

**COLORADO JUDICIAL DEPARTMENT
PURCHASE ORDER
TERMS AND CONDITIONS**

Rev. 6/22/2023

1. Pre-existing Contract Controls. If this transaction may arise out of, relate to, or in any way be governed by a fully signed, written agreement that is in effect between Vendor and the Colorado Judicial Department or any of its subdivisions, or a cooperative agreement binding upon Vendor, the terms and conditions of such signed, written agreement in effect control this transaction and replace and supersede these Purchase Order terms and conditions herein.

2. Offer/Acceptance. This Purchase Order, consisting of the Purchase Order form together with these terms and conditions, and any other attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference (collectively the "PO") shall represent the entire and exclusive agreement between the State of Colorado Judicial Department ("Department") and the Vendor. Department and Vendor may individually be referred to as "Party" or collectively as "Parties."

a. This PO represents an OFFER TO BUY, subject to Vendor's acceptance, demonstrated by Vendor's full or partial performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by Department accepting a counter-offer.

b. If this PO is in response to Vendor's bid, quote or proposal, this PO is an ACCEPTANCE of Vendor's OFFER TO SELL in accordance with the service or product description and quantities identified therein, and including these terms and conditions. In the event Vendor's bid, quote or proposal was in response to Department's solicitation, to include an RFQ, RFP, IFB, or any other form of order by Department, this PO incorporates the terms and conditions of such solicitation that are not in conflict with this PO.

c. This PO shall supersede and control over any Vendor form(s) or part(s) thereof included in or attached to any bid, quote, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof.

3. Changes. Vendor shall furnish products and/or services strictly in accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by Department's Representative and accepted by Vendor. Each shipment received or service performed shall comply with the terms of this PO, unless this PO has been modified, superseded or otherwise altered in accordance with this section.

4. Fee and Payment. Department shall compensate Vendor for the services fully performed and/or goods delivered as specified by this PO. Department's standard payment procedures are net 45 days following Department's receipt of products or services and Vendor's fully complete and correct invoice. The invoice must be approved by Department and must correctly identify the services performed, including all dates of performance, and/or goods delivered by Vendor under this PO. If Department determines that the invoice is not correct, then Vendor shall make all changes necessary to correct that invoice. Department's acceptance of an invoice does not necessarily constitute acceptance of services performed and/or goods delivered under this PO. Department may require that payment occur through electronic fund transfer ("EFT"). Department may require Vendor to utilize Department's electronic vouchering/invoicing system. Department may recover, at Department's discretion, payments made to Vendor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Vendor. Department may recover such payments by deduction from subsequent payments under this PO, deduction from any payment due under any other purchase order, contracts, grants or agreements between Department and Vendor, or by any other appropriate method for collecting debt.

d. **Not a Wage or Salary.** It is specifically agreed that the fees paid under this PO are neither salary nor hourly wage, and any computation of fees based on performance time is for convenience of the Parties in determining value of service and not as salary or hourly wage.

5. Safety Information. All chemicals, equipment and materials proposed and/or used in the performance of

this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970, among other workplace and environmental safety regulations and laws in effect. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

6. Delivery. Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. Department is relying on the promised delivery date, installation, and/or service performance set forth in Vendor's bid, quote, or proposal as material and basic to Department's acceptance. Vendor agrees that "time is of the essence," and if Vendor fails to deliver or perform as and when promised, Department, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge Vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised.

7. Quality. Department shall be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise specified.

8. Warranties. All provisions and remedies of the Colorado Uniform Commercial Code, C.R.S., Title 4, C.R.S. ("CUCC"), relating to implied and/or express warranties are incorporated herein, in addition to any warranties contained in this PO or the specifications.

9. Inspection and Acceptance. Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, Department may exercise all of its rights, including those provided in the CUCC. Department shall have the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this section includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to PO requirements, as determined solely by Department, Department may require Vendor to perform the services again in conformity with PO requirements, without additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, Department may (a) require Vendor to take necessary action to ensure that future performance conforms to PO requirements and (b) equitably reduce the payment due Vendor to reflect the reduced value of the services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.

10. Status as Independent Contractor. This PO does not constitute a hiring by either Party. It is the Parties' intention that Vendor shall perform its duties hereunder as an independent contractor and not as an employee for all purposes, including, but not limited to, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, no federal, state or local income tax or payroll tax of any kind, and no retirement contribution shall be withheld or paid by Department on behalf of Vendor or the employees of Vendor, if any. Vendor shall not have authorization, express or implied, to bind Department to any agreement, liability or understanding, except as expressly set forth herein. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by Department, and (c) be solely responsible for its acts and those of its employees and agents. Department shall provide no training to Vendor, inasmuch as Vendor already possesses the skills needed to perform the work required under this PO.

