

STATE OF COLORADO PRICE AGREEMENT

SIGNATURE AND COVER PAGE

State Agency Department of Personnel and Administration, State Purchasing and Contracts Office	Contract Number 169497
Contractor VitalSmarts, L.C.	Contract Performance Beginning Date Effective Date
Contract Description Training, Assessments & Development Programs	Initial Contract Expiration Date June 30, 2023

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

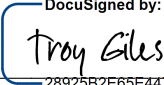
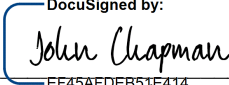
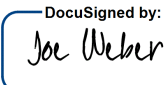
CONTRACTOR VitalSmarts, L.C.	STATE OF COLORADO Jared Polis, Governor Department of Personnel and Administration, State Purchasing and Contracts Office Kara Veitch, Executive Director
DocuSigned by:  28925B2E65E447A...	DocuSigned by:  EF45AFD0E851E414...
By: _____	By: John Chapman, State Purchasing Manager
Date: 7/1/2021	Date: 7/2/2021
In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.	
STATE CONTROLLER Robert Jaros, CPA, MBA, JD	
DocuSigned by:  AE2B5FC1373241D...	
By: _____	
Effective Date: 7/2/2021	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Signature and Cover Page for this Contract and

shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover Page for this Contract (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of one (1) year at the same rates and under the same terms specified in this Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to **Exhibit D**. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five (5) years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§17**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two (2) months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract 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 contract or modification extending the total term of this Contract.

E. Order Term

Orders may only be placed prior to the expiration or earlier termination of this Contract, but may have a delivery date or performance period that extends no longer than 120 calendar days following that expiration or earlier termination date. Regardless of whether this Contract has expired or has been terminated, the Contractor shall comply with all Orders that extend past the expiration or termination, as described in this section, and all requirements of this Contract necessary to complete all outstanding Orders shall survive the expiration or termination of this Contract until all such Orders are complete.

F. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§15.A.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§17**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§15.A.i.a**.

iii. Payments

If the State terminates this Contract in the public interest, the Purchasing Entities shall pay Contractor according to their Orders with the Contractor. The sum of all payments shall not exceed the maximum amount payable to Contractor under each Order.

3. AUTHORITY

Authority to enter into this Contract exists in §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01.

4. PURPOSE

The Parties are entering into this Contract for the Contractor to provide Training, Assessments & Development Programs to Purchasing Entities. The Contractor was selected as a result of RFP-SPCO-MZ-21-001.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“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.
- B. **“Ceiling Price”** means the maximum price Contractor or a Subcontractor may charge for a Service under this Contract.
- C. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all goods and services needed by the state.
- D. **“Competency”** means an area of knowledge, skill, ability or behavior that is associated with, and necessary to, the successful performance of a task or a job.
- E. **“Contract”** 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. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Contract.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. **“Day Fee”** means the fee that is paid to the Master Trainer (whether in-person or virtual) for workforce development, leadership development and senior leader development Event. Day Fees shall not be applicable for public courses.
- I. **“End of Term Extension”** means the time period defined in §2.D.
- J. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Contract.
- K. **“Event”** means all in-person and virtual courses conducted by a Master Trainer. Event shall not refer to on-demand courses.
- L. **“Exhibits”** means the following Exhibits attached to this Contract:
 - i. **Exhibit A**, Statement of Work

- ii. **Exhibit B**, Courses and Pricing
 - iii. **Exhibit C**, Event Confirmation Form
 - iv. **Exhibit D**, Sample Option Letter
- M. **“Extension Term”** means the time period defined in **§2.C**.
- N. **“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.
- O. **“Initial Term”** means the time period defined in **§2.B**
- P. **“Master Trainer”** means an individual who has successfully completed certification by the Contractor and has demonstrated mastery of the knowledge and application of the course content.
- Q. **“Order”** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Services and/or Supplemental Materials described in this Contract from the Contractor, and shall include any modification to such a document.
- R. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- S. **“Purchasing Entity”** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.
- T. **“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.
- U. **“Services”** means the Services to be performed by Contractor as set forth in this Contract, and may include courses on workforce development, leadership development, senior leader development, as well as surveys and assessments, and any public courses as listed in **Exhibit B**.
- V. **“State Confidential Information”** means all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to PCI and State personnel records not subject to disclosure under CORA.
- W. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S..
- X. **“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.
- Y. **“State Records”** means all State data, information, and records, regardless of physical form,

including, but not limited to, information subject to disclosure under CORA.

