to the terms of the State price agreement, by issuing a purchase order, task order, or other approved order form.

Utility Cost-Savings Contract – An energy performance contract, shared-savings contract, or other agreement in which utility cost savings are used to pay for services or equipment. See C.R.S. § 24-30-2001(6).

3. CATEGORIES

The following categories provide examples of different types of Center contracts, but are not all inclusive.

3.1 Expenditure Contracts

- 3.1.1** Capital construction contracts;
- 3.1.2** Employee voluntary separation agreements;
- 3.1.3** Fund management services agreements;
- 3.1.4** Goods contracts;
- 3.1.5** Information technology contracts;
- 3.1.6** Investment advisory services agreements;
- 3.1.7** Outsource contracts-third party payor;
- 3.1.8** Personal property leases/licenses – The Center as lessee or licensee;
- 3.1.9** Personal services contracts;
- 3.1.10** Personal services review exempted contracts;
- 3.1.11** Professional services contracts;
- 3.1.12** Real property leases/ licenses – Center as tenant or licensee;
- 3.1.13** Real property purchase agreements – Center as buyer; and
- 3.1.14** Settlement agreements.

3.2 Revenue Contracts

- 3.2.1** Franchise agreements;
- 3.2.2** Real property leases/licenses – The Center as landlord or licensor; and
- 3.2.3** Real property purchase agreements – The Center as seller.

3.3 Other Contract Types

- 3.3.1** Debt contracts;
- 3.3.2** Grant contracts;
- 3.3.3** Interagency agreements;
- 3.3.4** Intergovernmental agreements;
- 3.3.5** Loan contracts;

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- 3.3.6 No cost/non cash contracts;
- 3.3.7 Price agreements;
- 3.3.8 Sale of securities agreements; and
- 3.3.9 Sponsored project agreements.

4. RULE

The Center shall:

- 4.1 Use a Center contract as the commitment voucher, as required in Fiscal Rule 2-2, “*Commitment Vouchers*”; and
- 4.2 Ensure that all constitutional, statutory, Fiscal Rule, and CFO Policy requirements have been met prior to signing a Center contract.

5. CONTENT OF CENTER CONTRACTS

5.1 Expenditure Contracts, Other State Funded Contract Types, Debt Contracts, and Price Agreements. The general provisions of subsection 5.1.1 shall apply to all contract types noted in subsection 5.1 except as limited or excluded in the specific §5 subsections covering: (a) real property purchases (Center as buyer), leases (Center as tenant), and licenses (Center as licensee) and (b) settlement agreements and employee voluntary separation agreements. See CFO Policy entitled “*Content-Mandatory Provisions in Center Contracts.*”

5.1.1 General Provisions-The following provisions shall be included in (a) expenditure contracts, (b) grant contracts where the Center is the grantor and provides funds from State, federal, or other sources to the other party, (c) intergovernmental agreements where the Center provides funds to the other governmental entity, (d) debt contracts, and (e) price agreements, to-wit:

- 5.1.1.1 Identification of the parties;
- 5.1.1.4 Statement of Work;
- 5.1.1.5 Payment terms, including maximum dollar amount;
- 5.1.1.6 Performance period;
- 5.1.1.7 General terms and conditions;
- 5.1.1.8 Special Provisions (see Appendix to this Fiscal Rule);
- 5.1.1.9 Signature page; and
- 5.1.1.10 Statement that the contract shall not be valid until it has been approved by the Center’s CFO or delegate.

5.1.2 Personal Services Contract Provisions – In addition to the elements listed in subsection 5.1.1 above, each personal services contract over \$350,000 (other than sponsored project agreements) shall include all of the contract requirements as follows:

- 5.1.2.1 Performance measures and standards developed specifically for the contract by the Center;

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5.1.2.2 Accountability standards requiring regular vendor reports on achievement of the specified performance measures and standards;

5.1.2.3 Payment provisions allowing the Center to withhold payment until successful completion of all or specified parts of the contract and requiring prompt payment upon successful completion;

5.1.2.4 Monitoring requirements specifying how the Center and the vendor will evaluate performance, including progress reports, site visits, inspections, and reviews of performance data; and

5.1.2.5 Processes for resolving disputes between the Center and the vendor.

5.1.3 Real Property Purchases (Center as Buyer), Leases (Center as Tenant) and Licenses (Center as Licensee). State contracts for the purchase, lease or license of real property shall contain the following provisions:

5.1.3.1 If the Center is the buyer, tenant or licensee, the contract shall include the following Special Provisions:

5.1.3.1.1 Center's CFO or delegate Approval;

5.1.3.1.2 Funds Availability; and

5.1.3.1.3 Vendor Offset.

5.1.3.2 If the Center is the buyer, tenant or licensee, the contract may include the other Special Provisions, at the discretion of the Center.

5.1.3.3 If the Center is the tenant or licensee, the contract shall include provisions specifying cancellation rights, if the real property leased or licensed is destroyed by fire and/or becomes subject to eminent domain.

5.1.4 Capital Construction Contracts – See Fiscal Rule 4-1, “*Capital Construction Projects*”. See also approved contract forms, available on the website of the Office of the State Architect.

5.1.5 Settlement Agreements and Employee Voluntary Separation Agreements – See CFO Policy entitled “*Settlement Agreements*.”

5.2 Content for other Contract Types

5.2.1 Interagency Agreements - All interagency agreements require approval of the Center's CFO, or delegate. Each interagency agreement shall include, at a minimum, the following elements:

5.2.1.1 Identification of the parties;

5.2.1.3 Statement of work;

5.2.1.4 Statement of consideration (if applicable);

5.2.1.5 Payment and other performance terms; and

5.2.1.6 Definition of breach and remedies, consistent with Fiscal Rule 2-6, “*Interagency Purchases and Payments*”.

5.2.2 Intergovernmental Agreements

5.2.2.1 Special Provisions – The Center contracting with governmental entities outside of the State shall not agree to modify the Special Provision requiring

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the governance of Colorado law, but, if requested, may agree to strike the Choice of Law Special Provision, resulting in contractual silence as to governing law. Any other change to the Choice of Law Special Provision shall require the prior written approval of the CFO and a Reviewing Attorney.

5.2.2.2 Federal Government Contracts – All intergovernmental contracts with any agency of the Federal Government shall be reviewed by a Reviewing Attorney. See CFO Policy entitled “*Federal Government Contracts*.”

5.2.3 Sponsored Project Agreements – See CFO Policy entitled “*Sponsored Projects*”.

5.3 Content for All Contract Types

5.3.1 Indemnification by the Center Prohibited – The Center shall not indemnify and/or hold harmless another party (no matter how it is phrased) against any loss or liability. See Constitution of Colorado, Article V, §33 and Article XI, §1.

5.3.1.1 C.R.S. § 24-30-1510(3)(e) authorizes limited indemnification of an owner of property leased to the Center for State purposes.

5.3.2 Limitation of Liability

5.3.2.1 Limitation of Vendor’s Liability Bodily Injury and Property Damage.

The Center shall not limit the vendor’s liability for claims or damages, including consequential damages, arising out of bodily injury (including death) and damage to tangible property, if tangible risk is inherent in the nature of the contract.

5.3.2.2 Limitation of Vendor’s Liability -Other Types of Damages. The Center may accept commercially reasonable limitations of liability and/or remedies provisions, or the exclusion of consequential damages, if the benefits are deemed to outweigh the risks and this determination is documented in the contract file. Such action requires approval of the Procurement Director, and may include legal counsel.

5.3.3 Contract Provisions Prohibited by § 24-106-109, C.R.S. Any term or condition in any contract entered into by the Center:

5.3.3.1 that requires the Center to indemnify or hold harmless another person, except as otherwise authorized by law, or

5.3.3.2 by which the Center agrees to binding arbitration or any other binding extra-judicial dispute resolution process in which the final resolution is not determined by the Center, or

5.3.3.3 by which the Center agrees to limit liability of another person for bodily injury, death, or damage to tangible property of the Center caused by the negligence or willful misconduct of such person or such person’s employees or agents, shall be void ab initio; except that the contract containing that term or condition shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the Center, except for contracts with another government, shall be governed by Colorado law notwithstanding any term or condition to the contrary.

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6. APPROVED CENTER CONTRACT FORMS

All Center expenditure contracts shall be in a form approved by the CFO. The CFO has approved the following Center contract forms and may approve additional forms at his or her sole discretion.

6.1 Capital Construction Contracts – See Fiscal Rule 4-1, “*Capital Construction Projects*”.

See also approved contract forms available on the website of the Office of the State Architect.

6.2 Model Contracts – The CFO has approved model contracts for personal services, information technology and interagency agreements, and may approve other model contracts in the future, at his or her sole discretion. See CFO Policy entitled “*Model Contracts*”.

6.3 Contract Amendments – All modifications to a Center contract shall be made by a formal written amendment signed by the parties to the contract and approved by Center’s CFO, unless an alternative modification tool has been approved by the CFO. A contract cannot be amended or extended (revived) after the contract term has expired. A form of contract amendment and forms of alternative modification tools are set forth in CFO Policy entitled “*Modifications of Contracts-Tools and Forms*” (“Modification Policy”).

6.4 Alternative Modification Tools and Forms – The Center may use an approved alternate modification tool to modify a contract in lieu of a contract amendment only in the specific circumstances identified in the Modification Policy. A contract cannot be modified or extended after the expiration of the contract term. Approved alternative modification tool forms are set forth in the Modification Policy.

6.4.1 Required Provision and Attachment. An approved modification tool may be included as a part of a State contract only if the contract contains a provision referencing the specific modification tool, in the form set forth in the Modification Policy, and the form of the specific modification tool is attached as an exhibit to the contract.

6.4.2 Caveat. Each contract modification tool was created for use in connection with specific types of contracts and scopes of services and is not universally applicable. Each modification tool shall be used only for its intended purposes, as set forth in the Modification Policy, and shall not be changed or combined with any other contract modification tool.

6.5 Real Property Lease Agreements – Lease agreements involving real property shall be in a form approved by and set forth on the website of the Office of the State Architect, except for:

6.5.1 Leases exempted by statute (see subsection 7.10 of this Fiscal Rule), and

6.5.2 Leases where the Department of Personnel and Administration is a party, which may be in any form approved by the State Controller.

6.6 Special Provisions – All Center (a) expenditure contracts, (b) grant contracts where the Center is the grantor and provides funds from State, federal, or other sources to the other party, (c) intergovernmental agreements where the Center provides funds to the other governmental entity, (d) debt contracts, (e) price agreements, and (f) capital construction

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contracts shall contain the Center's Special Provisions. See §14 to this Fiscal Rule. No modification shall be made to a Special Provision without the prior written approval of the CFO and, in the case of the Choice of Law Special Provision, a Reviewing Attorney, except as otherwise expressly provided in subsection 5.2.2 above.

6.7 Other contract forms – Any other contract form which may be approved by the CFO from time-to-time.

7. CENTER CONTRACT APPROVALS

The Center CEO, or authorized delegate, shall sign all Center contracts on behalf of the Center. The Center, at its discretion, may require such additional internal signatures as it deems proper. The Center shall obtain all required approvals and signatures and retain documentation thereof in its files for the period specified in CFO Policy entitled "*Records Retention for Contracts*." Unless the Center is exempted by statute or has delegated approval authority, prior approval of the contract by one or more of the Central Approvers is required as follows:

7.1 Capital Construction and Controlled Maintenance contracts require the approval of the State Architect or delegate, unless otherwise exempted by statute or waived by the State Architect. See C.R.S. § 24-30-1303(1)(d).

7.2 Contingency-Based contracts require the approval of the Office of State Planning and Budgeting. See C.R.S. § 24-17-204.

7.3 Financial Information contracts used by the Center to record financial transactions and information, develop financial reports, or prepare financial statements require the approval of the State Controller. See C.R.S. § 24-30-202(12).

