

# STATE OF COLORADO GRANT AGREEMENT

## COVER PAGE

<b>State Agency</b> Department of Public Safety, Division of Criminal Justice	<b>DCJ Grant Number</b> DCJ Grant Number												
<b>Grantee</b> Insert Grantee's Full Legal Name. Note: This must match the Secretary of State legal name. Only include a dba if it is a legal name with SOS.													
<b>Agreement Performance Beginning Date (Start Date)</b> The later of the Effective Date or Month Day, Year	<b>Initial Agreement Expiration Date (End Date)</b> Month Day, Year												
<b>Agreement Maximum Amount</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">State Fiscal Year 20xx</td> <td style="width: 40%; text-align: right;">\$0.00</td> </tr> <tr> <td>State Fiscal Year 20xx</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>State Fiscal Year 20xx</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>State Fiscal Year 20xx</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>State Fiscal Year 20xx</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td><b>Total for All State Fiscal Years</b></td> <td style="text-align: right;"><b>\$0.00</b></td> </tr> </table>	State Fiscal Year 20xx	\$0.00	State Fiscal Year 20xx	\$0.00	State Fiscal Year 20xx	\$0.00	State Fiscal Year 20xx	\$0.00	State Fiscal Year 20xx	\$0.00	<b>Total for All State Fiscal Years</b>	<b>\$0.00</b>	<b>Fund Expenditure End Date</b> Month Day, Year  <b>Agreement Authority (State Authority)</b> The Division of Criminal Justice is authorized to disburse these funds by Colorado Revised Statute 24-33.503 and 507.  Insert Statutory Authority of the State Grant Funds
State Fiscal Year 20xx	\$0.00												
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State Fiscal Year 20xx	\$0.00												
<b>Total for All State Fiscal Years</b>	<b>\$0.00</b>												
<b>Grant Description</b> Insert Brief Description of the Grant Agreement. (This is specific to this project.) This should be 1,000 characters or less and must be descriptive.													
<b>Agreement Purpose</b> Briefly describe the Agreement's purpose. (This is purpose of the grant program in general.) Describe the selection process to address the OSC Competition Policy requirements. (this includes solicitation/announcement and selection process)													
<b>Exhibits and Order of Precedence</b> The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> <li>1. Exhibit A1, Sample Option Letter.</li> <li>2. Exhibit A2, Sample Grant Funding Change Letter</li> <li>3. Exhibit B, Grant Requirements.</li> <li>4. Exhibit C, Special Conditions.</li> <li>5. Exhibit D, Statement of Work.</li> <li>6. Exhibit E, Budget.</li> </ol> <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> <li>1. Exhibit C, Special Conditions.</li> <li>2. Colorado Special Provisions in §17 of the main body of this Agreement.</li> <li>3. The provisions of the other sections of the main body of this Agreement.</li> <li>4. Exhibit B, Grant Requirements.</li> <li>5. Exhibit D, Statement of Work.</li> <li>6. Exhibit E, Budget.</li> </ol>													
<b>Principal Representatives</b> For the State: Joe Thome, Director Division of Criminal Justice Department of Public Safety 700 Kipling Street, Suite 1000 Denver, Colorado 80215-5897 Joe.Thome@state.co.us	For Grantee: Name Company Name Address Address City, State Zip Email												

**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

<p><b>GRANTEE</b> INSERT-Legal Name of Grantee</p> <p>_____</p> <p>By: Name &amp; Title of Person Signing for Grantee</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Public Safety Stan Hilkey, Executive Director</p> <p>_____</p> <p>By: Name &amp; Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>
<p>Additional Grantee Signature</p> <p>_____</p> <p>By: Name &amp; Title of Person Signing for Grantee</p> <p>Date: _____</p>	<p>Additional Grantee Signature</p> <p>_____</p> <p>By: Name &amp; Title of Person Signing for Grantee</p> <p>Date: _____</p>
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<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>_____</p> <p>By: Lyndsay J. Clelland, Contract and Grant Coordinator, Division of Criminal Justice</p> <p>Effective Date: _____</p>	

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### 1. PARTIES

This Agreement is entered into by and between Grantee named on the Cover Page for this Agreement (the “Grantee”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Grantee and the State agree to the terms and conditions in this Agreement.