- Z.** “**Subcontractor**” means third-parties, if any, engaged by Contractor to aid in performance of the Work. The term “Subcontractor” includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- AA.** “**Supplemental Materials**” means any surveys, assessments, manuals, pre-reading or other resources provided by the Contractor.
- BB.** “**Work**” means the Goods delivered and Services performed pursuant to this Contract.
- CC.** “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, 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 Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

6. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibits A and B and any Order.

7. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

- i. Each Purchasing Entity will make its own payments under any Order that it enters into. The State shall not be liable to Contractor for any payments due under any Order unless the State is a Party to that Order.
- ii. Contractor shall allow the State and Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the State or Purchasing Entity.
- iii. The State shall not pay any amount to Contractor under this Contract unless the state issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity that is not the State, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by and Purchasing Entity that is not the State.

B. Payment Procedures

i. Invoices

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity’s Order. Contractor shall not invoice the State under any Order unless the State is a Party to that Order. Contractor shall allow forty-five (45) days for the State and Purchasing Entities to pay an invoice following the receipt of that invoice, unless the State or a Purchasing Entity specifically agrees to a shorter time in an Order.

ii. Payment Disputes

Unless different procedures are specified in an Order, if Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the Purchasing Entity issuing the Order in writing of its dispute within thirty (30) days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by that Purchasing Entity. The Purchasing Entity will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the Purchasing Entity'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 Purchasing Entity has concluded its review, and the Purchasing Entity shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iii. Discount and Delinquency Period

Any applicable cash discount period or delinquency period for the amounts shown on an invoice shall begin on the date of the Purchasing Entity's approval of that invoice, or from the date of receipt of acceptable Services at the specified destination by an authorized Purchasing Entity representative, whichever is later.

8. RESERVED

9. REPORTING - NOTIFICATION

A. Litigation Reporting

If Contractor 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 Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within ten (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 in §17.

B. 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., Contractor shall provide written notice to the State, in accordance with §17, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor 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 Contractor to provide notice to the State under this §9.B shall constitute a breach of this Contract. This §9.B shall not apply if the Contract Funds include any federal funds.

10. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper

performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date three (3) years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor 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

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) 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 Contractor’s performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor’s performance in a manner that does not unduly interfere with Contractor’s performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor’s records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

11. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor 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 Contract, permitted by law or approved in Writing by the State. Contractor 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 including the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, Contractor shall immediately forward any request or demand for State Records to the State’s principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with 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. Contractor shall provide the State with access, subject to Contractor'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 Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor 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 Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor 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.

12. CONFLICTS OF INTEREST**A. Actual Conflicts of Interest**

Contractor 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 Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor 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 concerning the actual or apparent conflict constitutes a breach of this Contract.

13. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain,

insurance as specified in this section at all times during the term of this Contract and until all Orders for Services are delivered and accepted. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

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

B. General Liability

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

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

C. Professional Liability Insurance

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

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

D. Additional Insured

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

E. Primacy of Coverage

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

F. Cancellation

The above 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 Contractor and Contractor shall forward such notice to the State in accordance with §17 within seven (7) days of Contractor's receipt of such notice.

G. Subrogation Waiver

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

H. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity

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

I. Certificates

Contractor shall provide to the State certificates evidencing Contractor’s insurance coverage required in this Contract within seven (7) Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven (7) Business Days following the Effective Date, except that, if Contractor’s subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven (7) Business Days following Contractor’s execution of the subcontract. No later than fifteen (15) days before the expiration date of Contractor’s or any Subcontractor’s coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after the delivery of written notice, the Party may exercise any of the remedies as described in §15 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State.