7.4 Legal Services contracts require the approval of the State Attorney General or delegate. See C.R.S. § 24-31-101.

7.5 Personal Services contracts require the approval of the State Personnel Director or delegate. See C.R.S. § 24-50-501, et seq.

7.6 Real Property contracts, including leases where the Center is the tenant, easements, and rights-of-way contracts, require the approval of the State Architect/Director of Real Estate Programs, Department of Personnel and Administration, or delegate, unless otherwise exempted by statute.

7.7 Utility Cost-Savings contracts require the approval of the State Personnel Director or delegate. See C.R.S. § 24-30-2003(1)(b).

8. CENTER CONTRACT LEGAL REVIEW

At the discretion of the CFO a Center contract may be subject to legal review by and approval of the Center's General Counsel or the Office of the State Attorney General.

8.1 Mandatory Review. Legal review shall include, without limitation, scrutiny of contract provisions to ensure that the following requirements are met:

8.1.1 Compliance with the United States and Colorado Constitutions and applicable federal and State statutes and regulations;

8.1.2 Authority of the Center;

8.1.3 All essential elements of a legally binding contract;

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8.1.4 A statement of work or comparable provisions and business or commercial terms, which are sufficiently clear and definite, under the applicable circumstances, to be enforceable;

8.1.5 Required signatures; and

8.1.6 Compliance with these Fiscal Rules.

8.2 Discretionary Review. At the discretion of the CFO legal review also may include:

8.2.1 Review and analysis of the significant risks and issues of a particular transaction;

8.2.2 Inquiry into the availability of specific remedies; and

8.2.3 Review of compliance with grant conditions, federal funding requirements, and required assurances, where provided by the Center.

9. CFO REVIEW AND APPROVAL

CFO review and approval of all Center expenditure contracts, intergovernmental agreements, and price agreements is mandatory. The CFO, in his or her discretion, may review other types of contracts, for example, non-expenditure contracts, if requested by the Department. All CFO reviews and approvals shall be conducted in accordance with the provisions of this §9.

9.1 Outsource Contracts -Third Party Payor. All outsource contracts shall be submitted to the CFO or delegate for review and approval, including without limitation, any outsource contract that diverts revenues due to the State, unless specifically exempted by State statute. For example, see C.R.S. § 24-34-101.

9.2 Process for Review, Approval, and Signature

9.2.1 Review. The CFO or delegate shall review all expenditure contracts to determine if the:

9.2.1.1 Expenditure:

9.2.1.1.1 Is authorized by the appropriation to which it will be charged;

9.2.1.1.2 Does not exceed the unencumbered balance of the appropriation;

9.2.1.1.3 Complies with all applicable constitutional and statutory provisions, Fiscal Rules and CFO Policies;

9.2.1.1.4 Is encumbered; and

9.2.1.2 Prices or rates are fair and reasonable and in accordance with State law and administrative rules;

9.2.1.3 Form and Content of the contract are sufficient and appropriate for the parties and subject matter under applicable State and federal laws, Fiscal Rules, including Section 5 (Content of State Contracts) of this Fiscal Rule, and CFO Policies; and

9.2.1.4 Risk of the contract is outweighed by the contract's benefits.

9.2.2 Approval and Signature. After review, CFO or delegate shall approve or disapprove the Center expenditure contract. If approved, CFO or delegate shall evidence such approval by signing the contract.

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9.3 Contracts Not Approved by CFO

9.3.1 Not Binding. An expenditure contract is not binding on or enforceable against the Center unless and until it is signed by CFO or delegate.

9.3.2 Null and Void. Any expenditure contract disapproved by CFO or delegate is null and void.

9.3.3 Personal Liability. A person incurring an obligation on behalf of the Center through an expenditure contract or other State-funded contract type without the approval and signature of CFO or delegate shall be personally liable, jointly and severally, for the obligation. See C.R.S. § 24-30-202(3).

10. ACCOUNTING FOR CENTER CONTRACTS

10.1 Encumbrances. The Center shall encumber expenditure contracts in accordance with Fiscal Rule 2-2, "*Commitment Vouchers*".

10.2 Outsource Contracts – Third Party Payor. The Center shall record all gross revenues and expenditures for each outsource contract in the Center's financial system and shall not net the expenditures against the revenues, unless specifically exempted by State statute.

11. [OMITTED.]

12. INDEPENDENT CONTRACTOR RELATIONSHIP

The Center shall take care in maintaining the distinctions between services performed by persons who are employees of the Center and services performed by independent contractors, and their employees, agents and representatives, pursuant to a personal services contract. The Center's responsibilities and obligations with respect to employee/employer arrangements differ from its responsibilities and obligations with respect to independent contractors. The Center may be liable to a third party for the actions of its employees, whereas independent contractors and their employees, agents and representatives are liable for their own actions. The Center is responsible for payroll deductions and benefits for its employees, whereas independent contractors are responsible for payroll deductions and benefits of their employees. The Center shall follow guidelines issued by the Internal Revenue Service, the Colorado Division of Human Resources, Colorado statutes, and opinions of the State Attorney General in determining whether an individual is an employee or independent contractor.

13. EXCEPTIONS TO FISCAL RULE 3-1

13.1 Personal Services Contracts -This Fiscal Rule does not apply to Center contracts for personal services paid through the payroll system.

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14. SPECIAL PROVISIONS

See next page.

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AHEC SPECIAL PROVISIONS

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

1. **CFO'S APPROVAL.** This Contract shall not be valid until it has been approved by AHEC's Chief Financial Officer or designee.
2. **FUND AVAILABILITY. § 24-30-202(5.5), C.R.S.** Financial obligations of AHEC payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** Liability for claims for injuries to persons or property arising from the negligence of AHEC 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.
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 AHEC or the State. Contractor shall not have authorization, express or implied, to bind AHEC 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 AHEC, and AHEC 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 (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, (c) disclose to AHEC if they are a PERA retiree prior to performing contracted duties in order for AHEC to properly report information, and if applicable, withhold contributions from payment of services to PERA, and (d) 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, 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.
7. **PROHIBITED TERMS.** Any term included in this Contract that requires AHEC to indemnify or hold Contractor harmless; requires AHEC to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible

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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.

8. **CLICK-THROUGH AGREEMENTS.** Contractor's software or Contractor's website may contain a "click through" agreement which is integral to that product and/or website and which will require AHEC to click "I agree," or some similar action in order to proceed to use the software and/or website. It is hereby expressly agreed that all such click through, "shrink wrap," and/or online agreements, and any other such agreement mechanisms executed by AHEC in using the software and/or website are void and of no effect, do not create a binding assent by AHEC, do not modify this Contract, and do not in themselves create a separate Contract of any kind.
9. **SOFTWARE PIRACY PROHIBITION.** AHEC 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 AHEC or the State determine that Contractor is in violation of this provision, AHEC 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.
10. **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 AHEC or 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.
11. **ERRONEOUS PAYMENTS.** *[Not applicable to intergovernmental agreements]* AHEC may recover, at the AHEC'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 AHEC and Contractor, or by any other appropriate method for collecting debts owed to AHEC.

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CHAPTER 4: PROJECTS

FISCAL RULE NUMBER

Capital Construction Administration	4-1
Capital Construction Projects	4-2
Capital Construction Project Retainage	4-3

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Rule 4-1 CAPITAL CONSTRUCTION ADMINISTRATION

AUTHORITY:

§ 24-30-1301, C.R.S. (State Buildings)
§24-30-1303, C.R.S. (Office of the State Architect)
Title 24, Article 75, Part 3, C.R.S. (Capital Construction Fund)
Title 24, Article 91, C.R.S. (Construction Contracts with Public Entities)
Title 24, Article 92, C.R.S. (Construction Bidding for Public Projects)
§38-26-106, C.R.S. (Contractor Bonds)
§38-26-107, C.R.S. (Supplier Claims)

DEFINITIONS:

Capital Construction Fund - A fund created by statute for the purpose of purchasing and/or maintaining land, buildings and equipment and for constructing buildings for use by the State or its agencies or institutions.

RULE:

The State Capital Construction Fund was established to provide a source for appropriations to State agencies and Institutions of Higher Education to acquire and maintain their physical facilities. The fund has special requirements that must be followed by State agencies and Institutions of Higher Education receiving appropriations from the fund.

1. Capital Construction Contracts

1.1 Center contracts shall be required when expending funds in excess of \$150,000 appropriated for emergency maintenance projects including construction services or installation of fixed equipment unless previous approval has been obtained from the AHEC Chief Financial Officer to use a purchase order.

Purchases of fixed equipment that do not require installation services may be purchased with a purchase order.

A purchase order may be used for construction not exceeding \$150,000 if the State Architect or a delegate records written approval of the purchase order. Such approval by the State Architect or a delegate shall require compliance with approved building codes and signify compliance with bonding requirements in C.R.S. § 38-26-106.

1.2 Capital construction fund contracts shall follow the Center's contract routing procedures.

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Rule 4-2 CAPITAL CONSTRUCTION PROJECTS

AUTHORITY:

§24-30-1301, C.R.S. (State Buildings)
§24-30-1404, C.R.S. (Professional Services Contracts)
Title 24, Article 75, Part 3, C.R.S. (Capital Construction Fund)
Title 24, Article 91, C.R.S. (Construction)
Title 24, Article 92, C.R.S. (Construction Bidding for Public Projects)
§38-26-106, C.R.S. (Contractor Bonds)
§38-26-107, C.R.S. (Supplier Claims)

DEFINITIONS:

Capital Construction Fund - See Fiscal Rule 4-1 (Capital Construction Administration)

Capital Construction Project - A project for Capital Construction as described in §24-30-1301(2), C.R.S.

Controlled Maintenance Project - A project for Controlled Maintenance, as described in §24-30-1301(4), C.R.S.

RULE:

All funds appropriated for capital construction projects shall be used for their intended purpose. The Center shall not use the capital construction fund to pay or reimburse Center employees for construction management, administrative activities, direct labor performed, or any other expense outside the scope of the capital construction or controlled maintenance project.

Contracts funded by the state capital construction fund shall be executed and the funds encumbered within the time limits established by §24-30-1404(7), C.R.S. If the Center determines that the deadlines imposed by the statute cannot be met, the Center may request the Capital Development Committee to recommend to the State Controller that the deadline be waived. The State Controller may grant the waiver request. This Fiscal Rule does not apply to Center projects that are funded solely from cash funds held by the Center or other exemptions provided in statute.

Appropriated Capital Construction Funds are available immediately upon signature of the Governor, as current year appropriations. Appropriated Capital Construction Projects must be initiated by the end of the fiscal year following the original appropriation and will remain available for expenditure or Encumbrance for a period of three years or until completion of the Project, whichever is first.

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Rule 4-3 CAPITAL CONSTRUCTION PROJECT RETAINAGE

AUTHORITY:

§24-30-1301, C.R.S. (State Buildings)
Title 24, Article 75, Part 3, C.R.S. (Capital Construction Fund)
§24-91-103, C.R.S. (Retainage)
Title 24, Article 92, C.R.S. (Construction Bidding)
§38-26-106, C.R.S. (Contractor Bonds)
§38-26-107, C.R.S. (Supplier Claims)

DEFINITIONS:

Capital Construction Fund - A fund created by statute for the purpose of purchasing and/or maintaining land, buildings and equipment and for constructing buildings for use by the Center.

Capital Construction Project - A construction project, as defined in §24-30-1301, C.R.S., funded wholly or in part by funds from the State Capital Construction Fund.

Controlled Maintenance Project - A controlled maintenance project, as defined in §24-30-1301, C.R.S., funded wholly or in part by funds from the State Capital Construction Fund.

RULE:

The Center shall withhold retainage for all capital construction and controlled maintenance projects where the total amount of the contract exceeds the limit established by §24-91-103, C.R.S. The retainage shall be in the form of monies withheld from the contractor or in any other form authorized by statute and acceptable to the Center.