11. Performance Specifications. Department shall not exercise control over Vendor by overseeing the actual work or instructing Vendor as to how the work will be performed; however, the Parties agree that Vendor shall perform the services in accordance with recognized industry standards of care, skill and diligence for the type of services to be performed.

12. Licenses, Permits, And Other Authorizations. Vendor shall secure and maintain at all times during the term of this PO, at its sole expense, all licenses, permits, and other authorizations required by federal, state, and local laws and regulations to perform its obligations under this PO.

13. Criminal History Check. The Department requires that all individuals who perform services under this PO must pass a criminal history check before working under the PO, which shall be valid for two years. All such criminal history checks will be carried out, at no charge to the Vendor or the individual, by the

Department's Human Resources Division under standards developed by the Department. In order to request a new or renewal criminal history check, the Vendor must add in the Department's Contract Management System ("CMS") the name and email addresses for each and every individual who will perform any service(s) identified in and/or covered by this PO for the Department. Vendor shall add the names and email addresses for all such individuals in the "Contacts" section of the "Company Profile" in the CMS. Vendor shall then click on "Initiate CHC" or "Re-Initiate CHC" in the CMS, as appropriate for each and every individual so identified. The Department's Human Resources Division will request any necessary documentation from individuals the Vendor identifies by name and email address in the CMS, including any necessary authorization form(s); will process the criminal history check for all such individuals identified in this manner; and will inform the Vendor of the result. The decision as to whether the individual passes the criminal history check will be in the sole discretion of the Department. Vendor shall only use Department's criminal history check result to determine whether the individual may perform services under this PO. Vendor shall not use Department's criminal history check result for any other purpose, including, but not limited to, selection, hiring or retention decisions.

a. **Notification.** Vendor shall notify the Department in writing immediately upon discovering that any individual performing services under this PO pleads guilty to, or is convicted of, a petty, misdemeanor, or felony offense during the term of this PO. At the Department's sole discretion, the individual who pled guilty or was convicted may be subject to the authorization and completion of a new criminal history check, which process shall be initiated in the CMS by Vendor selecting "Re-Initiate CHC" in the CMS for the individual who pled guilty or was convicted. The individual who is subject of the report shall immediately cease performing services under this PO until otherwise informed by the Department.

14. Income Taxes. Vendor understands and agrees that Vendor is responsible to pay, according to law, Vendor's federal, state and local income taxes. If Vendor is not a corporation, Vendor further understands and agrees to pay any self-employment (social security) tax that may be required by law.

15. No Unemployment or Workers' Compensation. Vendor shall not be entitled to unemployment insurance benefits for work performed under this PO, unless unemployment compensation coverage is provided by Vendor or by some entity other than Department. No workers' compensation insurance shall be obtained by Department concerning Vendor or the employees of Vendor, if any. Vendor shall comply with workers' compensation law concerning Vendor and the employees of Vendor, if any.

16. Fringe Benefits. Because Vendor is engaged in Vendor's own independent business, Vendor is not eligible for, and shall not participate in, any employer pension, health, or other fringe benefit plan of the Department.

17. Vendor Offset. Pursuant to §24-30-202.4, as amended, C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, as amended, C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) any other unpaid debts owing to the State of any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the Controller.

18. Insurance. Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as specified in Department's solicitation, and provide proof of such coverage as requested by Department's Representative. If Vendor provides services under this PO, Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as follows, and provide proof of such coverage to Department's Representative:

a. Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of Vendor's employees acting within the course and scope of their employment.

b. Commercial General Liability Insurance written on an ISO occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- 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.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Vendor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Department a certificate or other document satisfactory to the Department showing compliance with this provision.

c. Automobile Liability Insurance covering any auto used in performance of this PO (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

d. Professional liability insurance with an aggregate limit of at least \$1,000,000, if this PO relates to professional services. For policies written on a claims-made basis, the policy shall include an endorsement, certificate or other evidence that coverage extends two years beyond the performance period of the PO. The insurance policy shall not contain a sexual misconduct exclusion.

e. The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability policies. Coverage required by this PO shall be primary over any insurance or self-insurance program carried by the State of Colorado.

f. The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Vendor, and Vendor shall notify the Department by certified mail, personal delivery with receipt or email of any such imminent cancellation or non-renewal within seven days after Vendor's receipt of such notice.

g. Vendor shall require all insurance policies in any way related to this PO and secured and maintained by Vendor to include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

h. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Department.

i. Vendor shall provide certificates showing insurance coverage required by this PO to the Department within seven business days of the Effective Date of this PO, if not previously provided, but in no event later than the commencement of the services or delivery of the goods under this PO. No later than 15 days prior to the expiration date of any such coverage, Vendor shall upload into the CMS in the "Documents & Certs" section in the "Company Profile" certificates of insurance evidencing renewals thereof. At any time during the term of this PO, the Department may request in writing, and Vendor shall thereupon within ten days supply to the Department, evidence satisfactory to the Department of compliance with the provisions of this section.