### 2. TERM AND EFFECTIVE DATE

#### A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date, except as described in §5.C, or after the Fund Expenditure End Date.

#### B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this

Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Grantee in a form substantially equivalent to **Exhibit A1, Sample Option Letter**.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Grantee as provided in **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Grantee, which shall be governed by **12.A.i**.

i. Method and Content

The State shall notify Grantee of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in **§12.A.i.a12.A.i.a**.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made.

F. Grantee’s Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is

terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Breach of Agreement**” means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- C. “**Budget**” means the budget for the Work described in **Exhibit E, Budget**.
- D. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E. “**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 §24-72-302, C.R.S.
- F. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- G. “**Effective Date**” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- H. “**End of Term Extension**” means the time period defined in §2.D2.D.
- I. “**Exhibits**” means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- J. “**Extension Term**” means the time period defined in §2.C.
- K. “**Goods**” means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- L. “**Grant Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- M. “**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 the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.* C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless

of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

- N. **“Initial Term”** means the time period defined in §2.B2.B.
- O. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- P. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- Q. **“PCI”** means payment card information including any data related to credit card holders' names, credit card numbers, or other credit card information as may be protected by state or federal law.
- R. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State 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; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- S. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** 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 **(ii)** 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. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- T. **“Services”** means the services to be performed by Grantee as set forth in this Agreement, and shall include any services to be rendered by Grantee in connection with the Goods.
- U. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- V. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

- W. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- X. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- Y. “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. This establishes a **procurement** relationship. The subcontractor provides goods or services for the benefit of the purchaser.
- Z. “**Subgrantee**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. This establishes a **grant** relationship. The beneficiary, not the purchaser, receives benefit from the work. There may be multiple tiers of subgrantees that do not include procurement transactions.
- AA. “**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. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- BB. “**Work**” means the Goods delivered and Services performed pursuant to this Agreement.
- CC. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

#### 4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit D, Statement of Work**. The State shall have no liability to compensate Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

#### 5. PAYMENTS TO GRANTEE

##### A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the Agreement Maximum for each State Fiscal Year shown on the Cover Page of this Agreement.

##### B. Payment Procedures

###### i. Invoices and Payment

- a. The State shall pay Grantee in the amounts and in accordance with the schedule and other conditions set forth in **Exhibit E, Budget**.

- b. Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
  - c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Grantee and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Grantee shall make all changes necessary to correct that invoice.
  - d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.
- ii. Interest
- Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Grantee shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.
- iii. Payment Disputes
- If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within 30 days following the earlier to occur of Grantee's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Grantee and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.
- iv. Available Funds-Contingency-Termination
- The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Grantee shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.E**.



C. Reimbursement of Grantee Costs

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in **Exhibit E, Budget** and **§5.A** for all allowable costs described in this Grant and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to and receives approval from the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed. Grantee's costs for Work performed after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- ii. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out

Grantee shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee's final reimbursement request or invoice. The State will withhold allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

**6. REPORTING - NOTIFICATION**

A. Quarterly Reports

In addition to any reports required or pursuant to any other Exhibit, for any Agreement having a term longer than three months, Grantee shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Grantee 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 Agreement or may affect Grantee's ability to perform its obligations under this Agreement, Grantee shall, within ten days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement.

C. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

D. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting this Award. The State may impose any penalties for noncompliance, which may include, without limitation, suspension or debarment.

