

# STATE OF COLORADO FISCAL RULES

## Rule 2-2 COMMITMENT VOUCHERS

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### 1. AUTHORITIES

- CRS §24-30-202 (1-4), and (5)(a) (State Controller Authority)
- CRS §24-30-1401, et seq., (Professional Services)
- CRS §24-102-205 (Centralized Contract Management System)
- CRS §24-102-206 (Contract Performance Outside United States or Colorado)
- CRS §24-103-601 (Right to Audit Records)
- CRS §24-103.5-101 (Monitoring of Vendor Performance)
- CRS §24-105-102 (Performance Evaluation Reports)

### 2. DEFINITIONS

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

- 2.1 Advance Payment** – A payment made for goods or services prior to the receipt thereof.
- 2.2 Advice of Employment** – A document that includes an offer of employment.
- 2.3 Agency** – An executive department of the State of Colorado, or any subdivisions thereof.
- 2.4 Commitment Voucher**
  - 2.4.1 Elements.** A document, the form of which has been approved by the State Controller, evidencing the following:
    - 2.4.1.1** A description of goods or services being purchased or other reasons for the disbursement of funds;
    - 2.4.1.2** The amount to be paid;
    - 2.4.1.3** That the obligation of the State is being charged to the appropriate account; and
    - 2.4.1.4** That procurement requirements have been satisfied.
  - 2.4.2 Inclusions.** Commitment vouchers include any approved form of purchase order, State contract, travel authorization, advice of employment, grant contract, license agreement, parking license agreement, and other written authorizations for disbursement which satisfy the requirements of subsection 2.4.1 (Elements) of this Fiscal Rule.
  - 2.4.3 Exclusion.** Procurement cards are not commitment vouchers. Procurement cards are a method of payment, not a method of procurement. Purchases made with a procurement card also require the use of an appropriate commitment voucher or small purchase documentation.
- 2.5 Delegated Agency or Institution of Higher Education** – An Agency or Institution of Higher Education whose controller has received delegated signature authority from the State Controller.
- 2.6 Emergency** – An unexpected event creating an immediate threat to the public health, welfare, or safety, the functioning of government, or the preservation or protection of property, which requires an immediate response.

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- 2.7 Encumbrance** - An amount reserved on the State financial system or an approved Agency or Institution of Higher Education accounting system to reflect a formal obligation of the State. When required by this Fiscal Rule, an Agency or Institution of Higher Education shall encumber funds prior to recording expenditures and disbursing funds.
- 2.8 Institution of Higher Education** - A college or university established as part of the State of Colorado.
- 2.9 Interagency Agreement** - An agreement between two Agencies, two Institutions of Higher Education, or an Agency and Institution of Higher Education, which includes a dispute resolution process giving the State Controller final decision-making authority.
- 2.10 Interagency Purchase Order** - A purchase order issued by an Agency or Institution of Higher Education to another Agency or Institution of Higher Education.
- 2.11 Procurement Officer** – Head of the procurement function for an Institution of Higher Education or for an Agency that has received delegation from the State Purchasing Office.
- 2.12 Purchase Order** - A document, in a form prescribed by the Office of the State Controller, prepared and approved by an authorized employee of an Agency or Institution of Higher Education for the purpose of encumbering funds and securing goods or services from a vendor. For the purpose of this Fiscal Rule, a purchase order is not a State contract.
- 2.13 Reviewing Attorney** – An assistant attorney general, special assistant attorney general, or other attorney authorized by the State Attorney General and employed by an Agency or Institution of Higher Education, who has received a written designation as a Reviewing Attorney from the State Controller. A written designation by the State Controller is personal to the Reviewing Attorney and may not be assigned or further delegated. The designation is limited to the specific responsibilities and authority set forth in the written designation, which may be terminated or modified at any time, at the sole discretion of the State Controller.
- 2.14 Small Purchase Documentation**
- 2.14.1 Applicability.** Small purchase documentation is required for purchases of \$5,000 or less.
- 2.14.2 Elements.**
- 2.14.2.1** Documentation shall include:
- 2.14.2.1.1** Description of goods or services being purchased or other reasons for the disbursement of funds; and
- 2.14.2.1.2** The amount to be paid.
- 2.14.2.2** The Agency or Institution of Higher Education shall ensure that:
- 2.14.2.2.1** The State's obligation is being charged to the appropriate account; and
- 2.14.2.2.2** Procurement requirements have been satisfied.
- 2.14.3 Inclusions.** Small purchase documentation includes, without limitation, an invoice, billing, receipt, court order, or any other document appropriate to the transaction and approved by the State Controller.
- 2.14.4 Exclusions.** Small purchase documentation is not required for purchases that do not require a receipt under Fiscal Rule 5-1(Travel).
- 2.15 State Contract** – See Fiscal Rule 3-1 (State Contracts).
- 2.16 Statutory Violation** – A statutory violation occurs when liabilities are incurred or payments are made on the State's behalf without prior approval of a State purchase order or contract by the State Controller, when required under this Fiscal Rule.
- 2.17 Vendor Agreement** – A vendor agreement is any form of agreement provided by a vendor, including an on-line agreement, containing contractual provisions relating to the goods and/or services to be provided by such vendor.