The retainage shall be released by the Center only when the contract has been satisfactorily completed and accepted, the Center has proof of publication of "Notice of Final Settlement", in accordance with §38-26-107, C.R.S., and there are no outstanding claims against the project.

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CHAPTER 5: TRAVEL

FISCAL RULE NUMBER

Travel

5-1

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Rule 5-1 TRAVEL

1. Authorities
2. Definitions
3. Rule
4. Travel Authorization
5. Travel Advance
6. Traveling Away from Home
7. Non-Allowable Travel Expenses
8. Certification and Approval
9. Reimbursement Requirements
10. Payment of Travel Expenses
11. Special Situations
12. Per Diem Rates - Meals and Incidental Expenses

1. AUTHORITIES

§ 24-9-104(2), C.R.S. – (Mileage allowances)
Executive Order D 005-03 - Concerning State Employee Travel
Executive Order D 021-07 - Efficient Management of State Employee Travel Expenses
1 CCR 103-1, State Travel Management Program Rules
26 USC §§162(a), 262, and 274(d) (Internal Revenue Code)
26 CFR Ch 1, §1.274-5T Substantiation Requirements (Temporary) (Treasury Regulations)
Rev Rul. 99-7, 1999-5 C.B. 4, Deductibility of Daily Transportation Expenses
IRS Publication 463 (2008) - Travel, Entertainment, Gift, and Car Expenses

2. DEFINITIONS

Approving Official - An individual, Director level or higher, who has authority to approve certain travel and travel expenses (other than their own) for their assigned department's or division's Center business and related matters as defined in this Chapter.

CONUS - The 48 continental United States, including the District of Columbia.

Division Chief – the head of one of the four (4) principal divisions of the Center.

Electronic Signature - Any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the person using it to have the same force and effect as a manual signature. "Electronic signature" includes digital signatures.

Expenses Incurred for the Benefit of the Center - Expenses incurred that enable a Center employee or Center official to perform assigned duties or enable the Center to carry out responsibilities required by law.

Foreign Travel - Travel to any out-of-country destination not included within the definitions of In-State Travel or Out-of-State Travel.

In-State Travel - Travel within the State of Colorado and to the immediate area outside the State that is a necessary part of an otherwise "in-state" trip.

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Incidental Expenses – Fees and tips given to porters, baggage carriers, bellhops, hotel maids, and skycaps for airport check-in, and cost of personal telephone calls. Incidental Expenses do not include expenses for laundry, cleaning and pressing of clothing, and Lodging taxes.

Lodging - Any commercial accommodations available or offered for use for which a rental schedule has been established and payment is required.

Metropolitan Area – A region including a city and the densely populated surrounding areas that are socially and economically integrated with it. See State Controller Technical Guidance entitled “*Taxability of State Travel*.”

Out-of-State Travel - Travel within CONUS, other than In-State Travel, or within Alaska or Hawaii.

Political Expenses - Expenses incurred in relation to activities that are primarily designed to further the interests of a candidate, political party, or special interest group.

Reimbursement Request – A request for reimbursement of travel expenses submitted by a Traveler pursuant to §9 of this Fiscal Rule.

Center Business – Official Center business or other duties undertaken for purposes and for the benefit of the Center.

Temporary Work Location – A location where employment is expected to continue, and does continue, for one year or less.

Travel Compliance Designee – An individual responsible for overseeing compliance and enforcement of travel rules and policies in accordance with Executive Order D 005 03.

Travel Advance – The advance of funds to a Traveler for approved travel expenses by the Center pursuant to § 5 of this Fiscal Rule.

Traveler – An employee or Center official who receives required approvals to travel on Center Business.

Traveler’s Regular Work Location – Generally, the primary location where the Traveler works, including the entire Metropolitan Area of the Traveler’s regular work location. See State Controller Technical Guidance entitled “*Taxability of State Travel*” for exceptions.

Traveler’s Residence – The location where the Traveler maintains his or her primary family home.

Traveling Away from Home – A Traveler is traveling away from home if: a) the Traveler’s duties require him or her to be away from the Traveler’s Regular Work Location substantially longer than an ordinary day’s work, *and* b) the Traveler needs to sleep or rest to meet the demands of his or her work while away from home.

Transportation -Travel by commercial airline, railroad, bus, taxicab, State-owned or -leased, or personally-owned or -leased vehicle or airplane or any other means of conveyance.

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3. RULE

3.1 Scope -Fiscal Rule 5-1 addresses Travel Advances and reimbursement of travel expenses to Center employees and officials. Center employees and officials shall follow this Fiscal Rule when Traveling Away from Home and for all other situations included in this Fiscal Rule.

3.2 Reimbursement – A Traveler may be reimbursed for travel expenses, only if the:

3.2.1 Traveler is Traveling Away from Home, or meets the criteria in one of the special situations described in §11 of this Fiscal Rule;

3.2.2 Travel:

3.2.2.1 Is on Center Business - travel charged to the Center, regardless of the funding source, shall be for the benefit of the Center;

3.2.2.2 Is only for the time period necessary;

3.2.2.3 Is completed using the most economical means available which will satisfactorily accomplish the Center Business; and

3.2.2.4 Is approved by the Approving Official as required by §4 of this Fiscal Rule;

3.2.3 Expenses are reasonable under the circumstances;

3.2.4 Traveler submits adequate documentation of the travel expenses to the Approving Official;

3.2.5 Reimbursement Requests and Travel Advances are settled as required by §9 of this Fiscal Rule

3.3 Traveler's Responsibilities – A Traveler is responsible for controlling expenses at a reasonable level and ensuring that the Center receives adequate value for the amounts expended. A Traveler shall identify Expenses Incurred for the Benefit of the Center while traveling away from home and request an advance or reimbursement for only those expenses.

3.4 Approving Official's Responsibilities - The Approving Official shall review the expenses claimed by a Traveler and authorize an advance or reimbursement for only those expenses incurred for Center business. The Approving Official may require documentation, in addition to the documentation prescribed by this Fiscal Rule, deemed necessary or advisable by the Approving Official in connection with the review and authorization of expenses.

4. TRAVEL AUTHORIZATION

All travel shall be requested and authorized via email, regardless of the sources of funding (including reimbursements by third parties). Email approval must be received from the Approving Official BEFORE the travel occurs or any funds are committed related to the travel.

4.1 In-State Travel - Prior written email authorization by the Approving Official for all In-State Travel shall be required.

4.2 Out-of-State Travel - Prior written email authorization by the CEO, or a Division Chief, shall be required for all Out-of-State travel.

4.3 Foreign Travel - Prior written email authorization by the CEO, or delegate, of the Center shall be required for all Foreign Travel.

4.4 Travel at No Cost to the Center - Prior written email authorization by the Approving Official is required for any Center travel for which reimbursement is made directly to a

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Center employee by a non-State organization. Absent this authorization, a Traveler shall submit a Reimbursement Request to the Center, and the Center will send an invoice to the non-State organization for the amount of reimbursement requested by the Traveler.

5. TRAVEL ADVANCE

- 5.1 Travel Advance Form** – A Traveler may request a Travel Advance for approved travel expenses, where not paid by P-Card, to include meals and stays at VRBO, Airbnb (or similar providers), which **cannot** be charged to the P-Card. The request for Travel Advance shall contain a statement as to the purpose of the travel. The Travel Advance request shall be part of the initial Travel Authorization request which must be emailed to the Approving Official, or Division Chief, or CEO, or delegate, to obtain travel approval.
- 5.2 Amount of Advance** - The amount of the advance shall be computed using the applicable per diem rates and other allowable estimated out of pocket amounts. Under no circumstance shall a Travel Advance exceed \$1,500 per Traveler per trip.
- 5.3 Approval** -Travel Advances requested from the Center require prior email authorization from the Approving Official, Division Chief, or CEO, or delegate.
- 5.4 Settlement of Advance** – Upon completion of travel, a Traveler shall settle his or her Travel Advance by following the requirements for timing, content and receipts set forth in §9 of this Fiscal Rule. The Traveler shall reimburse the Center to the extent that the amount of a Travel Advance received by the Traveler pursuant to §5 of this Fiscal Rule exceeds the actual expenditures for reimbursable items in §6 of this Fiscal Rule.

6. TRAVELING AWAY FROM HOME

A Traveler traveling away from home shall be reimbursed for the items set forth in this section, if all other requirements of §3 of this Fiscal Rule are met.

- 6.1 Lodging** –The Traveler shall submit receipts for lodging as documentation of the expense and shall be reimbursed for the actual cost of lodging (unless a P-Card was used for lodging), provided the Traveler complies with §3.2 of this Fiscal Rule.
- 6.2 Meals** – Under regulations issued by the Internal Revenue Service, Travelers are required to use the method chosen by the Center for reimbursement of meals. The Center has chosen to use the standard allowance method for meals, rather than the actual cost method. Under the standard meal allowance method, a Traveler shall claim the authorized meal per diem rate for each meal the Traveler would normally have eaten while Traveling Away from Home. If a meal is included in a conference fee or is provided with the cost of Lodging, a Traveler shall not request reimbursement for the standard meal allowance, unless the meal is determined to be inadequate by the Traveler (must be substantiated with a conference agenda or training schedule). Under no circumstances shall a Traveler request reimbursement for more than the applicable per diem rate. Receipts for meals are not required. See §12 of this Fiscal Rule for reference to the current standard per diem rates for meals. Note: P-Cards cannot be used for meals while traveling.

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- 6.3 Meals for Days Traveler Departs and Returns** – A Traveler may claim meals based on departure and arrival time. Breakfast cannot be claimed unless departure is prior to 5:00 a.m. at the departing city. Lunch cannot be claimed unless departure is before 11 a.m. at the departing city or return is after 1:00 p.m. at the destination city. Dinner cannot be claimed unless return is after 8:00 p.m. at the destination city. Under this method, the applicable per diem rate is based on where the meal is eaten.
- 6.4 Incidental Expenses** – Under regulations issued by the Internal Revenue Service, Travelers are required to use the method chosen by the Center for reimbursement of Incidental Expenses. The Center has chosen to use the standard allowance method for Incidental Expenses, rather than the actual cost method. Under the standard allowance method, a Traveler shall include the total Incidental Expense per diem rate for each overnight stay but shall not be reimbursed for Incidental Expenses for days that do not include an overnight stay. Under no circumstances shall a Traveler request reimbursement for more than the applicable per diem rate. Receipts for Incidental Expenses are not required. See §12 of this Fiscal Rule for reference to the current rates for Incidental Expenses.
- 6.5 Transportation** – A Traveler shall be reimbursed only for the dollar equivalent of the most cost beneficial method of Transportation available to the Traveler that satisfactorily accomplishes the Center's business. Reimbursement shall be limited to the actual cost of commercial Transportation (unless a P-Card was used). A Traveler requesting reimbursement shall submit receipts for all Transportation expenses except as provided in §6.10 of this Fiscal Rule.
- 6.6 Rental Vehicles** – A Traveler shall use a vehicle rental company that is included on a State Price Agreement (<https://www.bidscolorado.com/co/portal.nsf/xpPriceAgreementsByCategory.xsp>) to control travel costs and ensure that liability insurance coverage is adequate, unless the State Price Agreement does not meet the needs of the Traveler. In instances where a State Price Agreement is not used for vehicle rental, the Traveler shall purchase liability insurance in the amount of \$1,000,000 through the automobile rental company the Traveler uses. Various upgrades provided at extra cost by vehicle rental companies, such as satellite radio, GPS units, etc., are not reimbursable unless necessary for Center business or safety reasons and approved by the Approving Official. A Traveler shall submit receipts for rental vehicles as documentation of the expense and shall be reimbursed for the actual cost of rental vehicles, including any necessary liability insurance (unless a P-Card was used for the rental), provided the Traveler complies with §3.2 of this Fiscal Rule.

