

## **Agreement to Achieve Compliance with the Victim Rights Act and Colorado Constitution**

This agreement (the “Agreement”) is entered into between the State of Colorado (the “State”), by and through Philip J. Weiser, Attorney General for the State of Colorado (the “Attorney General”), and the Office of the District Attorney for the Twelfth Judicial District (the “DA’s Office,” and together with the State, the “Parties”), by and through Alonzo Payne, District Attorney (“DA Payne”), to resolve the State’s claims arising from the DA’s Office’s violation of the Victim Rights Act (“VRA”).

Since DA Payne took office, the DA’s Office has routinely failed to comply with the VRA. The DA’s Office has not kept victims informed about their cases, and it has repeatedly failed to consult with victims about plea deals or case dismissals. The DA’s Office has also treated victims disrespectfully, by ignoring, belittling, and even yelling at them. This Agreement requires the DA’s Office to come into compliance with the VRA by retaining an independent monitor to oversee the DA’s Office’s compliance with the VRA and requiring the DA’s Office to implement new policies and procedures, complete regular trainings, and improve communication with victims and stakeholders. It also implements progressive discipline steps to ensure compliance with this Agreement.

### **I. Introduction**

1. The Colorado Constitution guarantees victims of criminal acts the rights to be “heard when relevant, informed, and present at all critical stages of the criminal justice process.” Colo. Const. art. II, § 16a. These rights are further detailed by the VRA. *See* Colo. Rev. Stat. §§ 24-4.1-301 to -304. The goal of the VRA is to ensure that “all victims of and witnesses to crimes are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded criminal defendants.” *Id.* § 24-4.1-301.

2. District attorneys must ensure that victims are afforded their rights provided by Colorado law. In a systemic disregard of those requirements, the DA's Office has failed to communicate with victims, to consult with them about critical case developments, or to treat them with respect and dignity.

3. Victims are harmed when they are denied their VRA rights. By excluding and disrespecting victims, the DA's Office compounds the emotional distress they have suffered from the crimes committed against them. When the DA's Office fails to consult with victims, they lose the chance to provide input that could contribute to a just case outcome. In some instances, the lack of notice about a plea agreement or case dismissal may even put victims' safety at risk.

4. The Parties enter into this Agreement to ensure the DA's Office's future compliance with the VRA and the Colorado Constitution.

## **II. Parties**

5. Philip J. Weiser is the duly elected Attorney General for the State of Colorado. The Attorney General is authorized to file suit to enforce compliance with the VRA, *see* C.R.S. § 24-4.1-303(17), as well as to remedy violations of law by governmental authorities that engage in a pattern or practice of violating rights secured by Colorado's constitution or laws, *see id.* § 24-31-113.

6. The Office of the District Attorney for the Twelfth Judicial District, which prosecutes crimes within its jurisdiction, is bound by the VRA. *See id.* § 24-4.1-303(1).

## **III. Definitions**

7. The term “Effective Date” means the date on which the monitor is retained pursuant to paragraph 23 below.

8. Unless otherwise specified, all definitions found in C.R.S. § 24-4.1-302 are incorporated into this Agreement, and any term defined in that section shall have the same meaning when used in this Agreement.

#### **IV. Statutory Framework**

##### **A. The Victim Rights Act**

9. The VRA imposes obligations on district attorneys that govern how they must communicate and consult with victims. *Id.* § 24-4.1-303(1).

10. Victims have the fundamental “right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse.” *Id.* § 24-4.1-302.5(1)(a). A district attorney’s office must ensure that victims are afforded this right throughout the criminal justice process. *Id.*; *id.* § 24-4.1-303(1).

11. The VRA also provides victims with specific rights—and imposes corresponding obligations on district attorney’s offices—at different stages of the criminal case. Of particular relevance here:

- a. Victims are guaranteed “[t]he right to be informed . . . by the district attorney, after the filing of charges with the court, of the status of any case concerning a crime against the victim, and any scheduling changes or cancellations, if such changes or cancellations are known in advance,” *id.* § 24-4.1-302.5(1)(f);
- b. Victims are entitled to be informed of, as well as present for, designated “critical stages” of the criminal case, *id.* §§ 24-4.1-302.5(1)(b), 24-4.1-303(11)(b);

- c. Victims have “[t]he right to consult with the prosecution after any crime against the victim has been charged, prior to any disposition of the case, or prior to any trial of the case, and the right to be informed of the final disposition of the case,” *id.* § 24-4.1-302.5(1)(e); and
- d. Once a crime has been charged, a district attorney must “consult, where practicable, with the victim concerning the reduction of charges, negotiated pleas, diversion, dismissal, seeking of death penalty, or other disposition,” “unless inconsistent with the requirements of investigative activities,” *id.* § 24-4.1-303(4).