**7. GRANTEE RECORDS**

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records for a period (the "Record Retention Period") of three years following the date of submission to the State of the final expenditure report. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Grantee shall permit the State, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Grantee's performance of its obligations under this Agreement using procedures as determined by the State. Any other duly authorized agent of a governmental agency, in its discretion, may monitor Grantee's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Grantee shall allow the State to perform all monitoring based on the State's risk analysis of Grantee and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

D. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

**8. CONFIDENTIAL INFORMATION-STATE RECORDS**

A. Confidentiality

Grantee shall keep confidential, and cause all Subgrantees or Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Grantee shall immediately forward any request or demand for State Records to the State's Principal Representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns, Subgrantees, or Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns, Subgrantees and Subcontractors who require access to perform their obligations under this Agreement. Grantee shall ensure all such agents, employees, assigns, Subgrantees and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign, Subgrantee or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Grantee can establish that none of Grantee or any of its agents, employees, assigns, Subgrantees or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Grantee or any of its Subgrantees or Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

**9. CONFLICTS OF INTEREST**

A. Actual Conflicts of Interest

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Agreement. Such a conflict of interest would arise when a Grantee, Subgrantee or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Grantee acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

## 10. INSURANCE

Grantee shall obtain and maintain, and ensure that each Subgrantee or Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

### A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Grantee or Subcontractor employees acting within the course and scope of their employment.

### B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

### C. Automobile Liability- Required

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.

### D. Professional Liability Insurance- Not Required for Grantee, but provision must be passed down to Subgrantees and Subcontractors

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

### E. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

### F. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Grantee and Subcontractors.

### G. Primacy of Coverage

Coverage required of Grantee and each Subgrantee and Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Grantee or the State.

H. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Grantee and Grantee shall forward such notice to the State in accordance with §14 within seven days of Grantee's receipt of such notice.

I. Subrogation Waiver

All commercial insurance policies secured or maintained by Grantee or its Subgrantees and Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

J. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Grantee shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subgrantee or Subcontractor is a public entity within the meaning of the GIA, Grantee shall ensure that the Subgrantee or Subcontractor maintain at all times during the terms of this Grantee, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

K. Certificates

For each commercial insurance plan provided by Grantee under this Agreement, Grantee shall provide to the State certificates evidencing Grantee's insurance coverage required in this Agreement within seven Business Days following the Effective Date. Grantee shall provide to the State certificates evidencing Subgrantee or Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Grantee's subgrantee or subcontract is not in effect as of the Effective Date, Grantee shall provide to the State certificates showing Subgrantee or Subcontractor insurance coverage required under this Agreement within seven Business Days following Grantee's execution of the subgrant or subcontract. No later than 15 days before the expiration date of Grantee's or any Subgrantee's or Subcontractor's coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Grantee shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

**11. BREACH OF AGREEMENT**

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Grantee is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this

Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

## 12. REMEDIES

### A. State's Remedies

If Grantee is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

#### i. Termination for Breach

In the event of Grantee's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Grantee shall continue performance of this Agreement to the extent not terminated, if any.

#### a. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders, subgrants and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Grantee shall assign to the State all of Grantee's rights, title, and interest in and to such terminated orders, subgrants or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee but in which the State has an interest. At the State's request, Grantee shall return materials owned by the State in Grantee's possession at the time of any termination. Grantee shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

#### b. Payments

Notwithstanding anything to the contrary, the State shall only pay Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.E.

#### c. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold payment to Grantee for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess

costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Grantee to an adjustment in price or cost or an adjustment in the performance schedule. Grantee shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Grantee after the suspension of performance.

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Grantee's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Grantee's employees, agents, Subgrantees or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Grantee shall, as approved by the State (i) secure that right to use such Work for the State and Grantee; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Grantee's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.



### **13. DISPUTE RESOLUTION**

#### **A. Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Grantee for resolution.

#### **B. Resolution of Controversies**

If the initial resolution described in §13.A13.A fails to resolve the dispute within ten Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S. (the “Resolution Statutes”), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

### **14. NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party’s principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

### **15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

#### **A. Work Product**

##### **i. Copyrights**

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Grantee hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all

works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Grantee cannot make any of the assignments required by this section, Grantee hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Grantee grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Grantee that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not Grantee is under contract with the State at the time, Grantee shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Grantee assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Grantee

Grantee retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Grantee including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Grantee under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Grantee Property"). Grantee Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State

from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

## **16. GENERAL PROVISIONS**

### **A. Assignment**

Grantee's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

### **B. Subgrants and Subcontracts**

Grantee shall not enter into any subgrant or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Grantee shall submit to the State a copy of each such subgrant or subcontract upon request by the State. All subgrants and subcontracts entered into by Grantee in connection with this Agreement 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 Agreement.