15. REMEDIES

A. State’s Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §14.B., shall have all of the remedies listed in this §15.A., in addition to all other remedies set forth in this Contract 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 Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

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

b. Payments

Notwithstanding anything to the contrary, Participating Entities shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor'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 Contract had been terminated in the public interest under §2.F.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages. A Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the Purchasing Entity 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 Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to

an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Purchasing Entity shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor'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 Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract 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, Contractor shall, at the option of and as approved by the State or Purchasing Entity **(i)** secure that right to use such Work for the State, Purchasing Entity and Contractor; **(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 Purchasing Entity.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in **§14.B** and the dispute resolution process in **§16** shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

C. Purchasing Entity's Remedies

- i.** If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that Order, in addition to all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.
- ii.** If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within five (5) Business Days following Contractor's receipt of that notice of breach or termination.

16. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives or through a dispute on an Order, as described in **Exhibit A, §4.C**, shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies arising under this Contract

If the initial resolution described in **§16.A** fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Purchasing and Contracts Office as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§ 24-109-101.1 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’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 Contractor 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.

C. Resolution of Controversies arising under any Order made pursuant to this Contract

Any dispute between Contractor and a Purchasing Entity concerning the performance of an Order shall be resolved under the dispute resolution processes as described in the applicable Order. If the Order does not describe a dispute resolution process, the dispute shall be resolved under the Purchasing Entity’s dispute resolution statutes, policies, or other applicable regulations, or in a manner as agreed upon by the Purchasing Entity and Contractor.

17. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract 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 below. 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 below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this **§17** without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

For the State:

Mandy Zila
 Department of Personnel & Administration
 1525 Sherman Street
 3rd Floor
 Denver, CO 80203
Mandy.zila@state.co.us

For Contractor:

Troy Giles
 VitalSmarts, L.C.
 282 River Bend Lane
 Provo, UT 84604
Troy.Giles@vital-smarts.com

18. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the Purchasing Entity 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 under an Order. Whether or not Contractor is under contract with the State at the time, Contractor 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.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, 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”). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Pre-existing Intellectual Property

If the Contractor uses material that was developed prior to the Effective Date, without modification, in the performance of the Work, Contractor grants to the Purchasing Entity’s participants a nonexclusive, nontransferable, limited license to use the materials solely for participant's internal use by employees of the Purchasing Entity for whom participant fees have been paid. Contractor’s pre-existing intellectual property is subject to copyright protection; the Purchasing Entity shall not sell, sublicense, or otherwise make Contractor’s pre-existing intellectual property available to third parties for any reason, and shall not reproduce, alter, or create derivative works from Contractor’s pre-existing intellectual property without Contractor’s prior written permission.

19. 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 GIA; 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.

20. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §20 shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Contract information in the State’s contract management system (“Contract Management System” or

“CMS”). Contractor’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

21. GENERAL PROVISIONS

A. Assignment

Contractor’s rights and obligations under this Contract 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 Contractor’s rights and obligations approved by the State shall be subject to the provisions of this Contract

B. Subcontracts

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

C. Binding Effect

Except as otherwise provided in §21.A., all provisions of this Contract, 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 Contract and the performance of such Party’s obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract 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 Contract 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 Contract 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 Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Modification

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

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

Any reference in this Contract 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 Contract.

J. Order of Precedence

In the event of a conflict or inconsistency between this Contract, Exhibits, Attachments, the RFP or the Contractor's Proposal, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions in §22 of the main body of this Contract.
- ii. The provisions of the other sections of the main body of this Contract.
- iii. Exhibit A, Statement of Work.
- iv. Exhibit B, Courses and Pricing.
- v. RFP-SPCO-MZ-21-001.
- vi. Exhibit D, Sample Option Letter.
- vii. Exhibit C, Event Confirmation Form.
- viii. Contractor's Proposal.