12. The VRA establishes an enforcement mechanism to hold accountable those who fail to comply with their obligations to victims. *Id.* § 24-4.1-303(17).

13. Any person affected by a VRA violation may report noncompliance to the state’s Crime Victim Services Advisory Board (“the Advisory Board”). *Id.* The Advisory Board reviews complaints and gathers further information to determine whether the complaint has a basis in fact.

14. If the Advisory Board determines that a complaint is based in fact and cannot be resolved, the Advisory Board is required to refer the matter to the governor. *Id.*

15. After receiving a referral from the Advisory Board, the governor must request that the attorney general file suit to enforce compliance with the VRA. *Id.*

## **B. Patterns or Practices of Violating the Rights of Coloradans**

16. It is unlawful for any governmental authority, or any person acting on its behalf, to engage in a pattern or practice of conduct that deprives persons of rights secured by Colorado's constitution or laws (a "pattern-or-practice violation"). *Id.* § 24-31-113.

17. A district attorney's office commits a pattern-or-practice violation if it engages in a pattern or practice of depriving crime victims of their rights under the Colorado Constitution and VRA.

18. If the Attorney General has reasonable cause to believe that a pattern-or-practice violation has occurred, he is authorized to file suit seeking relief that would eliminate the pattern or practice of misconduct (the State's "Pattern or Practice Authority"). *Id.*

#### **V. Admissions and Stipulations**

19. DA Payne and the DA's Office admit, acknowledge, and accept responsibility for the following conduct:

##### ***Failure to Treat Victims with Dignity and Respect***

- a. The DA's Office has repeatedly failed to treat victims with dignity and respect.
- b. On multiple occasions, victims were yelled at and verbally abused by the then-Assistant DA in meetings. DA Payne knew of this behavior but took no steps to stop it or to apologize to the victims for the Assistant DA's conduct.
- c. Repeatedly, DA Payne has abruptly left meetings with victims following disagreements between DA Payne and the victims on how a criminal case should be handled or resolved.

- d. DA Payne has frequently refused to answer questions from victims, to accept written statements from them detailing their emotional distress from a crime, or to speak with them altogether.

***Failure to Notify Victims of Critical Developments in Court Proceedings***

- e. The DA's Office routinely fails to keep victims informed of the status of their criminal cases.
- f. Many victims have received no outreach at all from the DA's Office.
- g. Other victims contact the DA's Office seeking information, but their calls are not returned.
- h. On multiple occasions, the DA's Office has moved to dismiss criminal charges without notifying the victim of the anticipated dismissal.

***Failure to Consult with Victims***

- i. The DA's Office has systematically failed to consult with victims about plea agreements and case dismissals.
- j. Numerous times, the DA's Office has notified a victim about a proposed plea agreement or case dismissal for the first time on the same day as the court hearing at which the plea or dismissal will be addressed, which leaves no time for meaningful consultation with the victims.
- k. When victims voice opposition to proposed plea agreements and dismissals, the DA's Office has often rudely told them, in sum and substance, that they have no control over the case outcome and that the DA's Office plans to offer the plea agreement or dismissal regardless of the victim's input.

