1. Offer/Acceptance. This Purchase Order, together with these terms and conditions and any other attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference (collectively the “PO”) shall constitute the final, complete, and exclusive contract agreement between the University and the Vendor. 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 this PO. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to Vendor’s acceptance, demonstrated by delivery of goods and/or services or acceptance of the PO in writing. If a 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 party(s) thereof included in or attached to any bid or proposal. Any representation in the solicitation, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or party thereof.

2. Limited Terms. Nothing in this PO shall be construed as a waiver of any provision of CRS §24-106-109. Any term included in this PO or appearing on Contractor’s website(s) or online agreement(s) which require the State to indemnify or hold Vendor harmless; requires the State to waive the right to jury or agree to bind arbitration; limits Vendor’s liability for damages resulting from death, bodily injury, or damage to tangible property; or conflicts with that statute in any way shall be void ab initio.

3. Conflicts of Interest. Vendor shall not engage in any business or personal activities or practices or maintain any relationships which would preclude in any way the performance of its duties hereunder. Vendor acknowledges that with respect to PO, even the appearance of a conflict of interest is harmful to the University’s interests. Absent the University’s prior written approval, Vendor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Vendor’s obligations to the University hereunder. If a conflict or appearance exists, or if Vendor is uncertain whether a conflict or the appearance of a conflict of interest exists, Vendor shall submit to the University a disclosure statement setting forth the relevant details for the University’s consideration. Failure to promptly submit a disclosure statement or to follow the University’s direction in regard to the apparent conflict constitutes a breach of this PO.

4. Governmental Immunity. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act (§24-10-101, et seq.), the federal law applicable to this CO state and local governmental entities, and any other applicable immunity laws in the State. The University shall not be liable in contract or delict for any damages or civil penalties otherwise recoverable by the Indemnified Party from any of the Indemnified Parties in relation to any act or omission by Vendor, or its employees, agents or representatives, under this PO or any other agreements or obligations hereunder. Vendor acknowledges that with respect to PO, even the appearance of a conflict of interest is harmful to the University’s interests. Absent the University’s prior written approval, Vendor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Vendor’s obligations to the University hereunder. If a conflict or appearance exists, or if Vendor is uncertain whether a conflict or the appearance of a conflict of interest exists, Vendor shall submit to the University a disclosure statement setting forth the relevant details for the University’s consideration. Failure to promptly submit a disclosure statement or to follow the University’s direction in regard to the apparent conflict constitutes a breach of this PO.

5. Sale and Agreement. Colorado Mesa University (the “University”), or buyer, as applicable, and all confidentiality and non-disclosure agreements, security controls, and reporting requirements.

6. 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) with the shipment.

7. 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, supersedes or otherwise altered, except in writing executed by purchase and vendor, without the prior written consent of the State of Colorado. No claim as to condition of this PO shall be construed or implied as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the said Governmental Immunity Act, or the Federal Tort Claims Act, 28 U.S.C. §§1345(b) and 2671 et seq., as now applicable or hereafter amended.

8. Delivery. Unless otherwise specified in 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 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.

9. 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 Vendor’s performance or written acceptance of this PO. Vendor shall not claim any right, title or interest in any of the materials, including without limitation, all materials, copies, or other uses of the materials. Vendor shall comply with all applicable Cyber Security Policies of the Colorado Mesa University (the “University”), or buyer, as applicable, and all confidentiality and nondisclosure agreements, and all applicable regulations in effect or hereafter established, including, without limitation, laws applicable to the protection of personal information.

10. Warranties. All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 25 (“CUCC”), relating to implied and/or express warranties are incorporated herein, in addition to any warranties created in this PO.

11. Inspection and Acceptance. Final acceptance is contingent upon completion of all applicable inspection procedures. All goods delivered shall be newly manufactured and the current model, unless otherwise specified. If products or services are returned to Vendor at Buyer’s request, 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. The University shall be the sole judge in determining “equals” with regard to conformance with the specifications outlined in this PO for quality, price, and performance. Buyer’s acceptance of any goods or services shall be construed as acceptance of the 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 prejudice to any other rights available to Buyer. If Vendor cannot correct 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.

12. 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 the University, except as authorized by buyer representatives.

13. 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 12). Article 26 of this PO shall apply without modification to the purchase of property 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 is not responsible for and shall not reimburse such taxes paid, if any.

14. Payment. The University shall not pay Vendor any amount for performance under this PO in excess of the Document Total set forth in the Purchase Order document. Buyer shall pay Vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate 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 delinquent amounts, referencing the delinquent payment, number of days’ interest to be paid, and applicable interest rate.

15. Errors. At the State’s sole discretion, payments made to Vendor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or unused funds shall be returned to the University by Vendor by applying such amounts as are due to the University to other payments under this Contract or other contracts, grants or agreements between the State and Vendor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the University.

16. 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 the University. Buyer may assign all or any part of the benefits of this PO to any of its respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to buyer.

17. Indemnification. Vendor 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 Vendor, or its employees, agents or representatives, under this PO or any other agreements or obligations hereunder. Buyer determines for any reason that Vendor was not in default or the delay was caused by circumstances beyond Vendor’s control, except as necessary to mitigate costs of performance. For services or specially manufactured goods, buyer shall pay (a) a reasonable profit for the unaccepted work. For existing goods, buyer

(c) 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 §20-26-109.2, Revised

27. Choice of Law. Colorado law, rules and regulations issued pursuant thereto, shall be applied in

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

29. Funds 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 conditions applicable to federal funds, including, without limitation, laws applicable to the protection of personal information.

30. University shall not pay Vendor any amount for performance under this PO in excess of the Document Total set forth on the Purchase Order document. Buyer shall pay Vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate set forth in CRS §24-30-202(24)
Colorado. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against buyer.

28. 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 Colorado Department of Labor and Employment (“CDLE”) 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 CDLE 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 CDLE. If vendor participates in the CDLE 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 CDLE 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.

29. 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.