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6.7 Mileage for Personal Vehicles – A Traveler shall be allowed mileage reimbursement for each mile actually and necessarily traveled on Center business using the Traveler’s personal vehicle as provided in the “*Mileage Reimbursement Policy*” section. A Traveler normally shall be reimbursed at the mileage rate designated for two-wheel drive vehicles. A Traveler shall be reimbursed at the mileage rate designated for four-wheel drive vehicles only when the use of four-wheel drive is necessary because of road, terrain, or adverse weather conditions. Commuting expenses incurred while traveling between a Traveler’s Residence and Traveler’s Regular Work Location are non-reimbursable personal expenses. C.R.S. § 24-9-104(2) establishes the mileage rate to be used for reimbursement of Center business travel. The current mileage rates are posted on the website of the Office of the State Controller at:

<http://www.colorado.gov/dpa/dfp/sco/FiscalRules/mileage.htm>.

6.8 Airfare - A Traveler shall be reimbursed only for the dollar equivalent of the most cost beneficial airfare that satisfactorily accomplishes the Center’s business (unless a P-Card was used). A Traveler shall be reimbursed for baggage fees if not included in the airfare (unless a P-Card was used).

6.9 Tips – A Traveler cannot claim tips as a separate item on a Reimbursement Request. Tips paid to porters, baggage carriers, bellhops, hotel maids, and skycaps for airport check-in are included in Incidental Expenses. Tips paid in conjunction with meals are included in the standard meal allowance. Tips paid in connection with taxi and shuttle expenses should be included as part of these expenses.

6.10 Other Allowable Travel Expenses -In addition to lodging, meals, and transportation, the actual expenses identified below, incurred as a part of approved travel, are allowable if necessary to complete Center Business:

6.10.1 Commercial Transportation such as taxi and shuttle expenses, including tips. A receipt shall be required for each individual ride in a commercial vehicle costing over \$25, unless a P-Card is used and a receipt is then required for any amount;

6.10.2 Parking fees. A receipt shall be required for any single fee over \$25, unless a P-Card is used and a receipt is then required for any amount;

6.10.3 Registration fees for conferences or other meetings. A receipt shall be required for all registration fees;

6.10.4 Telephone, fax, internet access, and other similar miscellaneous business expenses paid for Center Business. A receipt shall be required for any single charge over \$25, unless a P-Card is used and a receipt is then required for any amount;

6.10.5 Toll road charges. A receipt shall be required for charges over \$25, unless a P-Card is used and a receipt is then required for any amount; and

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6.11 Summary of Allowable Travel Expenses

Type of Travel Expense	Reimbursement	Receipt Required?	Use of P-Card Allowed?
Lodging	Actual	Yes	Yes, except for VRBO, Airbnb, or similar providers
Meals	Per Diem Rate	No	No
Incidental Expenses	Per Diem Rate	No	No
Transportation (other than airfare)	Actual	Yes if over \$25, or if using P-Card	Yes
Rental Vehicles	Actual	Yes	Yes
Mileage for Personal Vehicles	Miles x 90% x current federal mileage rate (95% for 4-wheel drive)	No	No
Airfare	Actual	Yes	Yes
Tips	Included in Per Diem Rate	No	No
Other Allowable Travel Expenses	Actual	Yes if over \$25, or if using P-Card	Yes

7. NON-ALLOWABLE TRAVEL EXPENSES

A Traveler shall not be reimbursed for the following expenses:

- 7.1 Alcoholic beverages;
- 7.2 Entertainment expenses;
- 7.3 Personal expenses incurred during travel that are primarily for the benefit of the Traveler and not directly related to Center business;
- 7.4 Political expenses;
- 7.5 The cost of traffic fines and parking tickets;
- 7.6 Certain insurance coverage – The Center’s Commercial Card Program (P-Card) provides travel insurance for Travelers who use AHEC’s P-Card, but AHEC does not provide insurance if a Traveler uses the Traveler’s personal credit card. The cost of additional or other types of coverage shall not be reimbursed by the Center, unless required by §6.6 of this Fiscal Rule, including without limitation, expenses paid by a Traveler for the following:
 - 7.7.1 Collision damage waiver or loss-of-use waiver for rental vehicles as this coverage is automatically provided with use of the Center’s P-Card;
 - 7.6.2 Additional or supplemental liability insurance on vehicles rented through a State Price Agreement Vendor;
 - 7.6.3 Value premiums on airline tickets;
 - 7.6.4 Trip cancellation insurance;
 - 7.6.5 Personal accident and personal effects insurance on rental vehicles; and
 - 7.6.6 Supplemental life insurance for airline or common carrier travel.

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8. CERTIFICATION AND APPROVAL

8.1 Certification - Each Travel Advance request or Reimbursement Request shall contain the following certification signed manually or electronically by the Traveler:

"I certify that the statements in the above schedule are true and correct in all respects; that payment of the amounts claimed herein has not and will not be reimbursed to me from any other source; that travel performed for which an advance or reimbursement is claimed was or will be performed by me while on Center Business and that no claims are included for expenses of a personal or political nature or for any other expenses not authorized by the Fiscal Rules; and that I actually incurred or paid the operating expenses of the motor vehicle for which reimbursement is claimed on a mileage basis. Further, I hereby authorize the Center to deduct from my pay any amount paid to me in excess of my authorized expenses as provided by Fiscal Rule 5-1."

8.2 Approval – If approved, the Approving Official shall respond via email to the approval of the Travel Advance and endorse the Reimbursement Request manually or by electronic signature.

9. REIMBURSEMENT REQUIREMENTS

Per Internal Revenue Code §62(c), reimbursement of travel is nontaxable to employees under an Accountable Plan which mandates all of the following Reimbursement Requirements be met. If any of the below requirements are not met, reimbursement will be processed through the payroll system in order for the Center to properly process the reimbursement as taxable wages to the employee.

9.1 Timing - A Reimbursement Request shall be filed within 60 days of completion of travel to allow for proper recording of expenses and to obtain reimbursement for approved travel expenses.

9.2 Content - The Reimbursement Request form shall contain all of the following:

9.2.1 Amount – The amount of each separate expenditure incurred while Traveling Away from Home, such as the cost of Transportation or Lodging;

9.2.2 Time – Dates of departure for and return from Traveling Away from Home and the number of days spent on Center business while Traveling Away from Home;

9.2.3 Place – Destinations or locality of travel, described by name of city or town or other similar designation; and

9.2.4 State Purpose – Reason for travel or nature of Center business benefit derived or expected to be derived as a result of the travel.

9.3 Receipts

9.3.1 Receipts Required - Receipts are required for all expenses over \$25, or for any expenses paid by the P-Card, except for meal per diem, incidental per diems, mileage for personal vehicles (with the exception of documentation outlined in Fiscal Rule 11.3), and tips, which do not require receipts regardless of dollar amount and cannot be charged to a P-Card. Receipts are required for Lodging, rental vehicles and airfare, regardless of the amount. See §6.11 of this Fiscal Rule. Receipts shall be original, detailed vendor receipts. Non-specific charge card transaction slips shall not be accepted as proper documentation.

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9.4 Application to Travel Advances – The requirements with respect to timing, content and receipts set forth in this §9 shall apply to the settlement of Travel Advances as provided in § 5 of this Fiscal Rule.

9.5 Compliance – A Traveler shall comply with the reimbursement requirements in this §9 regardless of the method of payment used. See §10 of this Fiscal Rule.

10. PAYMENT OF TRAVEL EXPENSES

The Center shall use one or more of the methods set forth in this §10 to pay for travel expenses or reimburse Travelers.

10.1 Electronic Reimbursement – The Center shall pay a Traveler for expenses claimed on the Reimbursement Request form or the Travel Advance form by direct deposit using electronic funds transfer (EFT) or by check.

10.2 Procurement Card (P-Card) – The P-Card may be used to pay for certain travel expenses (as outlined above); however, prior authorization to utilize a P-Card for allowable travel-related expenses is required by the appropriate Division Chief. If a Traveler fails to request approval, the P-Card cannot be used, and the Traveler will be personally liable for all incurred travel expenses and will be required to submit a Reimbursement Request.

10.3 Travel Advance – See §5 and §9 of this Fiscal Rule.

11. SPECIAL SITUATIONS

11.1 Travel within a Single Day – If travel is completed wholly within a single day, reimbursement for lunch shall not be allowed. If, however, an employee or official leaves home prior to 5:00 a.m. on Center Business that requires the employee to extend the workday, the Approving Official may allow a meal per diem for breakfast. In addition, if an employee or official remains away from home after 8:00 p.m. on Center Business that requires the employee to extend the workday, the Approving Official may allow a meal per diem for dinner. See State Controller Technical Guidance entitled *“Taxability of State Travel Reimbursement.”*

11.2 Travel to a Temporary Work Location - A Traveler may be reimbursed for Transportation expenses to a Temporary Work Location if the temporary work location is further away than the permanent location.

11.3 Travel to Conferences, Meetings, Training Sessions, and Other Business-related Activities – Reimbursement for these transportation expenses will only be for the amount of travel expense over and above the normal transportation expense an employee or official incurs traveling to their primary place of business. For example: if an employee travels 25 miles to their normal place of business, but the distance to the meeting etc, is 28 miles the traveler will only receive reimbursement for 3 miles. Traveler must attach mileage documentation (printout) confirming the number of miles submitted for reimbursement.

11.4 Allowances for Members of Statutory Boards or Commissions - Board and commission members shall be paid in accordance with the statute establishing the board or commission. Board members may be reimbursed for actual and necessary expenses incurred in the performance of their duties. Actual and necessary expenditures shall be

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reasonable under the circumstances and board and commission members shall be made aware that public funds are the source of the reimbursement. Board and commission members also may be reimbursed for childcare services. The CEO or delegate, shall determine the need for childcare reimbursement. Reimbursement shall not be made for services provided by a family member. Receipts shall be furnished with all Reimbursement Requests.

- 11.5 Allowances for Center Job Applicants** - To obtain the best-qualified individual for a given Center employment position, it may be necessary to pay interview related travel expenses for job applicants. At the discretion of the CEO or delegate, such travel expenses, including the meal per diem rate established by the State Controller for Travelers, may be reimbursed to the applicant.
- 11.7 Allowances for Travel Not Solely for Center Business** - In some instances, the purpose of travel may be partially for Center business and partially for personal or political reasons. In these instances, the Traveler shall make a reasonable allocation of the expenses between Center business and personal or political purposes and the Reimbursement Request for such expenses shall contain such allocation and sufficient documentation to explain the basis for the allocation. If a Center employee obtains lower rates for Lodging or Transportation because travel is extended for personal or political reasons, these lower rates shall also apply to the Center business portion of the travel.
- 11.8 Allowances for Travel Paid Directly by a Non-State Entity** - In limited instances, Center officials and employees may be invited to attend a committee meeting, seminar, or conference concerning Center business where their travel expenses are paid directly or reimbursed by the sponsor of the meeting, seminar or conference. In such instances the official or employee may accept the invitation, if the travel has been approved by the appropriate Approving Official and does not violate other State statutes or constitutional provisions.
- 11.9 Allowances for Travel with Spouse, Relatives, or Friends** - The Center shall not reimburse the cost of an employee's spouse or other person(s) accompanying the Center employee on a business trip, unless specifically permitted in this Fiscal Rule.
- 11.10 Allowances for Travel by Leased or Privately Owned Aircraft**
- 11.10.1** The Center shall not lease an aircraft without the prior written approval of the Aircraft Section of the Colorado State Patrol in the Department of Public Safety, regardless of the source of funds.
- 11.10.2** The Center shall not authorize the use of a privately owned aircraft without prior written approval from the Office of Risk Management. Reimbursement for the use of a privately owned aircraft shall not be allowed unless the required prior written approval has been secured.
- 11.11 Allowances for Travelers Furnishing Their Own Lodging and Meals** - When a Traveler furnishes his or her own Lodging and meals, the Center may negotiate a special per diem rate for that period of travel. The rate negotiated shall be on a case-by-case basis and under no circumstance shall the negotiated rate exceed the normal per diem rates established by this Fiscal Rule.