1. Attorneys from the DA's Office have informed victims that they do not represent the victims and do not need the victims' assistance on criminal cases.
20. DA Payne and the DA's Office further acknowledge the following facts:
- a. Between February and July 2021, the Advisory Board's VRA Subcommittee ("the Subcommittee") received four complaints alleging that the DA's Office had not complied with the VRA.
  - b. These complaints alleged that the DA's Office (1) failed to communicate with victims about the status of their cases; (2) failed to notify victims of court hearings; (3) failed to consult with victims before resolving cases; and (4) failed to treat victims with respect and dignity.
  - c. After reviewing the complaints, the Subcommittee sent the DA's Office multiple Requests for Information. The DA's Office did not respond to these requests.
  - d. The Subcommittee determined that all or some of the allegations in each of the four complaints had a basis in fact.
  - e. To prevent future violations of the VRA, the Subcommittee asked the DA's Office to (1) attend VRA and Victim Empathy trainings, (2) provide the Subcommittee with information about the office's VRA policies and practices, and (3) add information to the office's website to facilitate victims' virtual attendance at court proceedings. The Subcommittee gave the DA's Office several months to complete these remedial requirements.

- f. The DA's Office attended the required training, but it did not do so in good faith. Some attorneys continually interrupted the training and swore at the women leading it. Senior attorneys repeatedly walked out of the training session. DA Payne took no steps to control this disruptive and unprofessional behavior and effectively condoned it.
- g. The DA's Office did not successfully comply with the Subcommittee's other remedial requirements.
- h. Beginning in August 2021, the Subcommittee received four new complaints that the DA's Office had violated the VRA.
- i. On December 17, 2021, the Subcommittee held a vote and found that the DA's Office was noncompliant in resolving the first four VRA complaints.
- j. On December 22, 2021, the Subcommittee sent a letter to DA Payne notifying him of its noncompliance finding.
- k. On December 29, 2021, the Subcommittee sent DA Payne Requests for Information regarding the four new VRA complaints it received. DA Payne provided the Subcommittee with written responses regarding the four new complaints on January 27, 2022.
- l. On January 28, 2022, the Subcommittee voted to refer the first four VRA complaints to the Advisory Board.
- m. On February 10, 2022, the Advisory Board determined that the first four complaints had a basis in fact and could not be resolved. It therefore referred them to the Governor.



- n. On February 16, 2022, the Governor referred the first four VRA complaints to the Attorney General pursuant to C.R.S. § 24-4.1-303(17) and requested that the Attorney General file suit against the DA's Office.
- o. On February 25, 2022, the Subcommittee determined that all four of the new VRA complaints were based in fact. The Subcommittee voted to refer its finding of noncompliance to the Advisory Board for referral to the Governor.
- p. From early March through July 2022, the Attorney General investigated and validated these concerns.

**VI. Remedial Obligations of DA Payne and the DA's Office**

21. The Parties agree that they wish to resolve this controversy without further legal proceedings. The Parties therefore enter into this Agreement to ensure the DA's Office's future compliance with the VRA and the Colorado Constitution.

22. DA Payne and the DA's Office will comply with all requirements in this Section VI to the Attorney General's satisfaction.

***Retention of Outside Monitor***

23. By four weeks from the date on which this Agreement is signed, the DA's Office will retain an outside monitor (the "Monitor") to oversee the DA's Office's future compliance with the VRA. The Monitor shall be chosen by the Attorney General and funded by the DA's Office. The date on which the Monitor is retained shall constitute the Effective Date of this Agreement.

***Adoption of New VRA Policies and Procedures***

24. By the following deadlines, the DA's Office shall review and revise its VRA policy with the assistance of the Monitor to ensure that the policy complies with the VRA and

will be effective at ensuring that the DA's Office complies with its VRA obligations. The policy will include provisions governing the circumstances under which the DA's Office may or must notify the court in a criminal case about its VRA compliance in that case.

- a. Within two weeks of the Effective Date, the DA's Office shall complete a review of VRA policies used by other district attorneys' offices, including those used by other offices of comparable size. The Monitor shall approve the DA's Office's selection of policies for review.
  - b. Within four weeks of the Effective Date, the DA's Office shall draft a revised VRA policy, with guidance and input from the Monitor, and shall provide it to the Monitor for review. At the same time, the draft policy shall be provided to the State, which shall have two weeks in which to submit comments on the draft policy to the Monitor.
  - c. Within six weeks of the Effective Date, the Monitor shall review the draft revised policy and approve or disapprove it. If the Monitor approves the policy, the DA's Office shall implement it immediately. If the Monitor disapproves the policy, the DA's Office shall submit a new revised policy to the Monitor for review within two weeks from the date of the Monitor's disapproval. If the Monitor disapproves the second revised policy, the Monitor shall draft a new VRA policy for the DA's Office within two weeks of the Monitor's most recent disapproval, which the DA's Office shall accept and implement.
25. The DA's Office shall create procedures for timely contacting victims in compliance with the VRA, as well as for documenting such contacts, which shall include, among other elements, details on the required substance of such contacts and documentation.