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any Exhibit or Attachment attached hereto, any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provision incorporated into any other document or agreement between the Parties that (i) requires the State to indemnify or hold harmless Contractor or any other party, (ii) is in violation of State laws, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State, or (iii) is contrary to any of the provisions incorporated into §22 or the main body of this Contract.

K. Severability

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

L. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract shall survive the termination or expiration of this Contract 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 Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract. Contractor shall honor any tax exemption that any Purchasing Entity has, and shall not charge any Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

N. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in §21.A, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract 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 Contract are incidental to this Contract, 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 Contract, 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 Contract 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

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

R. Licenses, Permits, and Other Authorizations

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

S. Indemnification

i. General Indemnification

Contractor 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 Contractor, or its employees, agents, Subcontractors, or assignees in

connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §11 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor 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 Contractor, or its employees, agents, assigns, or Subcontractors in violation of §11.

iii. Intellectual Property Indemnification

Contractor 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.

22. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

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

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract 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 Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor 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 Contractor or any of its agents or employees.

Contractor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this Contract. Contractor 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

Contractor 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 Contract. 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 Contract 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 Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor'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 Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract 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 Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's Services and Contractor shall not employ any person having such known interests.

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

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

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform Work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform Work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform Work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform Work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three (3) days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for Work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

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

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101,

et seq., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK

1. OVERVIEW

- A. Contractor guarantees consistent quality and availability of the Services offered.
- B. Contractor may not provide Services and/or Supplemental Materials that have not been approved by the State.
- C. Contractor shall maintain compliance with all requirements of this Contract throughout the entire Contract term, including any extensions.

2. CONTRACTOR PERSONNEL

A. Key Personnel

i) Primary Point of Contact

- a) The Primary Point of Contact shall be responsible for handling all issues and questions regarding the Services provided, including, but not limited to, training options, training materials, workshop content, pricing, and invoice discrepancies and issues.
- b) The Primary Point of Contact shall ensure the completion of all Work in accordance with the Contract's requirements. This includes, but is not limited to, ensuring the accuracy, timeliness and completeness of all Work.
- c) The Primary Point of Contact shall oversee all other personnel and ensure proper staffing levels throughout the term of the Contract.

- ii) **Reporting Contact.** The Reporting Contact shall be responsible for submitting timely and accurate Quarterly Volume Reports.

B. Customer Service

Contractor shall be available to provide Services during the hours of 8am - 5pm Monday through Friday, Mountain Time.

3. CONTRACTOR SERVICES

Contractor shall provide the Services and/or Supplemental Materials as approved by the State and described in **Exhibit B, Courses and Pricing**, as amended. **Exhibit B** is located on the State's dedicated contract website, and is incorporated into this Price Agreement by reference. Changes to Services and/or Supplemental Materials must be approved by the State and shall be effective when published on the dedicated State website.

4. ORDERING AND ORDER FULFILLMENT

A. Ordering

- i) Upon request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.
- ii) A Purchasing Entity may complete an Order in accordance with its own rules and policies, using the appropriate documentation for that organization to issue an Order.
- iii) Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity's Orders.

- iv) If Purchasing Entity is registering for a course in which a Day Fee is charged, Contractor shall provide the Purchasing Entity with a copy of **Exhibit C, Event Confirmation Form**.
- v) Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this Contract.
- vi) If Contractor provides for ordering through an internet-based portal, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal.
- vii) **On-Demand and Virtual Instructor Led Course Terms**
 - a) Purchasing Entity shall take all measures necessary to ensure only Purchasing Entity employees for whom Purchasing Entity has paid the applicable participant fee are given access to the virtual training content.
 - b) If Purchasing Entity discovers that an individual has accessed the virtual training content in contravention of the foregoing, Purchasing Entity will end the unauthorized access and inform Contractor. Unauthorized access includes, but is not limited to, recording the sessions by screen capture or any other modality, and any inappropriate distribution or sharing of a computer during sessions.
 - c) Purchasing Entity acknowledges and agrees that a participant in virtual training may not cancel their registration once registration for an on-demand training course has been confirmed. Registration is considered confirmed when a participant clicks on the link to access an on-demand course or to access a virtual instructor led course for the first time.