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11.12 Allowances for Travelers staying at VRBO, Airbnb, or similar providers –

Travelers who desire to stay at VRBO, Airbnb, or similar providers, must submit a written justification to their Division Chief outlining the cost effectiveness to the Center. If approved, the traveler must book the stay using their own logins/accounts not associated with the Center, and **cannot** use the P-Card to pay for the lodging. Travelers can request a travel advance, or travel reimbursement, for approved lodging of this nature. Under no circumstance will the Center pay or reimburse for damages or special assessments or charges incurred by travelers at VRBO, Airbnb, or similar providers.

12. PER DIEM RATES - MEALS AND INCIDENTAL EXPENSES

The current maximum Meal and Incidental Expense per diem rates are posted on the website of the Office of the State Controller at: <https://www.colorado.gov/pacific/osc/travel-fiscal-rule>.

These rates include the following:

- ☐ ☐ Appendix A1 – Domestic (CONUS) Per Diem Rates
- ☐ ☐ Appendix A2 – Allocation of Domestic (CONUS) Per Diem Rates
- ☐ ☐ Appendix B – Alaska, Hawaii and US possessions Per Diem Rates
- ☐ ☐ Appendix C1 - Foreign Per Diem Rates
- ☐ ☐ Appendix C2 - Allocation of Foreign Per Diem Rates
- ☐ ☐ Appendix C3 – Footnote References for Foreign Per Diem Rates

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MILEAGE REIMBURSEMENT POLICY

1) DEFINITIONS

- a. **IRS** – The Internal Revenue Service, established under the U.S. Department of the Treasury.
- b. **Metropolitan Area** -The region including a city and the densely populated surrounding areas that are socially and economically integrated with it. For the State of Colorado, metropolitan area shall be defined as the 35-mile radius surrounding the Traveler's Regular Work Location, regardless of the location of the Traveler's Residence. See the attached map for the 35-mile radius for Denver.
- c. **Center Business** - Official Center business or other duties undertaken for Center purposes and for the benefit of the Center.
- d. **Temporary Work Location** – A location where employment is expected to last, and does last, for one year or less.
- e. **Traveler** – A Center employee or Center official who receives required approvals to travel on Center Business.
- f. **Traveler's Regular Work Location** – Generally, the traveler's regular work location is the primary location where the traveler works. For purposes of assessing taxability, Traveler's Regular Work Location includes the entire metropolitan area of the traveler's regular work location. See State Controller Technical Guidance entitled "*Taxability of State Travel*" for exceptions.
- g. **Traveler's Residence** – The location where the Traveler maintains his/her primary family home.

2) POLICY. When a Traveler uses his/her personal vehicle while on Center Business, the Traveler shall be reimbursed for an amount equal to the prevailing mileage rate established by the Colorado General Assembly, multiplied by the allowable miles as outlined below.

3) PREVAILING MILEAGE RATE.

- a. **Colorado Statute** –C.R.S. § 24-9-104(2) establishes the mileage rate to be used for reimbursement of travel while on Center business.
- b. **Percentage of Prevailing Internal Revenue Service (IRS) Rate** –C.R.S. § 24-9-104(d) provides that on and after January 1, 2008, State officers and employees shall be allowed a mileage reimbursement of 90% of the prevailing IRS rate per mile for each mile actually and necessarily traveled while on Center business (to the nearest cent) and, when authorized to be utilized and necessary for Center business, 95% of the prevailing IRS rate per mile (to the nearest cent) for four-wheel-drive vehicles (necessary because of road, terrain, or adverse weather conditions).
- c. **Current Mileage Rate** - The current mileage rate is posted on the website of the Office of the State Controller at: <https://www.colorado.gov/pacific/osc/mileage-reimbursement-rate>.

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4) ALLOWABLE MILES

a. Actual Miles or Miles Greater than Normal Commute

i. **Travel to a Temporary Work Location – When a personal vehicle is the usual method of commuting** - Traveler shall be reimbursed to the extent the number of miles between the Traveler's Residence and the Temporary Work Location exceeds the normal commuting miles from the Traveler's Residence to the Traveler's Regular Work Location. See Fiscal Rule 5-1 Travel, §11.2 and State Controller Technical Guidance entitled "*Taxability of State Travel Reimbursements*".

ii. **Travel to a Temporary Work Location – When a personal vehicle is NOT the usual method of commuting** - Traveler shall be reimbursed for the number of miles between the Traveler's Residence and the Temporary Work Location. See Fiscal Rule 5-1 Travel, §11.2 and State Controller Technical Guidance entitled "*Taxability of State Travel Reimbursements*".

iii. **Travel to conferences, meetings, training sessions, and other business-related activities –When a personal vehicle is the usual method of commuting** - For travel to these activities, when not covered by another subsection of this §4, Traveler shall be reimbursed to the extent the number of miles between the Traveler's Residence and the location of the conference, meeting, training session or other training activity exceeds the normal commuting miles from the Traveler's Residence to the Traveler's Regular Work Location. See Fiscal Rule 5-1 Travel, §11.3 and State Controller Technical Guidance entitled "*Taxability of State Travel Reimbursements*".

iv. **Travel to conferences, meetings, training sessions, and other business-related activities –When a personal vehicle is NOT the usual method of commuting** - For travel to these activities, when not covered by another subsections of this §4 of this policy, Traveler shall be reimbursed for the actual miles traveled between the Traveler's Residence and the location of the conference, meeting, training session or other training activity. See Fiscal Rule 5-1 Travel, §11.3 and State Controller Technical Guidance entitled "*Taxability of State Travel Reimbursements*".

b. **Actual Miles for Travel to and from Airport** – For travel to and from the airport, a Traveler shall be reimbursed for the actual miles traveled between the Traveler's Residence and the airport.

c. **Actual Miles when Traveler's residence is the Traveler's Principal Place of Business – This only applies if the Center employee works permanently and solely from his/her residence** – The Traveler's Residence is considered to be the Traveler's principal place of business if the Traveler works permanently and solely from his/her residence. If this applies, the Traveler shall be reimbursed for actual miles traveled between the Traveler's Residence/Work Location and Center work locations as long as the Traveler is conducting Center business. The Traveler's Residence shall not be considered to be the Traveler's principal place of business in the following situations:

i. If the Traveler participates in alternative work arrangements, where the Traveler continues to have a regular place of business other than the Traveler's Residence, the Traveler shall be reimbursed for mileage according to §4(a) above.

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STATE CONTROLLER TECHNICAL GUIDANCE TAXABILITY OF STATE TRAVEL REIMBURSEMENTS

1) AUTHORITY.

26 USC §§162(a), 262, and 274(d) (Internal Revenue Code)
26 CFR Ch 1, §1.274-5T - Substantiation Requirements (Temporary) (Treasury Regulations)
Rev Rul. 99-7, 1999-5 C.B. 4 - Deductibility of Daily Transportation Expenses
IRS Publication 463 (2008) – (Travel, Entertainment, Gift, and Car Expenses)

2) PURPOSE OF THIS TECHNICAL GUIDANCE. The Office of the State Controller is providing this technical guidance to inform State Agencies and Institutions of Higher Education of tax issues related to reimbursement for State travel. State Agencies and Institutions of Higher Education are responsible for compliance with all IRS regulations and should consult a tax advisor as they deem necessary.

3) DEFINITIONS.

a. Internal Revenue Code – U.S. Code, Title 26.

b. IRS Publications – Publications issued by the Internal Revenue Service, including without limitation the Internal Revenue Service cumulative bulletins.

c. IRS Regulations – The rules and regulations of the Internal Revenue Service/Department of the Treasury promulgated under the Internal Revenue Code.

d. Metropolitan Area -The region including a city and the densely populated surrounding areas that are socially and economically integrated with it. For the State of Colorado, metropolitan area shall be defined as the 35-mile radius surrounding the Traveler's Regular Work Location, regardless of the location of the Traveler's Residence. See the attached map for the 35-mile radius for Denver.

e. Regular Work Location – Generally, the traveler's regular work location is the primary location where the traveler works. For purposes of assessing taxability, Traveler's Regular Work Location includes the entire metropolitan area of the traveler's regular work location.
State Business – Official State business or other duties undertaken for State purposes and for the benefit of the State.

f. Temporary Work Location – A location where employment is expected to last, and does last, for one year or less.

g. Traveler – An employee or State official who receives required approvals to travel on State Business.

h. Traveler's Residence –The location where the Traveler maintains his/her primary family home.

i. Traveling Away from Home – A Traveler is traveling away from home if:

- i.** The Traveler's duties require him/her to be away from the Traveler's Regular Work Location (Metropolitan Area) substantially longer than an ordinary day's work, *and*
- ii.** The Traveler needs to sleep or rest to meet the demands of his/her work while away from home.

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4) RELATIONSHIP BETWEEN REIMBURSEMENT AND TAXABLE INCOME

- a. Reimbursement** - Travel expense reimbursement policies are set by the State.
 - i. Traveling Away from Home** – Fiscal Rule 5-1, §6 provides for the reimbursement of various types of travel expenses provided that the Traveler is Traveling Away from Home, with one exception for breakfast and dinner in a single day in Fiscal Rule 5-1 §11.1.
 - ii. Standard Allowance** –The State of Colorado has chosen to use the standard allowance method, rather than the actual cost method, for meals and incidental expenses.
 - iii. Actual Costs** -For lodging, rental vehicles, airfare, and other allowable expenses included in Fiscal Rule 5-1, §6, the State will reimburse a Traveler for actual costs.
 - iv. Mileage** - For mileage, the State will reimburse a Traveler based on mileage, as provided in the Controller Policy, entitled “Mileage Reimbursement”, and at rates as provided in C.R.S. § 24-9-104(2).
- b. Taxable Income or Deduction** – The Internal Revenue Code, IRS Regulations, and IRS Publications determine if a reimbursement is taxable income to the Traveler or if a non-reimbursed amount may be taken as a deduction on a Traveler’s income tax return.
- c. Income Tax Consequences** – Once the Traveler determines the allowable State reimbursement, by referring to Fiscal Rule 5-1, Controller Policy entitled, “Mileage Reimbursement,” and travel policies of the Traveler’s Agency or Institution of Higher Education, the Traveler can determine the income tax consequences of that reimbursement. The Internal Revenue Code, IRS Regulations, and IRS Publications determine the taxability of the reimbursement or the availability of a deduction.

5) MILEAGE – TRANSPORTATION EXPENSES

a. COMMUTING.

The cost of commuting from a Traveler’s residence to the Traveler’s Regular Work Location generally is a nondeductible personal expense and will not be reimbursed by a State Agency or Institution of Higher Education.

b. GENERAL REIMBURSEMENT FOR MILEAGE

A state may choose a reimbursement plan for mileage that differs from the IRS rates and allowable miles. The Colorado Legislature, in C.R.S. § 24-9-104(2), provided that Travelers shall be reimbursed at 90% of the prevailing IRS mileage reimbursement rate for two-wheel drive vehicles and 95% of the IRS rate for four-wheel drive vehicles. Under the Controller Policy entitled “*Mileage Reimbursement*,” when a Traveler uses his/her personal vehicle while on State Business, the Traveler shall be reimbursed for an amount equal to the State’s prevailing mileage rate multiplied by the allowable miles as outlined in the Policy. The difference between the reimbursement provided by the State Agency or Institution of Higher Education and the allowable reimbursement provided by the IRS regulations will result in a tax consequence for the Traveler. Travelers should seek independent tax advice regarding their individual tax situation if they believe the difference between the IRS allowable amount and the State reimbursement amount is significant.