- a. Within eight weeks of the Effective Date, the DA's Office shall create a draft procedure and provide it to the Monitor. At the same time, the draft procedure shall be provided to the State, which shall have two weeks in which to submit comments on the draft procedure to the Monitor.
- b. Within ten weeks of the Effective Date, the Monitor shall review the draft procedure and approve or disapprove it. If the Monitor approves the procedure, the DA's Office shall implement it immediately. If the Monitor disapproves the procedure, the DA's Office shall submit a new revised procedure to the Monitor for review within two weeks from the date of the Monitor's disapproval. If the Monitor disapproves the second revised procedure, the Monitor shall draft a new procedure for the DA's Office within two weeks of the Monitor's most recent disapproval, which the DA's Office shall accept and implement.

26. During the Term of this Agreement, the DA's Office shall not make changes to the policies and procedures addressed in paragraphs 24 and 25 without prior approval by the Monitor. The State will receive notice and have the opportunity to comment on any such proposed changes.

***Mandatory VRA Training***

27. The DA's Office shall adopt and implement new training procedures to ensure the office's compliance with the new VRA policies and procedures developed under paragraphs 24 and 25 and with the VRA, in accordance with the following deadlines:

- a. Within eight weeks of the Effective Date, the DA's Office will develop a draft mandatory training plan for all personnel at the DA's Office and provide it to the Monitor, which shall include (1) a plan for developing a training curriculum, (2) a

plan for identifying personnel to conduct the trainings, and (3) a procedure for mandatory, recurring annual trainings, as well as onboarding trainings for new employees. At the same time, the draft plan shall be provided to the State, which shall have two weeks in which to submit comments on the draft plan to the Monitor.

- b. Within ten weeks of the Effective Date, the Monitor shall review the draft training plan and approve or disapprove it. If the Monitor approves the training plan, the DA's Office shall implement it immediately. If the Monitor disapproves the plan, the DA's Office shall submit a new revised plan to the Monitor for review within two weeks from the date of the Monitor's disapproval. If the Monitor disapproves the second revised plan, the Monitor shall draft a training plan for the DA's Office within two weeks of the Monitor's most recent disapproval, which the DA's Office shall accept and implement.
- c. During the Term of this Agreement:
  - i. The DA's Office shall confirm in writing to the Monitor each time it completes an annual training required by the training plan.
  - ii. The DA's Office shall provide signed certifications from new employees confirming that the employees have completed and understood the onboarding trainings.

***Informational Materials for Victims***

28. The DA's Office and Monitor shall create new informational materials to notify victims of their VRA rights, in accordance with the following deadlines:

a. Website Revisions:

- i. Within two weeks of the Effective Date, the Monitor shall review the DA's Office's website to ensure that the website adequately informs victims and witnesses of their rights under the VRA and make recommendations for any needed revisions. The DA's Office's website will include information instructing victims how they can submit VRA complaints to the Advisory Board.
- ii. Within four weeks of the Effective Date, the DA's Office shall implement any changes to its website recommended by the Monitor.
- iii. Within six weeks of the Effective Date, the Monitor shall approve or disapprove the changes made to the DA's Office's website. If the Monitor disapproves the changes, the DA's Office shall promptly implement any additional changes required by the Monitor.

b. Informational Documents:

- i. The DA's Office shall create a system for routinely providing written information to victims about their rights, both at the DA's Office and during court proceedings. The system will include procedures for documenting that the materials were provided to and received by victims. The written materials provided to victims will include information instructing victims how they can submit VRA complaints to the Advisory Board.
- ii. Within six weeks of the Effective Date, the DA's Office shall provide drafts of the written materials, as well as written procedures for

disseminating such materials, to the Monitor. At the same time, the draft materials and procedures shall be provided to the State, which shall have two weeks in which to submit comments to the Monitor.