19. Confidentiality. In the event Vendor obtains access to any records or files of the Department in connection with this PO, or in connection with the performance of its obligations under this PO, Vendor shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the Department. Vendor shall notify its employees and agents, if any, that they are subject to the confidentiality requirements as set forth above, and shall provide each employee or agent with a written explanation of the confidentiality requirements before the employee or agent is permitted access to confidential data. The following provisions are applicable if substance abuse records are at issue:

a. **Confidentiality Laws.** The Parties to this PO shall be bound by all relevant state and federal laws as such laws relate to receiving, storing or exchange of client or victim information. Vendor shall be familiar with and adhere to all federal confidentiality laws applying to personal health information and substance abuse treatment information. These laws include, but are not limited to, federal regulations pertaining to Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and 45 C.F.R. Parts 160 and

164, the federal “Health Insurance Portability and Accountability Act” (HIPAA).

b. **Maintenance of Confidentiality.** Vendor shall maintain the confidentiality of all probation and victim records that are deemed by law or court order to be prohibited from public access. Copies of such records shall be identified as “Confidential,” prior to being turned over to Vendor at the time of referral of a Probationer to the Vendor.

c. **Authorization for Release.** In the event Vendor provides services under this PO to Department’s probationers, Vendor shall require each probationer to sign an “Authorization for Release of Information” allowing Vendor to release necessary confidential data to the appropriate Judicial District Department(s).

20. Intellectual Property, Copyright, Ownership Of Materials. By virtue of the compensation paid by the Department for services rendered by the Vendor and its employees or agents under this PO, Vendor acknowledges that adequate compensation will have been paid for any data, materials, or work products produced or created by the Vendor as a result of this PO. Vendor grants to the Department all right, title and interest in and to all such data, materials, or work products. Further, all copyrights, patents and royalties, if any, arising from the distribution of such data, materials or work products shall become the property of the Department or its assigns. To the extent required by the Department, Vendor shall place a notice of the Department’s copyright on any or all materials produced under this PO. Other rights to pre-existing intellectual properties are as follows:

a. **Exclusive Property of the Department.** Except to the extent specifically provided elsewhere in this PO, all Department records, 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 information provided by or on behalf of the Department to Vendor are the exclusive property of the Department (collectively, “Department Materials”). Vendor shall not use, willingly allow, cause or permit Department Materials to be used for any purpose other than the performance of Vendor’s obligations in this PO without the prior written consent of the Department. Upon termination of this PO for any reason, Vendor shall provide all Department Materials to the Department in a form and manner as directed by the Department.

b. **Exclusive Property of Vendor.** Vendor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Vendor 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 Vendor under the Agreement, whether incorporated in a deliverable or necessary to use a deliverable (collectively, “Vendor Property”). Vendor Property shall be licensed to the Department as set forth in this PO or a Department approved license agreement: (i) entered into as exhibits to this PO, (ii) obtained by the Department 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.

21. Taxes. Department is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code and from all State and local government sales and use taxes. Such exemptions apply when materials are purchased for the benefit of the Department, except that in certain political subdivisions (e.g., City of Denver) Vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to Department. Department shall not reimburse such sales or use taxes.

22. Assignment and Successors. Vendor’s rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the Department. Any attempt at transfer, assignment, or subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by the Department are subject to all of the provisions of this PO. Vendor shall be solely responsible for all aspects of subcontracting arrangements and performance.

23. Indemnification. To the maximum extent allowable by law, Vendor shall indemnify, save and hold harmless the Department, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Vendor, or its employees, agents, subcontractors, or assignees arising out of or in connection with performance of services under this PO. If any article sold or delivered under this PO is covered by a patent, copyright, trademark, or application therefore, Vendor shall indemnify and hold harmless Department from any and all loss, liability,

cost, expenses and legal fees incurred on account of any claims, legal actions or judgments arising out of manufacture, sale or use of such article in violation or infringement of rights under such patent, copyright, trademark or application.

24. Accessibility. If this transaction relates to information technology services, Vendor 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. Vendor 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/>. Vendor shall indemnify, save, and hold harmless the Department, its employees and agents, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by the Department, its employees and agents, in relation to Vendor'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 the State of Colorado Office of Information Technology ("OIT") pursuant to §24-85-103 (2.5), C.R.S.

25. Communication. All communication concerning administration of this PO, prepared by Vendor for Department's use, shall be furnished solely to Department's Representative.