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c. TRAVEL TO A TEMPORARY WORK LOCATION

A State Agency or Institution of Higher Education may reimburse a Traveler for the cost of traveling to a Temporary Work Location in accordance with the Controller Policy entitled entitled, “*Mileage Reimbursement*.” Taxability does not govern reimbursement. Rev Rule 99-7 provides three exceptions to the general rule, that commuting expenses are nondeductible personal expenses:

i. One or More Regular Work Locations – This is exception is likely to apply to State office employees - In this exception, a Traveler has one or more Regular Work Locations. A Traveler may be reimbursed for transportation expenses to a Temporary Work location as an IRS qualified reimbursable nontaxable travel expense, regardless of distance, only if the Temporary Work Location is in the same trade or business as the Traveler’s Regular Work Location.

1. A Traveler may go directly from his/her residence to the Temporary Work Location rather than going to the regular work location first. In this instance, under Rev Rule 99-7, there is no distance requirement that would act to make the reimbursement taxable to the Traveler.
2. The Temporary Work Location may be inside or outside the metropolitan area in which the taxpayer normally lives and works.
3. Key elements for this exception: 1) the temporary job is in the same trade or business as the employee’s regular job, and 2) the Traveler has a Regular Work Location away from his/her residence.
4. Example 1 – Traveler’s Residence is Aurora and Traveler’s Regular Work Location is Denver. The State Agency assigns the Traveler to a Temporary Work Location in Lakewood, and the Traveler does the same work he/she did at the Denver location. Lakewood is within the Denver Metropolitan Area. The Traveler goes directly from the Traveler’s Residence to the Temporary Work Location in Lakewood. If the State Agency has a travel reimbursement policy that provides for reimbursement of the Traveler for travel expenses from Traveler’s Residence in Aurora to the Temporary Work Location in Lakewood, this reimbursement is nontaxable to the Traveler (reimbursement would not be reported on the Traveler’s W2). Alternatively, if the Agency does not reimburse the Traveler, the Traveler may deduct the travel expenses on the Traveler’s income tax return.
5. Example 2 – Same facts as in Example 1 except that the State Agency follows the Controller Policy entitled “*Mileage Reimbursement*,” which provides that a Traveler will be reimbursed to the extent the number of miles between the Traveler’s Residence and the Temporary Work Location exceeds the normal commuting miles from the Traveler’s Residence to the Traveler’s Regular Work Location (assuming the Traveler normally commutes by personal vehicle). In this example, the distance from the Traveler’s Residence in Aurora to the Temporary Work Location in Lakewood is 24 miles. The distance from the Traveler’s Residence in Aurora to the Regular Work Location in Denver is 15 miles. The distance to the Traveler’s Temporary Work Location exceeds the distance to the Traveler’s Regular Work Location by 9 miles. Under the Agency’s policy, the

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Traveler would be reimbursed for the cost of this travel (9 miles multiplied by the 90% of the prevailing IRS mileage rate provided in CRS §24-9-104(2)). Using the rates as of January 1, 2009, the Traveler would receive \$4.50 each way (9 miles multiplied by \$0.50 per mile) or \$9.00 per day as reimbursement (reimbursement would not be reported on the Traveler's W2). The Traveler may deduct the difference between the total amount allowed by the IRS and the amount reimbursed on the Traveler's income tax return. The total amount allowed by the IRS is \$13.20 each way (24 miles x \$0.55) or \$26.40 per day. The Traveler could deduct the difference between the total amount allowed by the IRS (\$26.40 per day) and the amount reimbursed (\$9.00 per day), or \$17.40 per day on the Traveler's income tax return.

ii. Traveler's residence is the Traveler's Principal Place of Business – This only applies if the State employee works solely from his/her residence – In this exception, the Traveler's Residence is considered to be the Traveler's principal place of business within the meaning of Internal Revenue Code Sec 280A(c)(1)(A). A Traveler may be reimbursed for transportation expenses to a Temporary Work location as an IRS qualified reimbursable nontaxable travel expense, regardless of distance, only if the Temporary Work Location is in the same trade or business as the Traveler's regular business.

1. The Temporary Work location may be inside or outside the Metropolitan Area in which the Traveler normally lives and works.
2. Key elements for this case: 1) the temporary job is in the same trade or business as that of the regular job, and 2) the Traveler's Residence is the Traveler's principal place of business.
3. Example 3 – Traveler's residence is in Aurora, which is also the Traveler's principal place of business. The Traveler visits clients in Denver. The Traveler performs the same work at a Temporary Work Location in Denver as the Traveler performs at the Traveler's Residence/principal place of business. In this case, the Traveler may deduct the travel expenses from the Traveler's Residence in Aurora to the Temporary Work Location in Denver on the Traveler's income tax return. If the Traveler is reimbursed, the reimbursement is a qualified reimbursable nontaxable travel expense and would not be included on the employee's W2. Alternatively, if the Agency does not reimburse the Traveler, the Traveler may deduct the travel expenses on the Traveler's income tax return.

iii. No Regular Work Location – This is unlikely to apply to State office workers – In this exception, a Traveler does not have a Regular Work Location.

1. A Traveler may be reimbursed for transportation expenses to a Temporary Work Location as an IRS qualified reimbursable nontaxable travel expense only if both of the following conditions are met:
 - a. The Temporary Work Location is outside the Metropolitan Area of the Traveler's Residence, and
 - b. The Traveler normally lives and works in the same Metropolitan Area and has no Regular Work Location.

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2. If the Traveler does not meet both of the conditions, then the Traveler's reimbursed amount is taxable income, and the State Agency or Institution of Higher Education shall include the amount reimbursed on the Traveler's W-2. For instance, if the Traveler's Residence is located in one Metropolitan Area and the Traveler commutes to his or her Regular Work Location located outside of that Metropolitan Area, any reimbursement amounts paid by the State to the Traveler, shall be included the Traveler's W-2
3. Key elements for this exception: 1) Traveler has no Regular Work Location, 2) Traveler's Temporary Work location is located outside of the Metropolitan Area in which the Traveler's Residence is located, and 3) the Traveler normally works and lives in the same Metropolitan Area.

Example 4 – The Traveler's residence is in Aurora. The Traveler is a skilled laborer who does not have a Regular Work Location outside of the Traveler's Residence, but travels within the Metropolitan Area in which Traveler's Residence is located working on temporary projects at Temporary Work Locations. In this example, the Traveler is prohibited from deducting transportation expenses on his/her income tax return related to travel from the Traveler's Residence to the Traveler's first job of the day and from the Traveler's last job of the day to the Traveler's Residence. If the Traveler is reimbursed for the travel from the Traveler's Residence to the first job of the day or from the Traveler's last job of the day to the Traveler's Residence, those amounts are taxable and must be included on the employee's W2.

d. TRAVEL TO CONFERENCES, MEETINGS, AND TRAINING SESSIONS

A Traveler may be reimbursed for transportation expenses to conferences, meetings, and training sessions as an IRS qualified reimbursable nontaxable travel expense if the purpose of the conference, meeting, or training session is connected to the Traveler's present business or area of responsibility. If the Traveler is reimbursed, the reimbursement is a qualified reimbursable nontaxable travel expense and would not be included on the employee's W2.

- i. Time Limitations** – There are no limitations in the IRS Regulations as to the duration of conferences, meeting or training sessions. Examples provided in the IRS Regulations include time periods extending for days or weeks. If a training period extends beyond weeks, to months, then the training situation may fall outside of the IRS Regulations pertaining to conferences, meetings, and training sessions.
- ii. Distance Requirements** – There are no distance requirements. A Traveler may be reimbursed as an IRS qualified reimbursable nontaxable travel expense for travel to a conference, meeting, or training session that is held in the same city as or a different city from the Traveler's Regular Work Location.

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6) LODGING

- a. **Reimbursement and Traveling Away from Home** – If an Agency or Institution of Higher Education reimburses a Traveler for travel expenses incurred while the Traveler is Traveling Away from Home, such reimbursement is an IRS qualified reimbursable nontaxable travel expense and would not be included on the employee's W2.
- b. **Reimbursement and *Not* Traveling Away from Home** - If an Agency or Institution of Higher Education reimburses a Traveler for travel expenses incurred while the Traveler is *not* Traveling Away from Home, then that reimbursement is taxable income to the Traveler and must be included on the employee's W2.

7) MEALS – TRAVEL WITHIN A SINGLE DAY

Generally, if the State Agency or Institution of Higher Education reimburses a traveler for breakfast and/or dinner while the traveler is traveling in a single day, the amount paid is reportable as income on the W-2.

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8) SUMMARY

Type of Travel Expense	Reimbursement	Taxable Income if Reimbursed?	
		Traveling Away from Home	NOT Traveling Away from Home *
Lodging	Actual	No	Yes
Meals	Per Diem Rate	No	Yes
Incidental Expenses	Per Diem Rate	No	Yes
Rental Vehicles	Actual	No	Yes
Mileage for Personal Vehicles	Miles x 90% x prevailing mileage rate (95% for 4 wheel drive)		
1. One or more regular work locations		No	No
2. Residence is principal place of business		No	No
3. No regular work location		No	Yes
4. Travel to conferences, meetings, and training sessions		No	No
Airfare	Actual	No	Yes
Tips	Included in Per Diem Rate	No	Yes
Other Allowable Travel Expenses	Actual	No	Yes

In order for the reimbursement to be considered non-taxable income, the Traveler must adhere to the requirements in §9 *Reimbursement Requirements* of this Fiscal Rule.

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CHAPTER 6: CASH

FISCAL RULE NUMBER

Cash Receipts and Deposits	6-1
Change Funds and Petty Cash Funds	6-2
Imprest Cash Accounts and Bank Accounts	6-3
State Treasury Loans and Advances	6-4
Refunds and Reimbursements	6-5
Checks Returned for Insufficient Funds	6-6
Federal Cash Management	6-7

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Rule 6-1 CASH RECEIPTS AND DEPOSITS

AUTHORITY:

§ 24-36-103, C.R.S. (Transmit Monies to State Treasurer)

DEFINITIONS:

Bank Account - An account approved by the State Controller and State Treasurer that is established by the Center in any financial institution for the purpose of conducting Center business.

RULE:

When the Center receives money for any reason it shall make timely deposits to the State Treasury, unless otherwise provided by statute or fiscal rule. All money received and not deposited during the month shall be deposited on the last working day of the month. Deposits or transfers to the State Treasury from any bank account shall be made as required by the State Treasurer.

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Rule 6-2 CHANGE FUNDS AND PETTY CASH FUNDS

AUTHORITY:

§ 24-36-103(2), C.R.S. (Transmit Monies to State Treasury)

§ 24-36-104(2.5) C.R.S. (Monies to be Deposited)

DEFINITIONS:

Change Fund - A fund established at the Center that receives cash to allow for making change.

Petty Cash Fund - A fund established to allow cash payment for small, incidental expenses.

RULE:

Change Funds and Petty Cash Funds may be established based upon a written request from an authorized signatory and approval of the Controller. The request for approval shall state the purpose of the fund and contain justification for the amount requested.

Change Funds shall only be used for making change when cash receipts are accepted from the public, such as for fees and fines. No expenditures of any kind shall be authorized from a Change Fund.

Petty Cash Funds shall only be used for payment of incidental expenses of a nominal amount such as postage, parking or expenses not otherwise appropriately billed by invoice and paid by voucher or warrant. Petty cash expenditures shall be consistent with all applicable statutes, rules, regulations, and executive orders.

All Petty Cash Funds and all Change Funds shall be recorded on the Center's Financial System and will be subject to physical cash counts by the Controller and staff on the last day of the fiscal year (June 30th) and at random, unannounced times throughout the fiscal year.

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Rule 6-3 IMPREST CASH ACCOUNTS AND BANK ACCOUNTS

AUTHORITY:

§ 24-36-103(2), C.R.S. (Transmit Monies to State Treasury)

§ 24-36-104(2.5), C.R.S. (Monies to Be Deposited)

§ 24-75-202, C.R.S. (Imprest Cash Accounts)

DEFINITION:

Bank Account - An account that is established by the Center in any financial institution for the purpose of conducting Center business.

Imprest Cash Account - A bank account that is established by the Center for the purpose of paying operating expenses.