- iii. Within eight weeks of the Effective Date, the Monitor shall review the draft informational materials and procedures and shall approve or disapprove them. If the Monitor approves the informational materials and procedures, the DA's Office shall implement them immediately. If the Monitor disapproves any materials and/or procedures, the DA's Office shall submit revised materials and/or procedures to the Monitor for review within two weeks from the date of the Monitor's disapproval. If the Monitor disapproves the second revised materials and/or procedures, the Monitor shall draft such informational materials and/or procedures for the DA's Office within two weeks of the Monitor's most recent disapproval, which the DA's Office shall accept and implement.

29. During the Term of this Agreement, the DA's Office shall not make changes to any portion of its website that addresses the VRA, to its informational materials for victims, or to its system for providing such informational materials to victims without prior approval by the Monitor. The State will receive notice and have the opportunity to comment on any such proposed changes.

#### ***Quarterly Stakeholder Meetings***

30. In order to improve communication about VRA compliance and office operations relating to VRA cases with staff and stakeholders, including law enforcement partners, the DA's Office shall conduct quarterly meetings where substantive issues associated with the DA's Office

work, including compliance with the VRA and related issues, shall be discussed in accordance with the following implementation schedule:

- a. Within four weeks of the Effective Date, the DA's Office, working with the Monitor, shall identify all relevant stakeholders.
- b. Within five weeks of the Effective Date, the DA's Office shall contact all identified stakeholders.
- c. The first quarterly meeting shall occur within eight weeks from the Effective Date. The Monitor may attend any such meetings during the Term of this Agreement.

***Ongoing VRA Compliance***

31. On an ongoing basis, the DA's Office shall comply with its obligations under the VRA. Nothing in this Agreement relieves the DA's Office from complying with the VRA during the time period allotted for the DA's Office to complete the remedial steps listed in paragraphs 23 through 30 above.

**VII. Releases**

32. This Agreement constitutes a complete settlement and release of all claims and causes of action by the State under the VRA and/or the State's Pattern or Practice Authority that were or could have been asserted for the conduct described in this Agreement that arose prior to the date on which this Agreement was signed. The State agrees that, except as provided in the following paragraph, it shall not proceed with or institute any civil action or proceeding under the VRA and/or the State's Pattern or Practice Authority for any conduct prior to the date on which this Agreement was signed that relates to the subject matter of this Agreement.

33. Nothing in this Agreement precludes the State from enforcing this Agreement or from pursuing any law enforcement action under the VRA, the State's Pattern or Practice Authority, or any other legal authority with respect to conduct not covered by this Agreement or that occurs after the date on which this Agreement is signed. Nothing in this Agreement shall be construed as a waiver or limitation of the rights, remedies, or defenses of DA Payne and the DA's Office in connection with any claim, matter, or suit related to the subject matter of this Agreement other than an action by the State to enforce the provisions of this Agreement.

## **VIII. Enforcement**

### **A. Monitor Compliance Reviews**

34. The DA's Office will provide full access to its documents and personnel to the Monitor.

35. During the Term of this Agreement, the Monitor shall conduct quarterly reviews of the DA's Office's compliance with this Agreement and with the VRA. Those reviews shall include (1) the Monitor's recommendation of whether the DA's Office should be found in substantial compliance with the terms of this Agreement during the review period, (2) a review of any VRA complaints about the DA's Office submitted to the Monitor or to the Advisory Board within the reporting period, and (3) a review by the Monitor of a sampling of cases, to be selected by the Monitor, to determine whether the DA's Office has complied with the VRA in those cases. The Monitor may consult with other stakeholders, such as the Division of Criminal Justice, as part of this compliance review. The Monitor shall report its findings from these reviews through high-level written reports provided to the Parties.

36. During the Term of this Agreement, a summary of each of the Monitor's compliance reviews will be posted on the DA's Office's website. The summary will indicate



whether the Monitor recommended that the DA's Office should be found in substantial compliance with the terms of this Agreement during the review period, as well as the basis for the Monitor's recommendation. The Monitor will draft or approve the content of these public summaries.

37. Victim information shall remain confidential in any reporting accessible to the public.

### **B. Remedies for Noncompliance**

38. Before taking either of the following enforcement options, the State will provide the DA's Office with written notice of (1) its determination that the DA's Office has failed to substantially comply with one or more terms of this Agreement, (2) the basis for the State's determination, and (3) the steps the DA's Office must take in order to cure its noncompliance, along with the time period in which the DA's Office must take such steps. If the DA's Office fails to complete the curative steps required by the State within the required time period, the State may take either of the enforcement options below.

