

Terms and Conditions

1. **DEFINITION OF TERMS.** As used in this Request for Proposal, the terms listed below are defined as follows:
 - 1.1. "ADHS" means Arizona Department of Health Services.
 - 1.2. "Advanced Funds" means funds provided by Vitalyst to Grantee prior to incurring costs.
 - 1.3. "Budget Term" means the period of time for which the grant budget has been created and during which funds should be expended.
 - 1.4. "Change Order" means a written order that directs the Grantee to make changes authorized by the Terms and Conditions of the Grant.
 - 1.5. "Cost Reimbursement" means a Grant under which a Grantee is reimbursed for already incurred costs, which are reasonable, allowable and allocable in accordance with the Grant terms and approved by ADHS.
 - 1.6. "Data" means recorded information, regardless of the form or the media on which it may be recorded. The term may include technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
 - 1.7. "Days" means calendar days unless otherwise specified.
 - 1.8. "Exhibit" means any item labeled as an Exhibit in the Request for Proposal generally containing maps, schematics, examples of reports, or other documents that will be used to perform the requirements of the Scope of Work after Grant award.
 - 1.9. "Grant" means the combination of the Terms and Conditions, the Scope of Services, Attachments, Referenced Documents, any Grant Amendments and any terms applied by law.
 - 1.10. "Grant Amendment" means a written document that is issued for the purpose of making changes in the Grant.
 - 1.11. "Grantee" means any person who has a Grant.
 - 1.12. "Materials" unless otherwise stated herein, means all property, including but not limited to equipment, supplies, printing, insurance and leases of property.
 - 1.13. "Services" means the furnishing of labor, time or effort by a Grantee or Subgrantee.
 - 1.14. "Subgrant" means any grant express or implied, between the Grantee and another party or between a subgrant and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of this Grant.
 - 1.15. "State" means the State of Arizona and/or the ADHS.
 - 1.16. "Subcontract" means any contract, expressed or implied, between the Grantee and another party or between a Subgrantee and another party delegating or assigning, in whole or in part, the making or furnishing of any Materials or any Services required for the performance of the Grant.
 - 1.17. "Subcontractor" means a person who contracts to perform work or render Services to a Grantee or to another Subcontractor as a part of this Grant.
2. **GRANT TYPE.** Payment shall be made on a Cost Reimbursement basis. Upon a request by Grantee, Vitalyst may, at its sole discretion, provide funds in advance of expenditure (Advanced Funds). Total Advanced Funds will not exceed the expected expenditures for the following forty-five (45) days. Advanced Funds may only be used for expenses allowable in accordance with the Grant terms. Any Advanced Funds used for non-allowable expenses must be repaid immediately.
3. **GRANT INTERPRETATION.**
 - 3.1. Arizona Law. The law of Arizona applies to this Grant including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona.
 - 3.2. Relationship of Parties. The Grantee under this Grant is an independent Grantee. Neither party to this Grant shall be deemed to be the employee or agent of the other party to the Grant.

- 3.3. Severability. The provisions of this Grant are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Grant.
- 3.4. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- 3.5. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Grant shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 3.6. Headings. Headings are for organizational purposes only and shall not be interpreted as having legal significance or meaning.