RULE:

Bank Account balances shall be limited to the minimum amount necessary to be consistent with legal requirements and operating efficiency. Written approval is required from the State Controller and State Treasurer prior to the Center establishing a Bank Account. Deposits to Imprest Cash Accounts shall only be in the form of reimbursements for expenditures, interest earnings, and other miscellaneous adjustments credited by the banking institution.

Reimbursements to Imprest Cash Accounts shall be limited to actual expenditures. Request for reimbursements shall be made so that all disbursements are properly reported on the Center's financial system.

All Imprest Cash Accounts and Bank Accounts shall be recorded on the Center's financial system.

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Rule 6-4 STATE TREASURY LOANS AND ADVANCES

AUTHORITY:

§ 24-75-203, C.R.S. (Loans and Advances)

§ 24-75-204, C.R.S. (Loans and Advances - Report)

DEFINITIONS:

Loans - Funds borrowed from the State Treasury by the Center to provide working capital for business operations or programs that generate their own revenue and have the capacity to repay the funds borrowed. Loans shall bear interest at a rate established by agreement or by statute. Interest shall be calculated by the State Treasurer and shall be paid as provided in the agreement.

Advances - Funds borrowed from the State Treasury by the Center to provide working capital for operations of programs, or for federal programs for which federal advances and letters of credit are not available. Advances shall be made without interest. Advances are limited to a total of twelve million dollars to the Center at any time.

RULE:

The Center shall make a written request to the State Controller for a Loan or Advance from the State Treasury. The request shall include the amount requested, justification for the request, and the method and time period for repayment. The Center shall keep their working capital requirements to a minimum by following good business practices.

Loans and Advances shall be made for a period no greater than twelve months. Loans and Advances may be renewed for additional periods upon the Center demonstrating continuing purpose and need.

Loans and Advances shall be limited to the extent that funds are available in the State Treasury that are not immediately required to be disbursed. Advances shall not exceed twelve million dollars at any given time.

Loans shall be approved by the Office of the Governor, the State Controller, and the State Treasurer. Advances shall be approved by the State Controller and the State Treasurer.

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Rule 6-5

REFUNDS AND REIMBURSEMENTS

AUTHORITY:

§ 24-30-202 (19) C.R.S. (State Controller Authority)

DEFINITIONS:

Non-Augmenting Revenue Account - An account used to record a refund or reimbursement from a prior fiscal year. Such revenue accounts do not serve as funding sources for appropriated expenditures.

Refund - An amount or credit received because of an overpayment or the return of an item purchased.

Reimbursement - Repayment received for amounts remitted on behalf of another party.

RULE:

The Center will normally use either an account receivable or a revenue account to record Refunds and Reimbursements. However, incidental and non-recurring Refunds or Reimbursements for activities that involve a routine Center function may be credited against the original account coding if the recovery occurs in the same fiscal year as the original expenditure. If such recoveries are made in a subsequent fiscal year, such as an audit recovery, they should be credited to a Non-Augmenting Revenue Account.

EXCEPTIONS TO RULE:

Capital construction funds - Refunds or Reimbursements received for expenditures of capital construction fund appropriation during the life of the project shall be treated as if they were received in the same fiscal year as the original expenditure. If the recovery is made after the term of the appropriation has expired, the recovery shall be credited to a Non-Augmenting Revenue Account.

Federal funds - Refunds or Reimbursements received for expenditures of federal funds, prior to the expiration of the award, shall be treated as if they were received in the same fiscal year as the original expenditure. If the recovery is made after the award has expired, the recovery shall be refunded to the federal government.

Contracts and grants - Refunds or Reimbursements received for expenditures made from contracts and grants shall be handled as set forth in the terms of the contract or the conditions of the grant.

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Rule 6-6 CHECKS RETURNED FOR INSUFFICIENT FUNDS

AUTHORITY:

§ 24-30-202(25), C.R.S. (Returned Check Penalty)

DEFINITIONS:

Insufficient Funds - Not having a sufficient balance in an account with a bank or other drawee to cover a check when it is presented for the payment.

RULE:

If the Center receives a check that is returned for Insufficient Funds it shall assess a reasonable fee against the person who issued the check. The fee assessed shall be at least equal to the additional bank charges incurred by the Center and may include up to an additional 25% of the additional bank charges to cover the Center's administrative costs. This penalty is in addition to any other penalty provided by statute except the penalty provided by § 24-35-114, C.R.S.

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Rule 6-7 FEDERAL CASH MANAGEMENT

AUTHORITY:

31 CFR, Part 205 (Federal Cash Management Act)
§ 24-22-107(6), C.R.S. (Duties of the State Treasurer)

RULE:

The Center shall make draws of federal funds as closely as possible with the use of those funds. By statute, the State Treasurer shall ensure compliance with applicable federal and state laws, including any liability for interest payable to the federal government for major federal programs.

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CHAPTER 7: BUDGET

FISCAL RULE NUMBER

Cash and Custodial Funds	7-1
Expiration and Rollforward of Appropriations	7-2
Overexpenditures and Required Reporting	7-3

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Rule 7-1 CASH AND CUSTODIAL FUNDS

AUTHORITY:

§ 24-37-303, C.R.S. (Governor's Budget Authority)

§ 24-37-304, C.R.S. (Office of State Planning and Budgeting)

DEFINITIONS:

Cash Funds - Funds received by the Center from fees charged to the public, non-governmental entities, intra-agency service funds, internal service funds, and other state agencies and institutions of higher education for goods or services provided.

Custodial Funds - Funds set aside for a specific purpose generally by agreement with a donor, trustee or by court order that are generally not available for other Center purposes. Federal funds originating from the federal government are considered custodial funds for the purpose of this fiscal rule.

RULE:

Spending authority for Cash or Custodial Funds shall be approved by both the Office of State Planning and Budgeting and the State Controller. Spending authority remaining for Custodial Funds at year end due to an incomplete grant or contract may be reestablished in the new fiscal year, as approved by the State Controller.

Spending authority for Cash and Custodial Funds may arise from various sources including: the federal government, the State Constitution, the State Legislature, and court decisions. Expenditures of Cash and Custodial Funds are contingent on the availability of a positive fund balance, current revenue, or an approved working capital loan or advance from the State Treasurer.

Any excess revenue from Cash Funds shall be reverted to the general fund unless otherwise provided by statute. Custodial Fund revenues shall be closed to the appropriate account as provided by agreement with the grantor, trustee or by court order.

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Rule 7-2

EXPIRATION AND ROLLFORWARD OF APPROPRIATIONS

AUTHORITY:

§ 24-75-102, C.R.S. (Appropriation Expiration and Rollforward)

RULE:

Unexpended appropriations expire at the end of each fiscal year and do not carry over to a subsequent fiscal year, unless otherwise authorized by statute. Encumbrances that remain at the end of a fiscal year do not constitute an expenditure against that year's appropriation. Outstanding encumbrances that are carried over to the subsequent fiscal year and the resulting expenditure are charged against the subsequent fiscal year appropriation.

EXCEPTIONS TO RULE:

The Director of Finance and Business Services may approve the carry over of unexpended appropriations to a subsequent fiscal year under one or more of the following:

1. The appropriated funds have been legally committed by purchase order or contract and there are extenuating circumstances that warrant carry over of the remaining appropriation.
2. The appropriation is from the capital construction fund.
3. The appropriated funds have been legally committed by purchase order or contract with the Division of Correctional Industries, and delivery is reasonably anticipated within 60 days of fiscal year end.

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Rule 7-3 OVEREXPENDITURES AND REQUIRED REPORTING

AUTHORITY:

§ 24-37-303, C.R.S. (Governor's Budget Authority)

§ 24-75-109, C.R.S. (Overexpenditures)

DEFINITIONS:

Overexpenditure of Appropriated Funds - An overexpenditure of appropriated funds exists when the total expenditures, based on the accrual basis of accounting, exceed the amount statutorily appropriated, as reflected on the Center's financial system. An overexpenditure also exists when accrued revenue is less than the expenditures in any fiscal year and where the fund balance at fiscal year end is insufficient to cover the revenue shortfall.

Overexpenditure of Non-appropriated Funds - An overexpenditure of cash, custodial, or other funds exists when the accrued revenues in the cash funds or custodial funds are less than the actual expenditures in any fiscal year for a particular program or project, and where the residual balance for the cash, custodial, or other fund is insufficient at fiscal year end to cover the revenue shortfall.

RULE:

For appropriated funds, expenditures shall only be made for the purpose intended and statutorily appropriated by the state Legislature and shall be limited to the amount authorized and appropriated.

For non-appropriated funds, expenditures shall be limited to:

1. The spending authority provided by the Office of State Planning and Budgeting and the State Controller.
2. The amount of accrued revenue and/or fund balance.
3. The actual amount approved by the governing board for the Center.

Required Report of Overexpenditures

When the CEO becomes aware of an overexpenditure condition within the Center, a report shall be submitted within 20 working days to the Governor through the Office of State Planning and Budgeting and the State Controller.

Statutory Penalty

If any official, officer, or employee of the Center knowingly causes an expenditure of funds to be made in excess of the amount authorized by the State Legislature, upon conviction, statutory fines and/or imprisonment may be imposed.

EXCEPTIONS TO RULE:

The State Controller may, with the approval of the Governor, allow an overexpenditure. Prior to recommending to the Governor that the overexpenditure be approved, the State Controller shall verify that the statutory requirements allowing the overexpenditure have been met.

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Overexpenditures shall only be approved between May 1 of any fiscal year and the close of that fiscal year.

For any approved overexpenditure the State Controller shall restrict an amount equal to the overexpenditure in the next fiscal year's appropriation for the Center. The amount shall be restricted from a corresponding item or items of appropriation.

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CHAPTER 8: REPORTING

FISCAL RULE

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Rule 8-1 FINANCIAL STATEMENTS

AUTHORITY:

§ 24-75-102, C.R.S. (Appropriations Expended - When -Balance)

DEFINITIONS:

Financial Statements – Comprehensive reports prepared in accordance with generally accepted accounting principles, as adopted by the Governmental Accounting Standards Board.

Financial Reports - Financial information compiled periodically to assist in management decision-making or for reasons other than financial statement purposes.

RULE:

Annual Financial Statements prepared by the Center shall be submitted to and approved by the State Controller's Office as required by the State Controller. Unless otherwise provided by this fiscal rule, Financial Statements shall be prepared in accordance with generally accepted accounting principles.

The Center may provide draft Financial Statements to the Office of the State Auditor or its contractor to facilitate a timely and efficient audit. The draft Financial Statements must be submitted to the State Controller's Office at the same time. Before publication of the Financial Statements, the statements must be submitted to the State Controller's Office for approval. Upon request, the Center shall also provide copies of its Financial Statements to other interested parties.

1. Financial Statements for Center Reporting

The state financial system generates a balance sheet and an income statement for each state agency or institution of higher education utilizing the system. These system-generated Financial Statements are considered acceptable Financial Statements for the purpose of complying with this fiscal rule.

Financial statements prepared by the Center for formal third party reporting shall be prepared in accordance with generally accepted accounting principles.

Financial statements prepared by the Center may be presented at institution or governing board level.

Exhibit information required in the fiscal year-end closing instructions issued by the State Controller and any post-closing adjustments are an integral part of the financial statements and are considered part of the Center's reporting requirement.

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2. Required Reconciliation to the State Financial System

Financial statements prepared by the Center shall be reconciled to the state financial system. A copy of this reconciliation shall be provided to the State Controller.

Should the state financial system generate the required Center financial statements, these system generated financial statements shall satisfy the requirement for this reconciliation.

3. Financial Reports Provided to State Agencies and Institutions of Higher Education or Other Interested Parties

As required by statute or regulation, or upon written request, financial reports shall be provided to state agencies and institutions of higher education or other interested parties. These reports shall be based on financial data obtained from or reconciled to the state financial system. If the report provided contains additional financial information or if the report has been modified, a copy of the reconciliation of the report to the state financial system shall be retained by the Center.