B. Order Completion and Acceptance

Services provided to a Purchasing Entity under an Order shall not be deemed completed until that Purchasing Entity has received the Services, ensured that all Services were completed in accordance with the Order.

C. Order Cancellations and Modifications

- i) **Workforce Development, Leadership Development, and Senior Leader Development (Day Fee included)**
 - a) If Purchasing Entity cancels an Event with less than thirty (30) calendar days' notice, but greater than ten (10) calendar days' notice, then Purchasing Entity shall be responsible for 50% of the Day Fee. If Purchasing Entity cancels a course within ten (10) calendar days' of the Event date, then Purchasing Entity shall be responsible for 100% of the Day Fee.
 - b) An Event is considered "rescheduled" only if the new Event date is within seven (7) calendar days of the last day of the original Event and Purchasing Entity signs an amended **Exhibit C, Event Confirmation Form** (or equivalent). If the Event is rescheduled with the same Master Trainer, then Purchasing Entity will not be charged a portion of the Day Fee. However, if a new Master Trainer is used for the rescheduled Event, the Purchasing Entity shall be responsible for 20% of the Day Fee in order to compensate the original Master Trainer for the lost opportunity. If the new Event is not rescheduled within seven (7) calendar days, or the Purchasing Entity has not signed an amended **Exhibit C** (or

equivalent), the reschedule will be considered a cancellation and the cancellation terms in §4.C.i(a) will apply.

ii) Public Courses (No Day Fee)

- a) If Purchasing Entity cancels a participant's registration, then Contractor shall refund the Purchasing Entity the participant fee, less an administrative fee, in accordance with **Exhibit B, Courses and Pricing**.
- b) If Purchasing Entity transfers a participant's registration to a different public course, then the administrative will be waived as a one-time courtesy only. All subsequent transfers will be subject to an administrative fee as outlined in **Exhibit B, Courses and Pricing**.
- c) Purchasing Entity may substitute an existing participant for a new participant, providing Contractor has been given written notice of at least seven (7) calendar days' prior to the Event. Substitutions will not be allowed if less than seven (7) calendar days' notice is provided.
- d) Once an Event has started, cancellations and transfers will not be permitted.

iii) Notice to Contractor

Notice of cancellation or modification of an Event must be provided to Contractor in writing.

iv) Travel Expenses

- a) If Purchasing Entity cancels or reschedules an Event, Purchasing Entity shall be responsible for all non-refundable travel costs incurred, providing however, that Purchasing Entity and Contractor have mutually agreed to the travel costs before they were incurred.
- b) Contractor must provide proof to Purchasing Entity of non-refundable charges prior to Purchasing Entity reimbursing Contractor.

v) Purchasing Entity Refunds

Contractor shall process and submit all refunds to Purchasing Entity within seven (7) calendar days'.

D. Order Disputes, Termination and Resolution

- i) If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §17 of the main body of this Contract. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contract or any Order.
- ii) Purchasing Entities may terminate an Order if it determines that Contractor was in breach of that Order. Termination of an Order shall not automatically terminate any other Order or this Contract.
- iii) If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within five (5) Business Days following Contractor's receipt of

that notice of breach or termination.

E. Marketing

- i) If Contractor desires to distribute any materials, notices or literature with the intent to market their Services (“Marketing Materials”), Contractor shall deliver all such Marketing Materials to the State for review and approval prior to distributing any such materials to a Purchasing Entity.
- ii) The State will review submitted Marketing Materials and may approve, deny or request changes to any Marketing Materials in its sole discretion. If the State requests changes, Contractor may make those changes or may choose to rescind its submission for review and approval.
- iii) Contractor shall not distribute any marketing materials to any Purchasing Entity prior to receiving the State’s approval of those Marketing Materials.
- iv) The State shall not be responsible for maintaining any mailing lists or creating, printing, mailing or distributing any of Contractor’s Marketing Materials, though the State may distribute Marketing Materials in its sole discretion.