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## 3. RULE

An Agency or Institution of Higher Education shall not disburse funds unless the disbursement is supported by a commitment voucher or small purchase documentation. With respect to proposed expenditures, Agencies and Institutions of Higher Education shall ensure that the commitment voucher:

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

## 4. DOLLAR LIMITS AND REQUIREMENTS

<u>TYPE OF AGREEMENT</u>	<u>DOLLAR LIMIT</u> <small>Total value of the commitment; for multiple-year commitments, the total value is equal to the sum of the commitments for all contract years.</small>	<u>REQUIREMENTS</u>
<b>Goods</b>	\$5,000 and less	Small purchase documentation or any commitment voucher
	Above \$5,000	PO or State contract Create Encumbrance
<b>Services</b>	\$5,000 and less	Small purchase documentation or any commitment voucher
	\$5,001 to \$100,000	PO or State contract Create Encumbrance
	Above \$100,000	State contract Create Encumbrance
<b>Capital Construction / Controlled Maintenance</b>	NA	See Fiscal Rule 4-1 (Capital Construction Administration) and Fiscal Procedures Manual
<b>Professional Services under CRS §24-30-1401, et seq., including architectural, engineering, land surveying, industrial hygienist, and landscape architect services</b>	Any dollar amount	State contract Create Encumbrance
<b>Real Property</b> lease or license of land, buildings, or a portion thereof for term of more than 30 days	Any dollar amount	State contract Create Encumbrance

- 4.1 Protecting the State's Interests.** State contracts shall be used in situations in addition to those described in this § 4 if other commitment vouchers do not adequately protect the State's interests. Refer questions regarding the proper form of commitment voucher to the State Controller.

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- 4.2 Exempt Disbursements.** A purchase order or State contract is not required for the following types of disbursements regardless of the amount of funds disbursed:
- 4.2.1** Calculated payments required under a program within an Agency or Institution of Higher Education (e.g., formula distributions, other distributions required by regulatory or statutory formulas);
  - 4.2.2** Copier rental agreements when the payment is based on cost per copy;
  - 4.2.3** Conference registrations;
  - 4.2.4** Financial aid or tuition assistance programs;
  - 4.2.5** Insurance purchases;
  - 4.2.6** Internal services routinely provided by an Agency or Institution of Higher Education (e.g., printing services and materials ordered from the Division of Central Services, Capitol Complex lease payments, or legal services provided to an Agency or Institution of Higher Education by the Department of Law);
  - 4.2.7** Intra-Agency or intra-Institution purchases;
  - 4.2.8** Moving expenses reimbursed to State employees;
  - 4.2.9** Payroll and related disbursements (withholding, authorized benefits, etc.);
  - 4.2.10** Postal and other delivery charges, including messenger fees;
  - 4.2.11** State program payments to or on behalf of individuals qualified for the program's benefits;
  - 4.2.12** Subscriptions for journals, informational publications or similar materials (electronic or hard copy), which do not include services;
  - 4.2.13** Utility hook ups and line extensions performed by a utility company;
  - 4.2.14** Water, gas, electric, and customary local and long-distance telephone services, including pagers and cell phones, which are routinely purchased by an Agency or Institution of Higher Education; and
  - 4.2.15** Other disbursements approved in writing by the State Controller.

## 5. STATE PURCHASE ORDERS

- 5.1 Standard Provisions** – All purchase orders issued by State Agencies and Institutions of Higher Education shall include the provisions set forth in §11 (Purchase Order Terms and Conditions of this Fiscal Rule.
- 5.2 Interagency Purchase Orders** – An Agency or Institution of Higher Education issuing a purchase order to another Agency or Institution of Higher Education may change or delete any standard provision.
- 5.3 Revision of Standard Terms and Conditions** – An Agency or Institution of Higher Education issuing a purchase order to a party, other than another Agency or Institution of Higher Education, shall not change or delete the standard purchase order provisions unless it obtains prior written approval of a procurement officer or authorized State Controller delegate, in the case of a fully delegated Agency, or the State Purchasing Office or the State Controller, in the case of a partially delegated Agency, except that:
- 5.3.1** No changes to the provisions governing Changes, Vendor Offset, Assignment and Successor, Independent Contractor, and Funds Availability may be made without the prior approval of the State Controller; and
  - 5.3.2** No changes to the Choice of Law, Public Contracts for Services, or Public Contracts with Natural Persons provisions may be made without legal review and written approval by the Office of the State Controller, Attorney General, or a Reviewing Attorney.
- 5.4 Services involving transfer of confidential information** - All purchase orders issued by an Agency or Institution of Higher Education that involve the transfer of or access to confidential electronic information shall comply with Data Security policies issued by the Governor's Office of Cyber Security or by the contracting Institution of Higher Education.

