

# STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

## COVER PAGE

<b>State Agency</b> Colorado Department of Law, on behalf of the Division of Community Engagement	<b>Grant Number</b> CTGG1 LAAA 20240000000000000014
<b>Grantee</b> City and County of Denver	<b>Grant Performance Beginning Date</b> The later of the Effective Date or July 1, 2024
<b>Grant Maximum Amount</b> Initial Term State Fiscal Year 2025- 2026 \$541,158.00  Total for All State Fiscal Years \$541,158.00	<b>Initial Grant Expiration Date</b> June 30, 2026
	<b>Grant Authority</b> § 24-31-108, C.R.S. (4)(a)
<b>Grant Purpose</b> The purpose of this Agreement is for the Department of Law to award grant funds to the Denver Department of Public Health and Environment to address youth vaping.	
<b>Exhibits and Order of Precedence</b> The following Exhibits and attachments are included with this Grant: <ol style="list-style-type: none"> <li>Exhibit A, Statement of Work</li> <li>Exhibit B, Budget</li> <li>Exhibit C, Sample Option Letter.</li> </ol> In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"> <li>Colorado Special Provisions in §18 of the main body of this Grant.</li> <li>The provisions of the other sections of the main body of this Grant.</li> <li>Exhibit A, Statement of Work.</li> <li>Exhibit B, Budget.</li> <li>Exhibit C, Sample Option Letter.</li> </ol>	
<b>Principal Representatives</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> For the State:  Riley McIntyre or current Director of Grants and  Partnerships  Department of Law  1300 Broadway  10<sup>th</sup> Floor  Denver, CO 80203  <a href="mailto:Oce.grantmgmt@coag.gov">Oce.grantmgmt@coag.gov</a> </div> <div style="width: 45%;"> For Grantee:  Teddy Montoya   Denver Department of Public Health and Environment  101 W Colfax Ave  Unit 800  Denver, CO 80202  <a href="mailto:Teddy.montoya@denvergov.org">Teddy.montoya@denvergov.org</a> </div> </div>	

## SIGNATURE PAGE

### THE PARTIES HERETO HAVE EXECUTED THIS GRANT

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

<p><b>GRANTEE</b> Denver Department of Public Health and Environment</p> <hr/> <p>By: Alice Nightengale, Interim Executive Director</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Philip J. Weiser, Attorney General Department of Law</p> <hr/> <p>By: Peggy Valdez, Chief Administrative Officer</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Grant 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: _____ Melissa Moynham, Department of Law, State Controller Delegate</p> <p>Effective Date: _____</p>	

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### 1. PARTIES

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

### 2. TERM AND EFFECTIVE DATE

#### A. Effective Date

This Grant shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Grant before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Grant.

#### B. Initial Term

The Parties’ respective performances under this Grant shall commence on the Grant Performance Beginning Date shown on the Cover Page for this Grant and shall terminate on the Initial Grant Expiration Date shown on the Cover Page for this Grant (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Grant.

#### C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Grant beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Grant (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 the Sample Option Letter attached to this Grant. Except as stated in §2.D, the total duration of this Grant, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the State Purchasing Director in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Grant 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 Grant 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 Grant or modification extending the total term of this Grant.

E. Early Termination in the Public Interest

The State is entering into this Grant to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant ceases to further the public interest of the State, the State, in its discretion, may terminate this Grant in whole or in part. A determination that this Grant 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 Grant 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 Grant, 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.a.

iii. Payments

If the State terminates this Grant in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Grant is less than 60% completed, as determined by the State, the State may reimburse Grantee for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Grant, incurred by Grantee which are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Breach of Grant”** means the failure of a Party to perform any of its obligations in accordance with this Grant, in whole or in part or in a timely or satisfactory manner. If

Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Grant, then such debarment or suspension shall constitute a breach.