4. **GRANT ADMINISTRATION AND OPERATION.**

- 4.1. Records and Audit. Under A.R.S. § 35-214 and A.R.S. § 35-215, the Grantee shall retain and shall contractually require each subgrantee to retain all data and other records ("records") relating to the acquisition and performance of the Grant for a period of five (5) years after the completion of the Grant. All records shall be subject to inspection and audit by the State and where applicable the Federal Government at reasonable times. Upon request, the Grantee shall produce a legible copy of any or all such records.
- 4.2. Financial Management. For all contracts, the practices, procedures, and standards specified in and required by the Arizona Department of Health Service's Guidance for Federal Grant Award Management Manual shall be used by the Grantee in the management of Grant funds and by the State when performing a Grant audit.
 - 4.2.1. *State Funding*. Grantees receiving state funds under this Grant shall comply with the certified compliance provisions of A.R.S. § 35-181.03.
- 4.3. Inspection and Testing. The Grantee agrees to permit access, at reasonable times, to its facilities.
- 4.4. Advertising and Promotion of Contract. The Grantee shall not advertise or publish information for commercial benefit concerning this Grant without the prior written approval of an ADHS Procurement Officer.
- 4.5. Property of the State.
 - 4.5.1. *Equipment*. Except as provided below or otherwise agreed to by the parties, the title to any and all equipment acquired through the expenditure of funds received from the State shall remain the property of the State by and through the ADHS and, as such, shall remain under the sole direction, management and control of the ADHS. When this Grant is terminated, the disposition of all such property shall be determined by the ADHS. All purchases of equipment need to be reported to the ADHS Office of Inventory Control.
 - 4.5.2. *Title and Rights to Materials*. As used in this section, the term "Materials" means all products created or produced by the Grantee under this Grant, including, but not limited to: written and electronic information, recordings, reports, research, research findings, conclusions, abstracts, results, software, data and any other intellectual property or deliverables created, prepared, or received by the Grantee in performance of this Grant. Grantee acknowledges that all Materials are the property of the State by and through the ADHS and, as such, shall remain under the sole direction, management and control of the ADHS. The Grantee is not entitled to a patent or copyright on these Materials and may not transfer a patent or copyright on them to any other person or entity. To the extent any copyright in any Materials may originally vest in the Grantee, the Grantee hereby irrevocably transfers to the ADHS, for and on behalf of the State, all copyright ownership. The ADHS shall have full, complete and exclusive rights to reproduce, duplicate, adapt, distribute, display, disclose, publish, release and otherwise use all Materials. The Grantee shall not use or release these Materials without the prior written consent of the ADHS. When this Grant is terminated, the disposition of all such Materials shall be determined by the ADHS. Further, the Grantee agrees to give recognition to the ADHS for its support of any program when releasing or publishing program Materials.
 - 4.5.3. Title and exclusive copyright to all Material shall vest in the State of Arizona, subject to any rights reserved on behalf of the federal government. As State agencies and instrumentalities, both

ADHS and Grantee shall have full, complete, perpetual, irrevocable and non-transferable rights to reproduce, duplicate, adapt, make derivative works, distribute, display, disclose, publish and otherwise use any and all Material. The Grantee's right to use Material shall include the following rights: the right to use the Material in connection with its internal, nonprofit research and educational activities; the right to present at academic or professional meetings or symposia; and the right to publish in journals, theses, dissertations or otherwise of Grantee's own choosing. Grantee agrees to provide ADHS with a right of review prior to any publication or public presentation of the Material, and ADHS shall be entitled to request the removal of its confidential information or any other content the disclosure of which would be contrary to the best interest of the State of Arizona. Neither party shall release confidential information to the public without the prior expressly written permission of the other, unless required by the State public records statutes or other law, including a court order. Each party agrees to give recognition to the other party in all public presentations or publications of any Material, when releasing or publishing them.

- 4.5.4. In addition, ADHS and Grantee agree that any and all Material shall be made freely available to the public to the extent it is in the best interest of the State. However, if either party wants to license or assign an intellectual property interest in the material to a third-party for monetary compensation, ADHS and Grantee agree to convene to determine the relevant issues of title, copyright, patent and distribution of revenue. In the event of a controversy as to whether the Material is being used for monetary compensation or in a way that interferes with the best interest of the state or ADHS, then the Arizona Department of Administration shall make the final decision. Notwithstanding the above, "monetary compensation" does not include compensation paid to an individual creator for traditional publications in academia (the copyrights to which are Employee-Excluded Works under ABOR Intellectual Property Policy Section 6-908C.4.), an honorarium or other reimbursement of expenses for an academic or professional presentation, or an unprofitable distribution of Material.
- 4.6. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Grantee warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 4.7. Federal Immigration and Nationality Act. The Grantee shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the Grant. Further, the Grantee shall flow down this requirement to all subgrantees utilized during the term of the Grant. The State shall retain the right to perform random audits of Grantee and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Grantee and/or any subgrantees be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the Grant for default and suspension and/or debarment of the Grantee.