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

27. Termination.

a. **Termination Prior to Shipment or Commencement of Services.** If Vendor has not accepted this PO in writing, Department, with or without cause, may cancel this PO by written or oral notice to Vendor prior to shipment of goods or commencement of services without incurring any liability. Cancellation will be effective upon receipt of the written or oral notice to Vendor.

b. **Default.** Either Party may terminate this PO upon default by the other Party, effective upon receipt of notice or at such other time as may be stated in the notice. "Default" is defined as the failure of a Party to fulfill any of its duties and obligations under this PO. The non-defaulting Party may in its discretion permit the other Party a period of up to two weeks to cure the default.

c. **Loss of Funds.** The Department is prohibited by law from making commitments beyond the term of the current Department Fiscal Year. Payment to Vendor beyond the current Department Fiscal Year is contingent on the appropriation and continuing availability of funding in any subsequent year. In the event that funding for any activity established by this PO is discontinued or decreased by the State of Colorado, or any federal funding source, Department may terminate this PO or reduce its scope effective immediately upon receipt of notice without penalty.

d. **Public Interest.** The Department is entering into this PO for the purpose of carrying out the public policy of the Colorado Judicial Branch. If this PO ceases to further such public policy, the Department may terminate this PO, in whole or in part, for convenience of the Department, when the interests of the Department so require. The Department shall give at least thirty days written notice of such termination, specifying the part of the PO terminated and when the termination becomes effective.

e. **Force Majeure.** If acts of God or government authorities, natural disasters, or other emergencies beyond a Party's reasonable control make it illegal or impossible for such Party to perform its obligations under this PO, such Party may terminate this PO upon written notice to the other Party without liability.

f. **Final Payment.** In the event of termination for any reason, Vendor shall be compensated for the value of services actually performed prior to the effective date of the termination.

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

29. Choice of Law. The construction, interpretation and performance of this PO shall be governed by the laws of the State of Colorado, and any claim arising out of or relating to this PO or breach thereof shall be brought exclusively in the state courts of Colorado. The CUCC shall govern this PO in the case of goods. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations is null and void. Venue for any judicial or administrative action arising out of or in connection with this PO shall be in Denver, Colorado.

30. PERA Status. Vendor shall notify Department of the existence of any person, including Vendor himself/herself if doing business as an individual or sole proprietor, who is providing services to Department under this PO who is a service retiree from the Public Employee Retirement Association (PERA) of Colorado, and who is also an owner or operator, or is related to an owner or operator, of Vendor business entity. If the retiree has in the past worked as a government employee in a position covered by PERA, but will not be receiving retirement benefits from PERA during the pendency of this PO, Vendor shall also notify Department in the event the retiree's status changes to that of PERA benefit recipient during the pendency of this PO. If the retiree is currently receiving retirement benefits from PERA, Vendor understands and agrees, and shall also notify said retiree, that in the event the retiree experiences any reduction or loss of PERA retirement benefits due to work under this PO, Department shall not be liable for reimbursement of any such reduction or loss.

31. Sensitive Data. To the extent Vendor comes in contact with individual personal data owned or otherwise held by the Department as a result of performing under this PO ("Data"), Vendor agrees to use such Data, if at all, only to the extent required to perform its obligations under this PO, and to abide by the requirements of any federal, state and local laws that address the protection and/or use of such Data.

32. Litigation Reporting. If Vendor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this PO or may affect Vendor's ability to perform its obligations under this PO, Vendor shall, within ten days after being served, notify the Department of such action and deliver copies of such pleading or document to the Department's principal representative.

33. Publicity Releases. Vendor agrees not to refer to this PO or the services provided pursuant to this PO in commercial advertising in such a manner as to state or imply that the services provided are endorsed or preferred by the Department.

34. Non-Waiver. The failure of either Party to exercise any of its rights under this PO for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

35. Third Party Beneficiaries. Except for the Parties' respective successors and assigns described in Paragraph 22, this PO does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

36. Severability. If any part of these PO terms and conditions shall be held unenforceable, the rest of this PO will nevertheless remain in full force and effect provided that the Parties can continue to perform their obligations under this PO in accordance with its intent.

37. Substitution of PO by Contract. Vendor acknowledges that Department may elect to replace and supersede this PO in its entirety with a comprehensive, mutual contract in writing, subject to the agreement by Department and Vendor.

38. Signature Authority. This PO shall not be valid unless it is executed by Department's Representative or Purchasing Agent. Department shall not be responsible or liable for products or services delivered or performed prior to proper execution hereof. Department may require Vendor to countersign this PO. In such event, by signing this PO, the person signing on behalf of Vendor hereby swears and affirms that they are authorized to act on Vendor's behalf and acknowledge that Department is relying on their representations to that effect.