- B. **“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.
- C. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- D. **“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.
- E. **“Grant”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- F. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. **“End of Term Extension”** means the time period defined in §2.D.
- I. **“Effective Date”** means the date on which this Grant is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Grant. If this Grant is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Grant shall be the later of the date on which this Grant is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Grant is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Grant.
- J. **“Exhibits”** means the exhibits and attachments included with this Grant as shown on the Cover Page for this Grant.
- K. **“Extension Term”** means the time period defined in §2.C.
- L. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- 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 Information 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.B.
- O. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- Q. **“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. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- R. **“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.
- S. **“Services”** means the services to be performed by Grantee as set forth in this Grant, and shall include any services to be rendered by Grantee in connection with the Goods.
- T. **“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.
- U. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- V. **“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.
- W. **“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.
- X. **“Sub-Grantee”** means third-parties, if any, engaged by Grantee to aid in performance of the Work.

- Y. **“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.
- Z. **“Work”** means the Goods delivered and Services performed pursuant to this Grant.
- AA. **“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, 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 Grant 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 Grant and in accordance with the provisions of Exhibit A. 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 Grant.

#### 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 Grant that exceeds the Grant Maximum for that State Fiscal Year shown on the Cover Page for this Grant.

##### B. **Payment Procedures**

###### i. **Invoices and Payment**

- a. The State shall pay Grantee in the amounts on the Cover Page of this Agreement and in accordance with the schedule and other conditions set forth in Exhibit A.
- 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 Grant.

###### ii. **Interest**

Amounts not paid by the State within 45 days after 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 Grant 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 Grant, the State may, upon written notice, terminate this Grant, 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 Grant were terminated in the public interest as described in §2.E.

## 6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any Grant 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 Grant. 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 Grant or may affect Grantee's ability to perform its obligations under this Grant, Grantee shall, within 10 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 Grant.

C. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Grantee shall provide written notice to the State, in accordance with §14 and in a form designated by the State, within 20 days following the earlier to occur of Grantee's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Sub-Grantee to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Grantee to provide notice to the State under this section shall constitute a breach of this Grant. This section shall not apply if the Grant Funds include any federal funds.

## 7. GRANTEE RECORDS

A. Maintenance

Grantee shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Grantee Records"). Grantee Records shall include all documents, records, communications, notes and other materials maintained by Grantee that relate to any Work performed by Sub-Grantees, and Grantee shall maintain all records related to the Work performed by Sub-Grantees required to ensure proper performance of that Work. Grantee shall maintain Grantee Records until the last to occur of: (i) the date three years after the date this Grant expires or is terminated, (ii) final payment under this Grant is made, (iii) the resolution of any pending Grant matters, or (iv) if an audit is occurring, or Grantee has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State 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, in its discretion, may monitor Grantee's performance of its obligations under this Grant using procedures as determined by the State. 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 Grant or the Work, whether the audit is conducted by Grantee or a third party.

## 8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall keep confidential, and cause all Sub-Grantees 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 Grant, 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. If Grantee or any of its Sub-Grantees will or may receive the following types of data, Grantee or its Sub-Grantees shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. 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 and Sub-Grantees as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Sub-Grantees who require access to perform their obligations under this Grant. Grantee shall ensure all such agents, employees, assigns, and Sub-Grantees sign agreements containing nondisclosure provisions at least as protective as those in this Grant, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Sub-Grantee 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 Grant, 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 or Sub-Grantees 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, in its sole discretion and at Grantee's sole expense, require Grantee to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Grantee shall provide the State with the results of such audit and evidence of Grantee's planned remediation in response to any negative findings.