## 6. STATE CONTRACTS

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

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## 7. STATUTORY VIOLATIONS

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

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

## 8. ADVANCE PAYMENTS

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

- 8.1 General Prohibition.** State contracts and other commitment vouchers shall not provide for advance payment for goods supplied and/or services performed or for any other contractual obligation, except as permitted in subsection 8.3 of this Fiscal Rule.
- 8.2 Waiver Process,** The State Controller, in his or her sole discretion, may grant the request of an Agency or Institution of Higher Education for a waiver, allowing an advance payment not listed in the exceptions in subsection 8.3. The waiver request shall include evidence that advance payment is an established industry standard and/or provides a benefit to the State at least equal to the cost and risk of the advance payment.
- 8.3 Exceptions - Prior Approval Not Required.** Advance payments for a period of one year or less are permitted without prior approval of the State Controller for the following:
  - 8.3.1** Advertising services and related goods;
  - 8.3.2** Charter transportation;
  - 8.3.3** Construction permits;
  - 8.3.4** Federal grants awarded by the State to subgrantees (in compliance with Federal requirements);
  - 8.3.5** Overnight travel accommodations such as hotels, motels, etc. (See Fiscal Rule 5-1 Travel);
  - 8.3.6** Information Technology (IT) service agreements (including internet access, systems and database access),
  - 8.3.7** Insurance premiums;
  - 8.3.8** Interagency agreements;
  - 8.3.9** Licenses, including licenses for software;
  - 8.3.10** Maintenance of office equipment or information technology (IT) (software and hardware), and other maintenance agreements;
  - 8.3.11** Membership dues;
  - 8.3.12** Personal property leases or rentals;
  - 8.3.13** Post Office Box rentals;
  - 8.3.14** Professional services provided by expert witnesses hired for litigation purposes, mediators, entertainers, and speakers;

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- 8.3.15** Real property leases, where the State is a tenant, and perpetual easements, if the entire interest is purchased and all attendant rights are transferred upon payment;
- 8.3.16** Sponsored projects – See Fiscal Rule 3-1 (State Contracts);
- 8.3.17** Subscriptions for journals, informational publications or similar materials (electronic or hard copy), which do not include services;
- 8.3.18** Tuition, registration, and fees charged for trainings, classes, conferences, and seminars;
- 8.3.19** Utility hook ups and line extensions performed by a utility company; and
- 8.3.20** Water rights purchases or temporary leases.

- 8.4 Exceptions - Prior Delegate Approval.** Advance payments of up to \$10,000, for one or more fiscal years, if the State Controller delegate for the Agency or Institution of Higher Education determines, and documents in the contract file, that the advance payment provides a benefit to the State at least equal to the cost and risk of the payment.

## 9. EMERGENCIES

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

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

## 10. VENDOR AGREEMENTS

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

- 10.1 Prohibited Use.** A vendor agreement shall not be used in lieu of a State purchase order or contract, where one is required, absent the prior written approval of the State Controller. A vendor agreement shall not be used where a State purchase order or contract is not required, except as provided in this §10.
- 10.2 Permitted Use.** The chief fiscal officer or procurement director of an Agency or Institution of Higher Education may authorize the use of vendor agreements up to \$5,000, if a State contract or purchase order is not required.
- 10.3 Conditions of Use.** All of the conditions set forth in the State Controller Policy entitled “*Vendor Agreements*” shall be met whenever a vendor agreement is used.

## 11. PURCHASE ORDER TERMS AND CONDITIONS

See next page.

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**1. Offer/Acceptance.** If this purchase order ("PO") refers to vendor's bid or proposal, this PO is an ACCEPTANCE of vendor's OFFER TO SELL in accordance with the terms and conditions of the "solicitation" identified in vendor's bid or proposal. The solicitation includes an RFP, IFB, or any other form of order by buyer. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to vendor's acceptance, demonstrated by vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by buyer accepting a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included in or attached to any bid, 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.

**2. Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

**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 purchasing agent and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless this PO has been modified, superseded or otherwise altered in accordance with this section.

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

**5. Intellectual Property.** Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by vendor in performance of its obligations under this PO shall be the exclusive property of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Vendor shall comply with all applicable Cyber Security Policies of the State of Colorado (the "State"), or buyer, as applicable, and all confidentiality and non-disclosure

agreements, security controls, and reporting requirements.