F. Additional Terms

Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form, including, without limitation, terms regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Contract or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish completion of Services and shall not make any term of that form enforceable.

5. VOLUME AND OPERATIONAL REPORTING

A. Volume Reporting

- i) The State will use a centralized method of tracking volume. Contractor shall populate a Quarterly Volume Report, using the format as specified by the State, for each State Fiscal Year Quarter.
- ii) Contractor shall deliver the Quarterly Volume Report to the State’s representative as identified in §17 of the main body of this Contract, within thirty (30) calendar days following the end of the State Fiscal Year quarter that the report covers.
- iii) If any due date for a Quarterly Volume Report 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.
- iv) All data and information contained in a Quarterly Volume Report shall be the property of the State and shall not be considered proprietary.

B. Additional Operational Reporting

Upon request by the State, the Contractor shall develop and deliver to the State within ten (10) Business Days, Ad-Hoc Operational Reports that include all detailed and summary transaction, historical or payment information related to the State or any of the Purchasing Entities, as requested by the State.

6. PERIODIC BUSINESS REVIEWS

- A. The State may schedule periodic business reviews to review Contractor's performance under this Contract.
- B. Contractor shall ensure personnel assigned to the Contract are available for these meetings with the State as scheduled by the State.
- C. Contractor's key personnel designated in §2 of this **Exhibit A** shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

7. SERVICES AND PRICING

A. Price Lists

The State may publish any pricing information under this Contract, including, without limitation the pricing shown in **Exhibit B, Courses and Pricing**, on the State's website and any other website as the State determines is necessary or efficient to facilitate the use of this Contract by Purchasing Entities.

B. Services Modifications

- i) Any revisions to **Exhibit B** (i.e. course name change, description change, removal of course, addition of course, length of course, addition of Supplemental Materials, price decrease etc.) must be pre-approved by the State, and will be allowed once per calendar quarter.
- ii) Service modifications are required to be submitted to the contact identified in §17 of the main body of this Contract, between the first (1st) and tenth (10th) day of the new quarter starting period, and shall go into effect upon approval by the State.
- iii) Service modifications that are submitted after the tenth (10th) day of the new quarter starting period, will not be reviewed and/or approved until the following quarter.

C. Price Modifications

- i) **Price Increases.** Contractor may request an increase in the prices listed in **Exhibit B** by submitting its request to the State in writing as described in §17 of the main body of this Contract. Requests for increases in prices are limited as follows:
 - a) Contractor may not request a price increase during the Initial Term of this Contract.
 - b) Contractor may not request a price increase within any twelve (12) month period following the State's approval of a price increase under this section.
 - c) Contractor may not submit a request for a price increase to the State fewer than thirty (30) days prior to when Contractor intends those increased prices to be effective.
 - d) Contractor may only request a price increase if it can justify that increase based on the Producer Price Index or the Consumer Price Index issued by the US Department of Labor, Bureau of Labor Statistics, or a similar industry-pricing guide.
- ii) The State may approve or deny any request for a price increase based on the information provided by Contractor and other circumstances, in its sole discretion.
- iii) If the State approves a price increase, that price increase shall not take effect unless or until a bilateral Amendment is executed.

- iv) Contractor may only begin using the increased prices in Orders that are issued following the effective date of the Amendment. For Orders placed prior to a price increase, Contractor shall only charge the Purchasing Entity the prices that were in effect at the time the Order was placed.
- v) If the State does not approve a price increase, or Contractor increases its prices without submitting a request to the State, then those increased prices shall be void in any Order in which they are used and Contractor shall fulfill the Order at the existing rates approved by the State under this Contract. Contractor's use of rates in any Order that exceed those approved by the State under this Contract shall be a material breach of this Contract.
- vi) **Price Decreases and Ceiling Prices**
 - a) Contractor may decrease its prices shown in **Exhibit B** at any time by providing written notice to the State.
 - b) The prices listed in **Exhibit B** are Ceiling Prices. Contractor may offer lower pricing to Purchasing Entities, and Purchasing Entities may request lower pricing from Contractor, without the review or approval of the State.