E. Data Protection and Handling

Grantee shall ensure that all State Records and Work Product in the possession of Grantee or any Sub-Grantees are protected and handled in accordance with the requirements of this Grant, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Grantee or any of its Sub-Grantees will or may receive PII under this Grant, 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. In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Grantee, including, but not limited to, Grantee's employees, agents and Sub-Grantees, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Grantee is given direct access to any State databases containing PII, Grantee shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit \_\_\_ on an annual basis Grantee's duty and obligation to certify as set forth in Exhibit \_\_\_ shall continue as long as Grantee has direct access to any State databases containing PII. If Grantee uses any Sub-Grantees to perform services requiring direct access to State databases containing PII, the Grantee shall require such Sub-Grantees to execute and deliver the certification to the State on an annual basis, so long as the Sub-Grantee has access to State databases containing PII.

**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 Grant. Such a conflict of interest would arise when a Grantee or Sub-Grantee'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 Grant.

B. Apparent Conflicts of Interest

Grantee acknowledges that, with respect to this Grant, 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 Grant.

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 Grant.

D. Ethical Principles

Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.

## 10. INSURANCE

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

A. Grantee Insurance

The Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Sub-Grantee Requirements

Grantee shall ensure that each Sub-Grantee that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Grant, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Sub-Grantee's obligations under the GIA. Grantee shall ensure that each Sub-Grantee that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Grant all of the following insurance policies:

i. Workers' Compensation

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

ii. General Liability

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

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;

- c. \$1,000,000 products and completed operations aggregate; and
    - d. \$50,000 any one fire.
  - iii. Automobile Liability
 

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.
  - iv. Protected Information
 

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

    - a. \$1,000,000 each occurrence; and
    - b. \$2,000,000 general aggregate.
  - v. Professional Liability Insurance
 

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

    - a. \$1,000,000 each occurrence; and
    - b. \$1,000,000 general aggregate.
  - vi. Crime Insurance
 

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

    - a. \$1,000,000 each occurrence; and
    - b. \$1,000,000 general aggregate.
- C. Additional Insured
- The State shall be named as additional insured on all commercial general liability policies (leases and construction Grants require additional insured coverage for completed operations) required of Grantee and Sub-Grantees.
- D. Primacy of Coverage
- Coverage required of Grantee and each Sub-Grantee shall be primary over any insurance or self-insurance program carried by Grantee or the State.
- E. 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.
- F. Subrogation Waiver
- All commercial insurance policies secured or maintained by Grantee or its Sub-Grantees in relation to this Grant 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.

## G. Certificates

For each commercial insurance plan provided by Grantee under this Grant, Grantee shall provide to the State certificates evidencing Grantee's insurance coverage required in this Grant within seven Business Days following the Effective Date. Grantee shall provide to the State certificates evidencing Sub-Grantee insurance coverage required under this Grant within seven Business Days following the Effective Date, except that, if Grantee's Sub-Grant is not in effect as of the Effective Date, Grantee shall provide to the State certificates showing Sub-Grantee insurance coverage required under this Grant within seven Business Days following Grantee's execution of the Sub-Grant. No later than 15 days before the expiration date of Grantee's or any Sub-Grantee's coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Grant, 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 §10.

## 11. BREACH OF GRANT

In the event of a Breach of Grant, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Grant, 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 Grant to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Grant in whole or in part or institute any other remedy in this Grant 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 Grant in whole or in part or institute any other remedy in this Grant 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 Grant 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 Grant 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 Grant or any part of this Grant. Grantee shall continue performance of this Grant 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 and Sub-Grants 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 Grant'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 or Sub-

Grants. 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 Grant 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, or Sub-Grantees from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Grant 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 Grant 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 Grant which cannot be resolved by the designated Grant 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.A fails to resolve the dispute within 10 Business Days, Grantee shall submit any alleged breach of this Grant by the State to the Procurement Official of the State Agency named on the Cover Page of this Grant as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§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, under the Resolution Statutes before Grantee pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

### 14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Grant shall be the principal representative of the designating Party. All notices required or permitted to be given under this Grant 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 Grant. 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 Grant. 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 Grant.