**6. Quality.** Buyer 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.

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

**8. Inspection and Acceptance.** Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, buyer may exercise all of its rights, including those provided in the CUCC. Buyer 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, buyer 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, buyer 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.

**9. Cash Discount.** The cash discount period will start from the later of the date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized buyer representative.

**10. Taxes.** Buyer and the State are exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all State and local government sales and use taxes [CRS, Title 39, Article 26, Parts I and II]. Such exemptions apply when materials are purchased for the benefit of State, 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 buyer. Buyer shall not reimburse such sales or use taxes.

**11. Payment.** Buyer shall pay vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the 46th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to buyer's obligation to pay all or a portion of the amount due. Vendor shall invoice buyer separately for interest on

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delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate.

**12. Vendor Offset. [Not Applicable to Inter-governmental POs]** Under CRS §24-30-202.4 (3.5), 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 debts or arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

**13. Assignment and Successors.** Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of buyer. This PO shall inure to the benefit of and be binding upon vendor and buyer and their respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to buyer.

**14. Indemnification.** 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 buyer 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. If this PO is for services, vendor shall indemnify, save, and hold harmless buyer, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, 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.

**15. Independent Contractor.** Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or employee of buyer. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through buyer and buyer shall not pay for or otherwise provide such coverage for vendor or any of its agents or employees. Unemployment insurance benefits will be available to vendor and its employees and agents only if coverage is made available by vendor or a third party. Vendor shall pay when due all applicable employment, income, and local head taxes incurred pursuant to this PO. Vendor shall not have authorization, express or implied, to bind buyer 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 buyer, and **(c)** be solely responsible for its acts and those of its employees and agents.

**16. Communication.** All communication concerning administration of this PO, prepared by vendor for buyer's use, shall be furnished solely to purchasing agent.

**17. 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.

**18. Insurance.** Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as specified in the solicitation, and provide proof of such coverage as requested by purchasing agent.

**19. Termination Prior to Shipment.** If vendor has not accepted this PO in writing, buyer may cancel this PO by written or oral notice to vendor prior to shipment of goods or commencement of services.

**20. Termination for Cause. (a)** If vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified herein, buyer may notify vendor in writing of non-performance and, if not corrected by vendor within the time specified in the notice, terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. **(b)** Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. **(c)** If after rejection, revocation, or other termination of vendor's right to proceed under the CUCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to termination under §21.

**21. Termination in Public Interest.** Buyer is entering into this PO for the purpose of carrying out the public policy of the State, as determined by its Governor, General Assembly, and Courts. If this PO ceases to further the public policy of the State, buyer, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of buyer's obligations hereunder. This section shall not apply to a termination for vendor's breach, which shall be governed by §20. Buyer shall give written notice of

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termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, buyer shall pay (a) reasonable settlement expenses, (b) the PO price or rate for supplies and services delivered and accepted, (c) reasonable costs of performance on unaccepted supplies and services, and (d) a reasonable profit for the unaccepted work. For existing goods, buyer shall pay (e) reasonable settlement expenses, (f) the PO price for goods delivered and accepted, (g) reasonable costs incurred in preparation for delivery of the undelivered goods, and (h) a reasonable profit for the preparatory work. Buyer's termination liability under this section shall not exceed the total PO price plus a reasonable cost for settlement expenses. Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as required by CRS §24-106-101, upon request of buyer.

**22. PO Approval.** This PO shall not be valid unless it is executed by purchasing agent. Buyer shall not be responsible or liable for products or services delivered or performed prior to proper execution hereof.

**23. Fund Availability.** Financial obligations of buyer 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. Buyer 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.

**24. Choice of Law.** State laws, rules and regulations shall be applied in the interpretation, execution, and enforcement of this PO. The CUCC shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations is null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Unless otherwise specified in the solicitation or this PO, venue for any judicial or administrative action arising out of or in connection with this PO shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against buyer.

**25. Public Contracts for Services. [Not Applicable to offer, issuance, or sale of securities, investment advisory services, fund management services, sponsored projects, intergovernmental POs, or**

**information technology services or products and services]** Vendor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this PO and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this PO, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Vendor shall not knowingly employ or contract with an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this PO. Vendor shall (a) not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants during performance of this PO, (b) notify subcontractor and buyer within three days if vendor has actual knowledge that subcontractor is employing or contracting with an illegal alien for work under this PO, (c) terminate the subcontract if subcontractor does not stop employing or contracting with the illegal alien within three days of receiving notice, and (d) comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If vendor participates in the Department program, vendor shall deliver to the buyer a written, notarized affirmation that vendor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If vendor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., buyer may terminate this PO for breach and, if so terminated, vendor shall be liable for damages.

**26. Public Contracts with Natural Persons.** Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced a form of identification required by CRS §24-76.5-103 prior to the date vendor delivers goods or begins performing services under terms of the PO.