#### **i. Option to File Civil Suit**

39. If at any time the State determines, after consultation with the Monitor, that the DA's Office has violated any term of this Agreement, the State shall be entitled to file a civil action and to seek an injunction or other appropriate order from such court to enforce the provisions of this Agreement.

40. The Parties consent to venue and jurisdiction for any proceeding necessary to enforce the terms of this Agreement within the District Court, Alamosa County, Colorado.

41. In any such action, upon a showing by the State of a material violation of this Agreement by the DA's Office, the DA's Office stipulates to (1) a judgment declaring that the

DA's Office violated the VRA and committed a pattern-or-practice violation, and (2) an order converting this Agreement into a permanent injunction against the DA's Office. The State may seek, and the Court may enter, any additional remedies that are deemed proper. The DA's Office agrees to waive any counterclaims it may have had with respect to the subject matter of this Agreement and agrees to limit any defenses to (1) whether a violation of this Agreement has occurred and (2) the appropriate remedies for the violation.

**ii. Option to Require Contracting Under C.R.S. § 20-1-111**

42. If at any time the State determines, after consultation with the Monitor, that the DA's Office has failed to substantially comply with any term of this Agreement, the State shall be entitled to direct the DA's Office to contract with other district attorneys or another appropriate prosecutorial authority under C.R.S. § 20-1-111 by following the steps in paragraphs 43 through 45 below.

43. First, the State may require the DA's Office to submit some or all of its cases for which VRA compliance is required (the DA's Office's "VRA Cases") to real-time oversight by the Monitor or another third party selected by the State for a limited time period to be determined by the State. For any case subject to real-time oversight, the DA's Office shall not take any actions in the case that implicate the VRA without first obtaining the Monitor's or third party's approval that the DA's Office is complying with the VRA in taking such action in the case.

44. If, after submitting some or all of the DA's Office's VRA Cases to real-time oversight, the State determines in consultation with the Monitor that the DA's Office has continually failed to comply substantially with any term of this Agreement, the State may direct the DA's Office to contract with one or more other district attorneys or appropriate prosecuting authority approved by the State under C.R.S. § 20-1-111. The contract will provide that the

other district attorney(s) or appropriate prosecuting authority will exercise the functions and services of the DA's Office with respect to some or all of the DA's Office's VRA Cases on an ongoing basis. The quantity and categories of VRA Cases to be subject to such contract will be approved by the State. The DA's Office will provide to the contracting district attorney(s) or other appropriate prosecuting authority a portion of the DA's Office's funding, which will be proportionate to the quantity of cases that will no longer be managed by the DA's Office under the contract. In the event of any dispute over the appropriate funding, the Monitor's determination shall be binding. The DA's Office agrees to sign any contracts and complete any paperwork necessary to facilitate such an arrangement under C.R.S. § 20-1-111.

45. If one or more contracts is signed pursuant to paragraph 44 above, the State will evaluate the continued need for the contracting arrangement periodically but at least every six months, in consultation with the Monitor. In determining whether the contracting arrangement should be modified or terminated, the State will consider, among other factors, the extent of the DA's Office's VRA compliance in the VRA Cases retained by the DA's Office, the resources of the contracting district attorneys or other appropriate prosecutorial authority, and the need for continuity of personnel in ongoing matters. If DA Payne is succeeded by a new district attorney at the DA's Office during the term of this Agreement, the State will reevaluate the continued need for any existing contracting arrangements at that time.

#### **IX. Term of Agreement**

46. The obligations set forth in this Agreement are ongoing.

47. The Evaluation Date of this Agreement will be the earlier of (1) three years from the Effective Date of this Agreement, or (2) six months following the date on which a new district attorney succeeds DA Payne at the DA's Office.