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

### **A. Work Product**

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. Whether or not Grantee is under Grant 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. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

#### **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.

### **B. Exclusive Property of the State**

Except to the extent specifically provided elsewhere in this Grant, 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 Grant without the prior written consent of the State. Upon termination of this Grant 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 the Grant, 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 Grant or a State approved license agreement: (i) entered into as exhibits to this Grant; (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. STATEWIDE GRANT MANAGEMENT SYSTEM**

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §16 shall apply. Grantee agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, and §24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Grant performance information in the State's Grant management system ("Grant Management System" or "CMS"). Grantee's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Grant, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

**17. GENERAL PROVISIONS**

A. Assignment

Grantee's rights and obligations under this Grant 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 Grant.

B. Sub-Grants

Grantee shall not enter into any Sub-Grant in connection with its obligations under this Grant without the prior, written approval of the State. Grantee shall submit to the State a copy of each such Sub-Grant upon request by the State. All Sub-Grants entered into by Grantee in connection with this Grant 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 Grant.

C. Binding Effect

Except as otherwise provided in §17.A, all provisions of this Grant, 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 Grant and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant 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 Grant 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 Grant 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 Grant. Prior or contemporaneous additions, deletions, or other changes to this Grant 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 Grant, 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 Grant by reference.

I. Modification

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

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

Any reference in this Grant 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 Grant.

K. Severability

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

L. Survival of Certain Grant Terms

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

M. 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 Grant.

N. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §17.A, this Grant does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Grant 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 Grant are incidental to this Grant, and do not create any rights for such third parties.

O. Waiver

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

P. CORA Disclosure

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

Q. Standard and Manner of Performance

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

R. Licenses, Permits, and Other Authorizations.

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

S. 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, Sub-Grantees, or assignees in connection with this Grant.

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 Sub-Grantees 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.

iv. Accessibility Indemnification

Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Grantee's failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

T. Accessibility

- i. Grantee shall comply with and the Work Product provided under this Grant shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Grantee shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Grantee's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Grantee's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

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

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

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

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

Grantee shall perform its duties hereunder as an independent Grantee 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 Grant. 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 Grant. 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 Grant 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 Grant 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 Grant 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 Grant 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 Grant 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 Grant, including, without limitation, immediate termination of this Grant 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 Grant. 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.

## EXHIBIT A, STATEMENT OF WORK

### 1. PROJECT OVERVIEW AND OBJECTIVES

The Colorado Department of Law (DOL) announced funding to support programs that work to address youth vaping in Colorado. Funds were designated to support entities with programming seeking to serve either or both of the following objectives:

**Vaping cessation:** Work within this objective includes programming providing cessation assistance to Colorado residents who were exposed to ENDS while under the age of 21. Examples include but are not limited to:

- Evidenced-based cessation programs that are accessible and that are culturally tailored and appropriate or designed for youth.
- Initiatives that provide trauma-informed counseling, support groups, and nicotine replacement therapies to help youth quit vaping and address mental health impacts.

**Vaping prevention and education:** Work within this objective includes programming that is designed to prevent or reduce use of ENDS by Colorado residents who are under the age 21. Examples include but are not limited to:

- Programs that are designed to encourage greater connections with trusted adults, honest and authentic support for peers who are struggling, and support for mental health that can prevent the use of vaping.
- Comprehensive education campaigns that use a targeted approach to raise awareness about the risks and consequences of vaping, debunking myths about their reduced harm/harmlessness, and promote healthy alternatives.
- Presentations, workshops, or peer-led activities that discourage vaping and provide support and resources for those struggling with addiction.
- Incorporation of social media, streaming and app-based platforms to raise awareness and engage youth.
- Outreach that engages parents/guardians and communities in the effort to combat vaping and that provides resources, workshops, and support networks to families.