### **C. Binding Effect**

Except as otherwise provided in **§16.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

### **D. Authority**

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

### **E. Captions and References**

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

### **F. Counterparts**

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

### **G. Entire Understanding**

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

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

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Grantee. Grantee shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in § 16.A, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, 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.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Grantee's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents, Subgrantees and Subcontractors secure and maintain at all times during the term of their employment, agency, Subgrantee or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Indemnification

i. General Indemnification

Grantee shall indemnify, save, and hold harmless the State, its employees, 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 Grantee, or its employees, agents, Subgrantees, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Grantee in violation of §8 may be cause for legal action by third parties against Grantee, the State, or their respective agents. Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including

attorneys' fees and costs) incurred by the State in relation to any act or omission by Grantee, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) 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.

U. Accessibility

Grantee shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, *et seq.*, C.R.S. Grantee shall 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 and available at <https://www.w3.org/TR/WCAG21/>.

**17. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

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

**A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

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

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials 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 Agreement 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.

**D. INDEPENDENT CONTRACTOR.**

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise

provide such coverage for Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

**E. COMPLIANCE WITH LAW.**

Grantee shall 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.

**F. 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 Agreement. 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 Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

**H. SOFTWARE PIRACY PROHIBITION.**

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

**I. 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 the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

*[Not applicable to intergovernmental agreements]* Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State’s discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.**

*[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a grant with a Subgrantee or contract with a Subcontractor that fails to certify to Grantee that the Subgrantee and Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Grantee (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Agreement is being performed, (ii) shall notify the Subgrantee or Subcontractor and the contracting State agency or institution of higher education within three days if Grantee has actual knowledge that a Subgrantee or Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (iii) shall terminate the subgrant or subcontract if a Subgrantee or Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Grantee participates in the Department program, Grantee shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Grantee fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Grantee shall be liable for damages.



**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.**

Grantee, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that Grantee **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Agreement.

**EXHIBIT A1, SAMPLE OPTION LETTER**

<b>State Agency</b> Insert Department's or IHE's Full Legal Name	<b>Option Letter Number</b> Insert the Option Number (e.g. "1" for the first option)
<b>Grantee</b> Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	<b>Original Agreement Number</b> Insert CMS number or Other Agreement Number of the Original Contract
<b>Current Agreement Maximum Amount</b> Initial Term State Fiscal Year 20xx \$0.00	<b>Option Agreement Number</b> Insert CMS number or Other Agreement Number of this Option
Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00	<b>Agreement Performance Beginning Date</b> Month Day, Year
Total for All State Fiscal Years \$0.00	<b>Current Agreement Expiration Date</b> Month Day, Year

1. **OPTIONS:**

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Agreement
- C. Option to change the quantity of Services under the Agreement
- D. Option to modify Agreement rates
- E. Option to initiate next phase of the Agreement

2. **REQUIRED PROVISIONS:**

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Agreement, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.
- D. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
- E. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. **OPTION EFFECTIVE DATE:**

- F. The effective date of this Option Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

<p><b>STATE OF COLORADO</b>          Jared S. Polis, Governor          INSERT-Name of Agency or IHE          INSERT-Name &amp; Title of Head of Agency or IHE</p> <p>_____          By: Name &amp; Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>	<p>In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b>  <b>Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____          Name of Agency or IHE Delegate-Please delete if agreement will be routed to OSC for approval</p> <p>Option Effective Date: _____</p>
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**EXHIBIT A2, GRANT FUNDING CHANGE LETTER**