5. COSTS AND PAYMENTS.

- 5.1. Payments. The Grantee shall submit a complete and accurate Grantee's Expenditure Report for payment from Vitalyst within thirty (30) days.
- 5.2. Recoupment of Contract Payments.
 - 5.2.1. *Unearned Advanced Funds.* Any funds that have been advanced to the Grantee and remain in its possession at the time of termination of the Grant, shall be refunded to Vitalyst within forty-five (45) days.
 - 5.2.2. *Contracted Services.* Vitalyst shall pay for any costs that the Grantee can document as having been paid by the Grantee and approved under the Grant budget. In addition, the Grantee will be paid its reasonable actual costs for work in progress as determined by Generally Accepted Accounting Principles up to the date of Grant termination.
 - 5.2.3. *Unacceptable Expenditures.* The Grantee agrees to reimburse Vitalyst for all Grant funds expended, which are determined by the ADHS not to have been disbursed by the Grantee in accordance with the terms of this Grant or within the award terms and conditions. The Grantee shall reimburse Vitalyst within forty-five (45) days of the determination of unacceptability.

5.3. Applicable Taxes.

5.3.1. *Tax Indemnification.* The Grantee and all subgrantees shall pay all federal, state and local taxes applicable to its operation and any persons employed by the Grantee. Grantee shall require all subgrantees to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

5.3.2. *I.R.S. W9 Form.* In order to receive payment under any resulting Grant, the Grantee shall have a current I.R.S. W9 Form on file with Vitalyst.

5.4. Availability of Funds for the Next Fiscal Year. Funds may not be presently available for performance under this Grant beyond the first year of the budget term or Grant term. The State may reduce payments or terminate this Grant without further recourse, obligation or penalty in the event that insufficient funds are appropriated in the subsequent budget term. The State shall not be liable for any purchases or Subgrants entered into by the Grantee in anticipation of such funding.

5.5. Availability of Funds for the Current Grant Term. Should the State Legislature enter back into session and decrease the appropriations through line item or general fund reductions, or for any other reason these goods or services are not funded as determined by ADHS, the following actions may be taken by ADHS:

5.5.1. Accept a decrease in price offered by the Grantee.

5.5.2. Reduce the number of goods or units of service and reduce the payments accordingly.

5.5.3. Offer reductions in funding as an alternative to Grant termination.

5.5.4. Cancel the Grant.

6. **GRANT CHANGES.**

6.1. Amendments and Change Orders. The Grant may be modified only through a Grant Amendment and/or Change Order within the scope of the Grant, unless the change is administrative or otherwise permitted by the Special Terms and Conditions. Changes to the Grant, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized individual or made unilaterally by the Grantee are violations of the Grant and of applicable law. Such changes, including unauthorized Grant Amendments and/or Change Orders, shall be void and without effect, and the Grantee shall not be entitled to any claim under this Grant based on those changes.

6.2. Subgrants. The Grantee shall not enter into any subcontract under this Grant without the advance written approval of Vitalyst. The subcontract shall incorporate by reference all material and applicable terms and conditions of this Grant.

6.3. Assignments and Delegation. The Grantee shall not assign any right nor delegate any duty under this Grant without the prior written approval of Vitalyst. Vitalyst shall not unreasonably withhold approval.

7. **RISK AND LIABILITY.**

7.1. Risk of Loss. The Grantee shall bear all loss of conforming material covered under this Grant until received and accepted by authorized personnel at ADHS. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Grantee regardless of receipt.

7.2. Force Majeure.

7.2.1. *Liability and Definition.* Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Grant if and to the extent that such party's performance of this Grant is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; acts of terrorism; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-interventions not caused by or resulting from the act or failure to act of the parties; failures or refusals to act by government authority not caused by or resulting from the act or failure to act of the parties; and other similar occurrences beyond the control of the party

declaring force majeure, which such party is unable to prevent by exercising reasonable diligence.

7.2.2. **Exclusions.** Force Majeure shall not include the following occurrences:

7.2.2.1. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

7.2.2.2. Inability of either the Grantee or any subgrantee to acquire or maintain any required insurance, bonds, licenses or permits.

7.2.3. **Notice.** If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Grant Amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Grant.

7.2.4. **Default.** Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

7.3. **Third Party Antitrust Violations.** The Grantee assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Grantee for or toward the fulfillment of this Grant.