DDPHE will use funds awarded by the CO Attorney General's Office to address the escalating youth vaping crisis in Denver by integrating mental health support and comprehensive cessation strategies. Our approach centers on trauma-informed counseling, nicotine replacement therapy, and community engagement facilitated by a dedicated Youth Advisory Board. The initiative's goals include providing specialized counseling services, conducting a health needs assessment, developing a youth cessation toolkit, and mobilizing a Youth Advisory Board for community outreach. Our multidimensional strategy prioritizes the mental well-being of affected youth and aims to reduce vaping prevalence through evidence-based interventions. This grant will enable us to implement a holistic program addressing the physical, mental, and social aspects of youth health, fostering long-term positive outcomes in Denver's communities.



## **2. TERMINOLOGY**

In addition to the terms defined in §5 of this Grant Agreement, acronyms and abbreviations are defined at their first occurrence in this Exhibit A, Statement of Work. The following list of terms shall be construed and interpreted as follows:

- A. Closeout - the process to determine if all applicable administrative actions and all required work of the grant have been completed.
- B. Deliverable - any tangible or intangible object produced by Grantee as a result of the work that is intended to be delivered to the State, regardless of whether the object is specifically described or called out as a “Deliverable” or not. For example, quarterly reports.
- C. The Colorado Department of Law (“DOL”, “State”, “Department”) - a department of the government of the State of Colorado.
- D. Final Report - report submitted at during the Closeout period that summarizes the activities carried out, key outcomes accomplished and expenses of the Grant.
- E. Grantee - An individual or organization that has been awarded a grant.
- F. Key Personnel - The position or positions that are specifically designated as such in this Grant Agreement.
- G. Other Personnel - Individuals and Sub-Grantees, in addition to Key Personnel, assigned to positions to complete tasks associated with the Work.
- H. Program Manager – The State Grant Manager or project lead working with Grantee.
- I. Quarter(s) - Four distinct three-month time periods over the duration of fiscal year(s) in the grant agreement. The State of Colorado’s quarters are as follows: January-March, April-June, July-September, and October-December.

### **2.1.1. GRANTEE’S GENERAL REQUIREMENTS**

- A. Grantee shall work cooperatively with State staff and, if applicable, the staff of other State Grantees to ensure the completion of the Work. The State may, in its sole discretion, use other Grantees to perform activities related to the Work that are not contained in the Grant or to perform any of the State’s responsibilities. In the event of a conflict between Grantee and any other State Grantee, the State will resolve the conflict and Grantee shall abide by the resolution provided by the State.
- B. Grantee Deliverables

No Deliverable, report, data, procedure or system created by Grantee for the State that is necessary to fulfilling Grantee's responsibilities under the Grant, as determined by the State, shall be considered proprietary.

- C. Communication Requirements

Communication with the State: All communication, forms, and supporting documentation shall be sent via email to the Program Manager:

Division of Community Engagement, Colorado Department of Law

[OCE.GrantMgmt@coag.gov](mailto:OCE.GrantMgmt@coag.gov)

Any change to the Exhibit B- Budget or Attachment 1 – Work Plan must be communicated and approved by the Program Manager prior to reimbursement for any expenses related to a proposed change.

Communication with the Public: Grantee shall not engage in any non-routine communication with the media or the public related to the Work without the prior written consent of the State.

D. Modifications

Any modification to the Exhibit B - Budget or Attachment 1 - Work Plan must be communicated and approved by the Program Manager prior to reimbursement for any expenses related to a proposed change. Any change must be in accordance with guidelines established by DOL.

E. Personnel Requirements

Grantee shall provide qualified Key Personnel and Other Personnel as necessary to perform the Work throughout the term of the Grant.

Any change to Key Personnel or Other Personnel must be communicated to DOL within 10 days via email.

If any of Grantee's Key Personnel or Other Personnel are required to have and maintain any professional licensure or certification issued by any federal, state or local government agency, then Grantee shall submit copies of such current licenses and certifications to the State.