<b>State Agency</b> Insert Department's or IHE's Full Legal Name	<b>Grant Funding Change Letter Number</b> Insert the Option Number (e.g. "1" for the first option)
<b>Contractor</b> Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	<b>Original Grant Number</b> Insert CMS number or Other Contract Number of the Original Contract
<b>Current Contract Maximum Amount</b>	<b>Grant Funding Change Letter Contract Number</b> Insert CMS number or Other Contract Number of this Option
Initial Term	<b>Contract Performance Beginning Date</b> Month Day, Year
State Fiscal Year 20xx \$0.00	
Extension Terms	<b>Current Contract Expiration Date</b> Month Day, Year
State Fiscal Year 20xx \$0.00	
State Fiscal Year 20xx \$0.00	
State Fiscal Year 20xx \$0.00	
Total for All State Fiscal Years \$0.00	

**1. GRANT FUNDING CHANGE**

In accordance with §**Insert Section Number** of the Original Grant referenced above, the State Agency listed above commits the following funds to the grant:

- A. The funding available for State Fiscal Year 20xx is Increased/Decreased by \$Amount of Change, because Insert Reason For Change.
- B. The total funding avail for all State Fiscal Years as of the effective date of this Grant Funding Change Letter is shown as the current contract maximum above.

**2. TERMINOLOGY**

All terminology used in this Grant Funding Change Letter shall be interpreted in accordance with the Original Grant referenced above.

**3. NO ORDER FOR WORK**

This Grant Funding Change Letter modifies the available funding only and does not constitute an order or authorization for any specific services or goods under the Grant.

**4. GRANT FUNDING CHANGE LETTER EFFECTIVE DATE:**

The effective date of this Grant Funding Change Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

<p><b>STATE OF COLORADO</b>          Jared S. Polis, Governor          INSERT-Name of Agency or IHE          INSERT-Name &amp; Title of Head of Agency or IHE</p> <p>_____</p> <p>By: Name &amp; Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>
<p>In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b>  <b>Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____</p> <p>Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Grant Funding Change Letter Effective Date: _____</p>

## **EXHIBIT B, GRANT REQUIREMENTS**

The following terms as used herein shall be construed and interpreted as follows:

### **1. AUDIT REQUIREMENTS**

#### **A. DUE DATE:**

##### **I. PROJECT START:**

The Grantee must submit the most recent audit or financial review, including the corresponding management letter, to DCJ within thirty (30) days of request; and, if the most recent audit/financial review has not already been submitted to DCJ, it must be submitted within thirty (30) days of the start of this project.

##### **II. PROJECT DURATION AND END:**

The Grantee assures that it will procure an audit or financial review, incorporating this grant award, by an independent Certified Public Accountant (CPA), licensed to practice in Colorado. The audit or financial review incorporating this grant award must be completed and received by DCJ within nine (9) months of the end of the fiscal years that includes the end date of the grant, or within thirty (30) days of the completion of such audit or review, whichever is earlier. Failure to do

#### **B. REPORT/AUDIT TYPE:**

**I.** If your entity expended \$750,000 or more in Federal funds (from all sources including pass-through subawards) in your organization's fiscal year (12-month turnaround reporting period), your organization is required to arrange for a single organization-wide audit conducted in accordance with the provisions of Title 2 C.F.R. Subpart F (§ 200.500 et seq.)

**II.** *[NOT APPLICABLE TO SUBGRANTEES AS DEFINED IN §3.DD. "SUBGRANTEE"]* If your entity expends less than \$750,000 in Federal funds (from all sources including pass-through subawards) in your organization's fiscal year (12-month turnaround reporting period), your organization is required to arrange for either an audit or financial review as follows:

1. Grantees that have revenue greater than \$300,000 from all sources during the entity's fiscal year are required by DCJ to obtain a financial audit.
2. Grantees that have revenue less than \$300,000 from all sources during the entity's fiscal year are required by DCJ to obtain a financial audit or financial review. A compilation is not sufficient to satisfy this requirement.