8. **DESCRIPTION OF MATERIALS.**

8.1. **Liens.** The Grantee agrees that the Materials supplied under this Grant are free of liens. In the event the Materials are not free of liens, Grantee shall pay to remove the lien and any associated damages or replace the Materials with Materials free of liens.

8.2. **Quality.** Unless otherwise modified elsewhere in these terms and conditions, the Grantee agrees that, for one (1) year after acceptance by the State of the Materials, they shall be:

8.2.1. Of a quality to pass without objection in the Grant description.

8.2.2. Fit for the intended purposes for which the Materials are used.

8.2.3. Within the variations permitted by the Grant and are of even kind, quantity, and quality within each unit and among all units.

8.2.4. Adequately contained, packaged and marked as the Grant may require.

8.2.5. Conform to the written promises or affirmations of fact made by the Grantee.

8.3. **Inspection/Testing.** Subparagraphs 8.1 through 8.2 of this paragraph are not affected by inspection or testing of or payment for the Materials by the State.

8.4. **Compliance With Applicable Laws.** The Materials and Services supplied under this Grant shall comply with all applicable federal, state and local laws, and the Grantee shall maintain all applicable license and permit requirements.

8.5. **Survival of Rights and Obligations After Grant Expiration and Termination.**

8.5.1. **Grantee's Representations.** All representations and warranties made by the Grantee under this Grant in paragraphs 7 and 8 shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12.510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.

8.5.2. **Change Orders.** Unless otherwise directed in writing, the Grantee shall fully perform and shall be obligated to comply with all Change Orders received by the Grantee prior to the expiration or termination hereof, including, without limitation, all Change Orders received prior to but not fully performed and satisfied at the expiration or termination of this Grant.

9. STATE'S CONTRACTUAL REMEDIES.

- 9.1. Right to Assurance. If the State, in good faith, has reason to believe that the Grantee does not intend to, or is unable to, perform or continue performing under this Grant, the State may demand in writing that the Grantee give a written assurance of intent to perform. Failure by the Grantee to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Grant.
- 9.2. Stop Work Order.
- 9.2.1. *Terms.* The State may, at any time, by written order to the Grantee, require the Grantee to stop all or any part of the work called for by this Grant for a period up to ninety (90) Days after the order is delivered to the Grantee, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Grantee shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 9.2.2. *Cancellation or Expiration.* If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Grantee shall resume work and an equitable adjustment in the delivery schedule or Grant price, or both, shall be made to the Grant in writing accordingly.
- 9.3. Non-exclusive Remedies. The rights and remedies of ADHS under this Grant are not exclusive, and ADHS is entitled to all rights and remedies available to it, including those under the Arizona Uniform Commercial Code and Arizona common law.
- 9.4. Right of Offset. The State shall be entitled to offset against any sums due the Grantee in any Grant with the State or damages assessed by the State because of the Grantee's non-conforming performance or failure to perform this Grant. The right to offset may include, but is not limited to, a deduction from an unpaid balance and a collection against the bid and/or performance bonds. Any offset taken for damages assessed by the State shall represent a fair and reasonable amount for the actual damages and shall not be a penalty for non-performance.

10. GRANT TERMINATION.

- 10.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Grant within three (3) years after Grant execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Grant on behalf of the State is, or becomes at any time while the Grant or an extension of the Grant is in effect, an employee of or a consultant to any other party to this Grant with respect to the subject matter of the Grant. The cancellation shall be effective when the Grantee receives written notice of the cancellation, unless the notice specifies a later time.
- 10.2. Gratuities. The State may, by written notice, terminate this Grant, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Grantee or a representative of the Grantee to any officer or employee of the State for the purpose of influencing the outcome of the procurement, securing the Grant or an Amendment to the Grant, or receiving favorable treatment concerning the Grant, including the making of any determination or decision about Grant performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by the Grantee.
- 10.3. Suspension or Debarment. The State may, by written notice to the Grantee, immediately terminate this Grant if the State determines that the Grantee or its subgrantee has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subgrantee of any public procurement unit or other governmental body.
- 10.4. Termination Without Cause.
- 10.4.1. Vitalyst, the State and the Grantee may terminate this Grant at any time with thirty (30) days' notice in writing specifying the termination date. Such notices shall be given by personal delivery or by certified mail, return receipt requested.
- 10.4.2. If the Grantee terminates this Grant, any monies prepaid by Vitalyst, for which no service or benefit was received, shall be refunded to Vitalyst within five (5) days of the termination notice.