Grantee shall designate people to hold the following Key Personnel positions:

Project Director and Principal Representative: The Project Director and Principal Representative shall be responsible for all of the following:

- Serving as Grantee's primary point of contact for the State.
- Ensuring the completion of all Work in accordance with the Grant's requirements. This includes, but is not limited to, ensuring the accuracy, timeliness and completeness of all work.
- Communicating with Program Manager regarding any potential modification requests following DOL guidelines.
- Ensuring compliance with all the provisions within the Agreement.

Fiscal Contact: The Fiscal Contact shall be responsible for all of the following:

- Ensuring accurate financial reports and reimbursement requests are submitted.
- Maintaining complete documentation for all project-related expenses.

Authorized Signer: The Authorized Signer shall be responsible for the following:

- Entering into this Agreement on behalf of the organization and ensuring compliance with all of the provisions within the Agreement.

Other Personnel Responsibilities: Grantee shall follow the Personnel section of Exhibit B - Budget. Other Personnel shall carry out project related activities as described in the project description, Budget narrative and Work Plan. Reimbursement for Personnel time should be in

alignment with the percentage of time spent on the project as indicated in Exhibit B -Budget and supported by timesheets.

### **2.1.2. PROJECT SPECIFIC STATEMENT OF WORK**

Grantee shall timely perform and deliver all project milestones, deliverables, and necessary components as outlined in Attachment 1 - Work Plan, hereto incorporated by reference to the Statement of Work,

Grantee shall utilize the awarded funds to support the specific circumstances identified in Attachment – Work Plan no later than two years after the Effective Date and shall provide proof of expenditure at the request of the DOL.

The Program Manager, or representative, will inspect the final project for completeness.

### **3. REPORTING REQUIREMENTS**

Grantee shall provide the DOL progress reports on a quarterly basis within 15 days of the end of the Quarter. These reports shall include a summary of progress on the goals, objectives and deliverables stated in the Work Plan. If DOL provides a reporting template, the Grantee shall use the reporting template for the quarterly reports.

During the Close Out Period, Grantee shall deliver to DOL a Final Report, sent via email to the Program Manager, no later than the Project Completion Date. The Final Report shall include:

- Summary of activities completed in furtherance of the Grant,
- Summary of key outcomes of the Grant (both anticipated and unanticipated outcomes)
- Summary of all expenses,
- Other outcomes indicated in the grant application or Work Plan.

If any due date for a report, invoice or Deliverable falls on a day that is not a Business Day, then the due date shall be automatically extended to the next Business Day, unless otherwise directed by the State.

### **4. CLOSE-OUT PERIODS**

During the Closeout Period, Grantee shall complete all of the following:

Complete a Final Report and send it via email to the Program Manager no later than 30 days after the Initial Agreement Expiration Date.

Notify any Sub-Grantees of the termination of the Grant, as directed by the State.

The Closeout Period may extend past the termination of the Grant. The State will perform a closeout review to ensure that Grantee has completed all requirements of the Closeout Period. If Grantee has not completed all of the requirements of the Closeout Period by the date of the termination of the Grant, then any incomplete requirements, i.e. delivery of the Final Report, shall survive termination of the Grant.

### **5. REIMBURSEMENT AND INVOICING**

Compensation

Detailed Invoicing and Payment Procedures

Grantee shall invoice the State on a monthly basis, by the 15th Business Day of the month following the end of the month for which the invoice covers. Grantee shall not invoice the State for months prior to the last day of the month in the quarter.

The invoice shall contain all of the following for the month for which the invoice covers:

1. Invoice Number.
2. Invoice Date.
3. A breakdown of expenses by budget category and line item.
4. The total net amount owed to Grantee Agency for the period covered by the invoice.

If the DOL provides an invoice template, the Grantee shall use the template when submitting monthly invoices.

Grantee must maintain supporting documentation equal to 100% of the total net amount owed to Grantee for the month invoiced, including copies of any Sub-Grantor invoices. Grantee shall provide this supporting documentation to the DOL Program Manager if requested.