EXHIBIT B, COURSES AND PRICING

(posted as a separate file)

EXHIBIT C, EVENT CONFIRMATION FORM

Event Confirmation Form			
Event Details			
Organization			
Event Date(s)	Start:	End:	
Location			
Topic			
Format			
Language		English	
Master Trainer			
Client Contact	Name		
	Phone		
	Email		
VitalSmarts Representative	Name		
	Phone		
	Email		
VitalSmarts Coordinator	Name		
	Phone		
	Email		
Billing Information			
Day Fee	Quantity		
	Unit Price		
Materials	Product		
	Quantity		
	Unit Price		
Total Cost*	Day Fee		
	Materials		
	Subtotal		
*Total cost does not include Travel & Expenses (T&E). Said fees will be mutually agreed upon with Purchasing Entity prior to invoicing.			
Billing Address	Attn.		
	Company Address		
	Email		
Shipping Address	Attn.		
	Company Address		
	Special Instructions		
	Email		
Payment Method <small>(Purchase Order, Credit Card, or Invoice)</small>		Tax Exempt	
		Payment Terms	
Terms and Conditions			
ALL ORDERS ARE EXPRESSLY MADE SUBJECT TO PRICING AGREEMENT #CMS169497 BETWEEN THE STATE OF COLORADO AND VITALSMARTS, LC.			
I accept the Terms and Conditions and the above information is accurate.	Signature:		Date:

Logistics Information	
Event Address	Venue Address Room
Venue Contact	Name Phone Email
Event Times	Set-up Start End
Travel Recommendations The facilitator will arrange travel	Hotel Airport Per diem
Room Requirements 1. LCD projector with minimum screen resolution of 1024 x 768, minimum 16-bit color depth, and VGA connection port 2. Mixer cable and connection to sound system 3. 8- to 10-foot projector screen 4. Lavalier mic, if necessary for room size 5. Room set-up as seen in example 6. 2 large flip charts with array of colored markers 7. Participant name tags or name tents (blank or pre-filled) 8. Materials on-site for participant use	<p style="text-align: center;">Example Set Up for Training</p>
Other Important Information 1. Recording of the event is strictly prohibited without express written permission from VitalSmarts. 2. If course materials have not arrived at least two days prior to the event, please contact your VitalSmarts sales coordinator. 3. If you would like the facilitator to sign course completion certificates, please request a printing template from your VitalSmarts sales coordinator in advance. These certificates are optional, but are included with a standard participant suite. 4. Please greet the facilitator one hour prior to the start of the event to ensure all necessary arrangements have been made. 5. Please provide an on-site support contact for the facilitator for AV/IT needs and other concerns during the event.	

EXHIBIT D, SAMPLE OPTION LETTER

OPTION LETTER

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #
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1) **OPTIONS:** Option to renew only (*for an additional 12 month term*).

2) **REQUIRED PROVISIONS:**

In accordance with the **Price Agreement, Section Insert Section Number and letter (ex. 3.C), and title of Section**, between the **State of Colorado, Department of Personnel and Administration, State Purchasing and Contracts Office**, (“State”) and **Insert Name of Contractor** (“Contractor”), the State hereby exercises its option for an additional term beginning **Insert Date in mm/dd/yyyy format** and ending on **Insert Date in mm/dd/yyyy format** at the same rates and same terms specified in the original Price Agreement, **Insert State of Colorado Price Agreement Number**, as amended.

3) **EFFECTIVE DATE:** The Effective Date of this **Option Letter** is upon approval of the State Controller or others delegated.

STATE OF COLORADO	
Jared S. Polis, GOVERNOR	
Department of Personnel and Administration	
Kara Veitch, Executive Director	
By: _____	Date: _____
John Chapman, State Purchasing Manager	

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____ Date: _____