4. Additional Financial Reports for State Agencies and Institutions of Higher Education

In addition to the financial statements required by this fiscal rule, the Center is encouraged to provide additional financial reports. These reports should be tailored to meet their needs and enhance their ability to make timely and accurate decisions.

The reports prepared should be relevant, easy to understand, comparable, timely, consistent, current, accurate, and reliable. Reports may include but are not limited to such items as: comparison of budget to actual for programs or organizational units; efficiencies and economies in operations; and the results of specific programs and activities, as reflected in accomplishments, benefits, and effectiveness; and compliance with legal requirements and administrative policies.

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Rule 8-2 QUARTERLY FINANCIAL REPORTING

AUTHORITY:

§ 24-30-201, C.R.S.

§ 24-30-202(13)(a), C.R.S.

RULE:

If requested, the Center shall submit quarterly financial reports as may be required by the State Controller in a standardized reporting format.

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Rule 8-3 COST ALLOCATION PLANS

AUTHORITY:

CFR: Title 48, Chapter 99, Subchapter B, Part 9904:

"OMB" Cost Accounting Standards Board, Cost Accounting Standards"

Federal OMB Circular A-21: "Cost Principles for Educational Institutions"

Federal OMB Circular A-87: "Cost Principles for State and Local Governments"

DEFINITIONS:

Basis of Allocation - The best suited statistic that may be used for assigning pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither a benefit nor cause and effect relationship is determinable.

Cash Funds - Funds received by the Center from fees charged to the public, non-governmental entities, internal service funds, and other state agencies for goods or services provided.

Cost Objective - A project, grant, program, or other activity to which costs are being allocated.

Cost Pool - An aggregation of costs for subsequent allocation to another cost pool or a cost objective.

Costs - All expenses incurred by a project or program, either directly or indirectly. Costs include such items as labor, material, supplies, rent or building charges, operating expenses, and administrative expenses that might properly be assigned to the project or program.

Direct Cost - A cost incurred by a state agency that exclusively benefits a specific cost objective and that may be readily identified with the same specific cost objective.

Equitable Relationship - A relationship that is based on cause and effect or logic and reason.

Federal Funds - Funds received by state either directly or indirectly from the federal government.

Full Cost - The total of all direct and indirect cost associated with a specific cost objective.

Indirect Cost - A cost incurred by a state agency that does not exclusively benefit a specific cost objective and that cannot be readily identified with the same specific cost objective, and, therefore shall be allocated to cost objectives on some basis of assumed service/benefit or other equitable distribution basis.

Indirect Cost Allocation - A systematic and rational allocation of indirect cost to benefiting programs and activities that result in the calculation of an indirect cost recovery rate or the identification of the amount of indirect cost assigned to the benefiting program for cost

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recovery purposes and/or to establish appropriations and fees. Four types of documentation representing indirect cost allocations to cost objectives are recognized in this fiscal rule:

- a. Statewide Federal Indirect Cost Allocation Plan - The plan prepared by the State Controller's Office, using federally approved costing principles, to allocate the allowable central administrative costs of state government to state agencies for inclusion in its state agency Federal Indirect Cost Rate Proposal/Plan.
- b. Statewide Budget/Cash Indirect Cost Allocation Plan - The plan prepared by the State Controller's Office using full costing principles, to allocate the central administrative costs of state government to state for inclusion in its state agency Budget/Cash Program Indirect Cost Determination Worksheet.
- c. State agency Federal Indirect Cost Rate Proposal/Plan:
 - Proposal - A document prepared by a state agency to establish a rate used to recover indirect costs from federally funded programs or activities.
 - Plan - A document prepared by a state agency to document indirect cost allocation algorithms used for federal indirect cost recovery purposes.
- d. Documentation of an indirect cost allocation prepared separately or as a part of a fee formulation process, the allocations from which are used to establish a component of fees for state cash programs and services.

Indirect Cost Allocation Methodology - A system of principles, practices, and procedures that identify:

- 1) the types of services provided;
- 2) the cost of each service;
- 3) the reasonable basis of allocation for each type of service which shall produce a service/benefit based or other equitable distribution of costs; 4) the cost objective(s); and
- 4) the appropriate mathematical computation to make an equitable allocation of costs.

State funds – Money that the Center has available to spend excluding money originating from the federal government. State Funds include non-federal appropriated funds.

RULE

The Center shall prepare a documented indirect cost allocation or indirect cost rate proposal/plan for relevant State and federal programs.

The Center shall use a cost allocation methodology that assures that the allocations made through the methodology represents a service/benefit or other equitable relationship between the cost of the services provided and the value of the benefits received by users of the services.

The Center shall periodically review their cost allocation methodology to ensure that the methodology represents the best allocation attainable.

1. Indirect Cost Allocations Made for Federal Indirect Cost Recovery Purposes

A state agency that receives federal funds shall prepare a state agency federal indirect cost rate proposal/plan in accordance with OMB A-21 or OMB A-87 and sign an indirect cost rate or

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allocation methodology agreement with the federal government. The Center federal indirect cost rate proposal/plan shall include all costs allocated to the Center in the statewide federal indirect cost allocation plan and other approved cost allocation plans.

When the Center receives federal funds primarily from federal programs that do not allow indirect costs to be recovered it is exempted from preparing a state agency federal indirect cost rate proposal/plan to obtain an agreement with the federal government. However, documentation supporting this fact shall be sent to the State Controller's Office by the Center for review.

Grants, contracts, and other agreements that do not allow for the recovery of the full cost incurred under the agreement should be closely evaluated to determine if their acceptance is cost effective and in the best interest of the State of Colorado.

When the Center has prepared and submitted an indirect cost rate proposal or plan or a plan revision to the federal government and negotiated an indirect cost rate or allocation agreement with the federal government it shall submit a copy of the agreement with the federal government to the State Controller within three weeks after a signed copy is received from the federal government.

2. Indirect Cost Allocations Made For Use in Establishing Fees and Appropriations

When the Center receives cash funds based on fees charged to users it shall compute an indirect cost allocation that identifies and allocates all indirect costs to all appropriate cost objectives. Allocations to cash programs shall be used as a component in the calculation of fees that recover the full cost of cash funded programs and services. The allocations made to cash funded programs and services shall be documented. Documentation of the allocated components may take any form that is convenient for the Center, but shall adequately document the allocations of indirect costs used in establishing the fees for cash funded programs and services and be available for review. The allocations shall include all costs allocated to the Center in the Statewide Budget/Cash Cost Allocation Plan.

If a statewide central service agency provides services to federally funded programs and is charging a fee for the services provided, the statewide central service agency's fees charged to the federal programs shall be based upon only allowable cost for federal programs as defined in federal regulations. The statewide central service agency that charges a fee for services to federally funded programs shall include the allocation from the Statewide Federal Indirect Cost Allocation Plan, as opposed to the allocation from the Statewide Budget/Cash Cost Allocation Plan, as a component of the costs used to formulate its fees for services provided.

3. Accounting for Indirect Cost Recoveries

Indirect cost recoveries shall be recorded when earned in separately identifiable accounts as determined by the State Controller. All Indirect cost recoveries shall be credited to the state general fund, unless otherwise appropriated or directed by law.

Revenues from indirect cost recoveries shall not be deferred at the end of the fiscal year.

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EXCEPTIONS TO RULE:

1. If the Center can document that use of their state agency federal indirect cost rate or allocation, in lieu of a separate indirect cost determination for establishing fees would not result in a significant reduction in the potential costs recovered, the Center may use the Center's Federal Indirect Cost Rate Proposal/Plan as their basis for recovering indirect costs from cash funded programs.
2. Direct costs are generally defined as costs that may be identified specifically with a particular final cost objective. All other costs are defined as indirect costs. However, for institutions of higher education, under OMB Circular A-21, a cost that cannot specifically be identified with a particular final cost objective (a sponsored project, an instructional activity, or other institutional activity), but may be directly assigned to such activities relatively easily with a high degree of accuracy may be allocated to federal contracts and grants as a direct cost.
3. If the Center has negotiated a multiple year indirect cost recovery rate with its federal cognizant agency, based upon their Federal Indirect Cost Rate Proposal, the Center is not required to prepare or submit another Federal Indirect Cost Rate Proposal to the State Controller's Office as long as the negotiated multiple year rate is in effect.

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CHAPTER 9: PAYROLL

FISCAL RULE NUMBER

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Rule 9-1 USE OF THE STATE PAYROLL SYSTEM

AUTHORITY:

§ 24-30-201(1)(e), C.R.S.

§ 24-30-202(1); (8.5); (13), C.R.S.

DEFINITIONS:

State Payroll System - The official payroll system for the State of Colorado as designated by the State Controller.

RULE:

All state agencies and institutions of higher education shall use the state payroll system to record and maintain employee payroll information and data; and to pay employees, unless the State Controller has granted an exception.

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Rule 9-2

DIRECT DEPOSIT PAYROLL FOR CENTER EMPLOYEES

AUTHORITY:

§ 24-30-201(1)(e), C.R.S.

§ 24-30-202(8.5), C.R.S.

§ 24-50-104(8)(a), C.R.S. (Payment of Salaries)

DEFINITIONS:

Direct Deposit Payroll Program - A payroll program where an employee's net pay is deposited directly to the employee's legally established checking or savings account via an electronic fund transfer system.

RULE:

Center employees paid either monthly or bi-weekly shall be on the direct deposit payroll program unless an exception is approved by the State Controller, or delegate.

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Rule 9-3

FINAL PAY FOR A TERMINATING STATE EMPLOYEE

AUTHORITY:

§ 24-30-201(1)(e), C.R.S.

§ 24-30-202(8.5), C.R.S.

§ 24-50-104(8)(a), C.R.S. (Payment of Salaries)

RULE:

Final pay shall be available to terminating Center employees as follows:

1. When an employee terminates employment with the Center, with or without giving notice, final payment shall be made no later than their next regular pay day.
2. When the Center terminates an employee, final payment shall be made within three working days of the date of termination.
3. Subject to any requirements imposed by the Fair Labor Standards Act, the Center shall deduct any amounts the employee owes the Center from that employee's final pay. A Center employee shall return any Center laptop, tablet, cellphone or other electronic devices to the Center within one business day of the date of termination. If the employee refuses, the Center may pursue any applicable remedies to recover the equipment or value of the equipment not returned.
4. The Center shall comply with the Fair Labor Standards Act (FLSA) for the final pay. Any outstanding balance owed by the Center employee for any debts or the fair market value of equipment owed back to the Center after the final pay shall be subject to a collections process. Per the FLSA, the Center may deduct for non-exempt employees, however they cannot for exempt employees.

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Rule 9-4 OVERPAYMENTS TO CENTER EMPLOYEES

AUTHORITY:

§ 24-30-201, C.R.S.

§ 8-4-105 C.R.S. (Payroll deductions permitted – Notice Required)

§ 24-50-104(9)(a) (Liability for Overpayments to State Employees)

§ 8-13.3-516. FAMLI Benefits and Employer-provided Paid Leave

DEFINITIONS:

Overpayment – An overpayment is any payment that results from overstating the rate of pay, overstating the hours worked, understating the employee deductions, or any other payments to which the employee is not entitled.

RULE:

Through error, a Center employee may be paid more than is due. When the error is detected, provisions shall be made for the repayment of the overpayment.

If the overpayment is nominal, it shall all be deducted from the employee's next paycheck. However, in some cases the overpayment may be significant and require a repayment schedule extending over a period of time. The CFO or delegate shall establish a repayment schedule based on the particular facts involved in each case. The CFO shall approve any repayment schedule extending for more than six months. To avoid issuance of form W-2c, the Center should structure the schedule to complete the repayment in the same calendar year as the overpayment. If the repayment schedule crosses calendar years, the Center must issue a form W-2c.

An employee's maximum liability for repayment, should an error go undetected for over a two year period, shall be limited to the total amount of the overpayment for the first two years in which the employee was overpaid.