#### Carryover Funding

The Initial Term of this agreement is two years, aligned to the State's Fiscal Year calendar. If, at the end of the Fiscal Year 1 in the Initial Term, the Grantee is underspent from their stated Fiscal Year 1 expenses in Exhibit B – Budget and Attachment 1 – Work Plan, Grantee may be allowed to carryover up to 20% of the underspent funds to Fiscal Year 2 of the Initial Term. The approved carryover funds shall only be expended on approved costs, as outlined in the Grant Agreement, as amended. The final carryover percentage will be determined by, and in the State's sole discretion and this provision is subject to Section 18.B. of the Grant Agreement, as amended.

If Grantee proposes to carryover more than 20% of unobligated and unexpended Fiscal Year 1 funds into Fiscal Year 2 of the Initial Term, Grantee must provide a written proposal to the State's Principal Representative at least thirty (30) days prior to the end of Fiscal Year 1. Grantee's proposal must provide justification for the underspent amount and how Grantee plans to use the funds in Fiscal Year 2 of the Initial Term. Grantee shall work with their State Grant Manager to discuss this justification prior to submitting it. Grantee shall not be permitted to carryover funds beyond the Expiration Date of the Grant. Unobligated and unexpended Grant funds in excess of 20% the Fiscal Year 1 total of the Initial Term shall be forfeit by Grantee without written State approval to carryover funds.

#### Accounting

At all times from the Agreement Effective Date until completion of the Work, Grantee shall maintain properly segregated books of State Funds and other funds associated with the Work. All invoices associated with the performance of Services shall be documented in a detailed and specific manner, and shall accord with the Budget set forth in Exhibit B. Grantee shall make and maintain accounting and financial books and records documenting its performance under the Statement of Work in a form consistent with good accounting practices. Grantee shall provide a Statement of Activity or equivalent document from their accounting system to support the expenses being requested for reimbursement upon request from the DOL Program Manager.

#### Closeout Payments

Notwithstanding anything to the contrary in this Grant, all payments for the final month of this Grant shall be paid to Grantee no sooner than 10 days after the State has determined that Grantee has completed all of the requirements of the Closeout Period.

## EXHIBIT C, 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	<b>Original Grant Number</b> Insert CMS number or Other Grant Number of the Original Grant
<b>Current Grant Maximum Amount</b> Initial Term State Fiscal Year 20xx                      \$0.00 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 Total for All State Fiscal Years              \$0.00	<b>Option Grant Number</b> Insert CMS number or Other Grant Number of this Option  <b>Grant Performance Beginning Date</b> Month Day, Year  <b>Current Grant 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 Grant
- C. Option to change the quantity of Services under the Grant
- D. Option to modify Grant rates
- E. Option to initiate next phase of the Grant

**2. REQUIRED PROVISIONS:**

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Grant referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Grant expiration date shown above, at the rates stated in the Original Grant, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Grant 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 Grant, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Grant referenced above, the State hereby exercises its option to modify the Grant rates specified in Exhibit/Section Number/Letter. The Grant rates attached to this Option Letter replace the rates in the Original Grant 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 Grant 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 Grant Maximum Amount:** The Grant Maximum Amount table on the Grant's Signature and Cover Page is hereby deleted and replaced with the Current Grant Maximum Amount table shown above.

**3. OPTION EFFECTIVE DATE:**

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

<p style="text-align: center;"><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> <hr style="width: 80%; margin-left: 0;"/> <p>By: Name &amp; Title of Person Signing for Agency or IHE</p>  <p>Date: _____</p>	<p style="text-align: center;">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 style="text-align: center;"><b>STATE CONTROLLER</b>  <b>Robert Jaros, CPA, MBA, JD</b></p>  <p>By: _____          Name of Agency or IHE Delegate-Please delete if Grant will be routed to OSC for approval</p>  <p style="text-align: center;">Option Effective Date: _____</p>
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