#### **C. REPORT/AUDIT COSTS:**

The Grantee accepts responsibility for the costs of a financial program audit to be performed by the Department of Public Safety in the event that the audit report or financial review:

- I.** does not meet the applicable federal audit or DCJ standards;
- II.** is not submitted in a timely manner; or,
- III.** does not provide an audit response plan with corresponding corrections made sufficient to satisfy any audit findings.

#### **D. FAILURE TO COMPLY:**

The grantee understands and agrees that DCJ or the federal awarding office (DOJ) may withhold award funds, or may impose other related requirements, if the grantee does not satisfactorily and promptly address outstanding issues from audits required by Part 200 Uniform Requirements, by the terms of this award, by the current addition of the DOJ Grants Financial Guide, or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

#### **2. ADDITIONAL REPORTING REQUIREMENTS**

In addition to quarterly report requirements these grant funds may have additional report requirements. The additional reports may include, but is not limited to, reporting progress and statistics directly into a federal Performance Management Tool (PMT).

#### **3. FINANCIAL AND ADMINISTRATIVE MANAGEMENT**

- A. The Grantee assures that fund accounting, auditing, monitoring, evaluation procedures and such records as necessary will be maintained to assure adequate internal fiscal controls, proper financial management, efficient disbursement of funds received, and maintenance of required source documentation for all costs incurred. These principles must be applied for all costs incurred whether charged on a direct or indirect basis.
- B. All expenditures must be supported by appropriate source documentation. Only actual, approved, allowable expenditures will be permitted.
- C. The Grantee assures that it will comply with the applicable Administrative Guide of the Division of Criminal Justice (Guide), located at the Division of Criminal Justice Grants website. However, such a guide cannot cover every foreseeable contingency, and the Grantee is ultimately responsible for compliance with applicable state and federal laws, rules and regulations. In the event of conflicts or inconsistencies between the Guide and any applicable state and federal laws, rules and regulations, such conflicts or inconsistencies shall be resolved by applicable state and federal laws, rules and regulations.

#### **4. PROCUREMENT AND CONTRACTS**

- A. Grantee assures that open, competitive procurement procedures will be followed for all purchases under the grant. All contracts for professional services, of any amount, and equipment purchases over five thousand dollars (per item, with a useful life of at least one year) must receive prior approval by the DCJ. Grantee shall submit Form 16 – Professional Services/Consultant Certification and/or Form 13 – Equipment Procurement Certification Form.
- B. Grantee may not assign its rights or duties under this grant without the prior written consent of the DCJ.

#### **5. AWARD CHANGE REQUESTS**

- A. Grantee may request budget modifications by submitting a request to DCJ. DCJ reserves the right to make and authorize modifications, adjustments, and/or revisions to the Contract for the purpose of making changes in budget categories, extensions of grant award dates, changes in goals and objectives, and other modifications as described in the body of the Contract.

### **EXHIBIT C, SPECIAL CONDITIONS**

The following program specific requirements are imposed by the State concerning special requirements of law, program requirements, and other administrative requirements. These requirements apply to this Agreement and must be passed on to subgrant award recipients.

The following Special Conditions documents, if checked, are incorporated herein.

- Insert Applicable Special Conditions Documents (e.g. “2020-22 State Victims Assistance and Law Enforcement Fund (State VALE) Special Conditions”)
- Insert Applicable Special Conditions Documents (e.g. “2017-21 State Victims Assistance and Law Enforcement Fund (State VALE) Special Conditions”)

Additional Program Specific Conditions applicable to this Agreement.

1. Grantee and all Subgrantees or Subgrants shall comply with Colorado law including, SB20-200 (CO Secure Savings Program). <https://treasury.colorado.gov/colorado-secure-savings-program>
2. Insert program specific special conditions
3. Insert program specific special conditions
4. Insert program specific special conditions
5. Continue as needed

**EXHIBIT D, STATEMENT OF WORK**

The Statement of Work contained within the DocuSign Envelope is incorporated herein.

## **EXHIBIT E, BUDGET**

The Budget and Budget Narrative contained within the DocuSign Envelope is incorporated herein.