48. On the Evaluation Date, the State will evaluate whether the DA's Office has been in substantial compliance with the terms of this Agreement for the prior six months, taking into consideration the Monitor's recommendations from any compliance reports completed during the six-month period. If the State determines that the DA's Office has substantially complied with this Agreement for at least six consecutive months, the State will determine that the Term of this Agreement is complete. If the State determines that the DA's Office has not substantially complied with the Agreement for at least six consecutive months, the State will provide the DA's Office with the basis for its determination in writing. Thereafter, the State will continue to evaluate every six months whether the DA's Office has been in substantial compliance with the Agreement for a six-month period, such that the Term of this Agreement is complete. The DA's Office will not be considered in substantial compliance with this Agreement during any time period in which any of its VRA Cases are subject to a contracting arrangement under paragraph 44, excluding cases that continue to be subject to a contracting arrangement solely for purposes of personnel continuity.

49. Beginning on the Evaluation Date, the State may determine that certain oversight mechanisms in this Agreement are no longer necessary and may be terminated, even if the Term of this Agreement is not yet complete.

#### **X. Miscellaneous Provisions**

50. Nothing in this Agreement limits or alters in any way the Advisory Board's authority regarding VRA complaints received by the Advisory Board.

51. This Agreement is the final, complete, and exclusive statement of the Parties' agreement on the matters contained herein, and it supersedes, terminates, and replaces any and all previous negotiations, agreements, and instruments as may exist between the Parties. Other

than any representations expressly stated in this Agreement, the Parties have not made any representations or warranties to each other, and no Party's decision to enter into this Agreement is based upon any statements by any other Party outside of those in this Agreement. No change or modification of this Agreement shall be valid unless in writing and signed by all Parties. If any provision(s) of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

52. This Agreement shall neither create nor waive or otherwise affect any private rights or remedies in any third parties nor waive any rights, remedies, or defenses of the Parties in respect to any third parties. Under no circumstances shall this Agreement or the name of the Attorney General or any of the State's employees or representatives be used by DA Payne or the DA's Office or any person under their direction or control to suggest the State's endorsement of DA Payne and/or the DA's Office's past, present, or future conduct.

53. Nothing in this Agreement relieves DA Payne or the DA's Office of their duty to comply with all applicable laws, regulations, or rules of the State of Colorado nor constitutes authorization by the State for DA Payne or the DA's Office to engage in acts and practices prohibited by such laws.

54. DA Payne and the DA's Office acknowledge that it is the State's customary position that an agreement restraining certain conduct by a party does not prevent the State from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the State's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the State from taking enforcement action to address conduct occurring after the signing of this Agreement that the State believes to

be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Agreement shall not be a defense to any such enforcement action.

55. The terms and provisions of this Agreement may be enforced by the current Colorado Attorney General and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives.

56. DA Payne and the DA's Office acknowledge that they had a full opportunity to review this Agreement and consult with legal counsel regarding it. The undersigned representatives of DA Payne and the DA's Office agree and represent that they have read and understood this Agreement, accept the legal consequences involved in signing it, and that there are no other representations, agreements, or understandings between the State and DA Payne and/or the DA's Office that are not stated in writing in this Agreement.

57. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Agreement. Electronic copies of this Agreement and the signatures hereto may be used with the same force and effect as an original.

## **XI. Notice**

58. All notices regarding this Agreement shall be sent in the manner indicated below, unless any Party notifies the other Party in writing of another means by which notice should be provided:

For the State:

Via email, to [12thJD\\_VRA@coag.gov](mailto:12thJD_VRA@coag.gov)

Via mail, to Pattern or Practice Unit, Office of the Attorney General, 1300 Broadway,  
10<sup>th</sup> Floor, Denver CO 80203

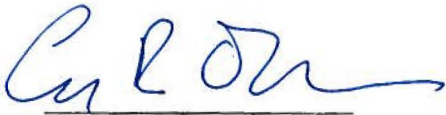
For the DA's Office:

Via email, to [apayne@da12.state.co.us](mailto:apayne@da12.state.co.us)

Via mail, to District Attorney, 426 San Juan Avenue, Alamosa, Colorado 81101

Signed this 11<sup>th</sup> day of July 2022

For the Attorney General:

A handwritten signature in blue ink, appearing to read "Eric R. Olson", written over a horizontal line.

Eric R. Olson

Solicitor General

For the DA's Office

A handwritten signature in blue ink, appearing to read "Alonzo Payne", written over a horizontal line.

Alonzo Payne

District Attorney, 12<sup>th</sup> Judicial District