In addition, if the Grantee terminates the Grant, the Grantee shall indemnify Vitalyst and the State for any sanctions imposed by the funding source as a result of the Grantee's failure to complete the Grant.

- 10.4.3. If the State or Vitalyst terminates this Grant pursuant to this Section, Vitalyst shall pay the Grantee the Grant price for all Services and Materials completed up to the date of termination. Vitalyst shall pay for any costs that the Grantee can document as having been paid by the Grantee and approved by ADHS. In addition, the Grantee will be paid its reasonable actual costs for work in progress as determined by GAAP up to the date of termination. Upon such termination, the Grantee shall deliver to the ADHS all deliverables completed. ADHS may require Grantee to negotiate the terms of any remaining deliverables still due.
- 10.5. Mutual Termination. This Grant may be terminated by mutual written agreement of the parties specifying the termination date and the terms for disposition of property and, as necessary, submission of required deliverables and payment therein.
- 10.6. Termination for Default. The State reserves the right to terminate the Grant in whole or in part due to the failure of the Grantee to comply with any material obligation, term or condition of the Grant, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Grant. In the event the ADHS terminates the Grant in whole or in part as provided in this paragraph, the ADHS may procure, upon such terms and in such manner as deemed appropriate, Services or Materials, similar to those terminated, and Grantee shall be liable to the ADHS for any excess costs incurred by the ADHS in obtaining such similar Services or Materials.
- 10.7. Continuation of Performance Through Termination. Upon receipt of the notice of termination and until the effective date of the notice of termination, the Grantee shall perform work consistent with the requirements of the Grant and, if applicable, in accordance with a written transition plan approved by the ADHS. If the Grantee terminated in part, the Grantee shall continue to perform the Grant to the extent not terminated. After receiving the notice of termination, the Grantee shall immediately notify all subgrantees, in writing, to stop work on the effective date of termination, and on the effective date of termination, the Grantee and subcontractors shall stop all work.
- 10.8. Disposition of Property. Upon termination of this Grant, all property of the State, as defined herein, shall be delivered to the ADHS upon demand.

11. COMMUNICATION.

- 11.1. Program Report. When reports are required by the Grant, the Grantee shall provide them in the format approved by ADHS.
- 11.2. Information and Coordination. Vitalyst will provide information to the Grantee pertaining to activities that affect the Grantee's delivery of services, and the Grantee shall be responsible for coordinating their activities in such a manner as not to conflict or unnecessarily duplicate activities. As the work of the Grantee progresses, advice and information on matters covered by the Grant shall be made available by the Grantee throughout the effective period of the Grant.

12. CLIENT GRIEVANCES.

If applicable, the Grantee and its subgrantees shall use a procedure through which clients may present grievances about the operation of the program that result in the denial, suspension or reduction of services provided pursuant to this Grant and which is acceptable to and approved by the State.

13. ADMINISTRATIVE CHANGES.

Vitalyst reserves the right to correct any obvious clerical, typographical or grammatical errors, as well as errors in party contact information (collectively, "Administrative Changes"), prior to or after the final execution of a Grant or Grant Amendment. Administrative Changes subject to permissible corrections include: misspellings, grammar errors, incorrect addresses, incorrect Grant Amendment numbers, pagination and citation errors, mistakes in the labeling of the rate as either extended or unit, and calendar date errors that are illogical due to typographical error. Vitalyst shall subsequently send to the Grantee notice of corrections to administrative errors in a written confirmation letter with a copy of the corrected Administrative Change attached.

14. SURVIVAL OF TERMS AFTER TERMINATION OR CANCELLATION OF CONTRACT.

All applicable Grant terms shall survive and apply after Grant termination or cancellation to the extent necessary for Grantee to complete and for the Vitalyst to receive and accept any final deliverables that are due after the date of the termination or cancellation.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA).

- 15.1. The Grantee warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Grant. Grantee warrants that it will cooperate with the ADHS in the course of performance of the Grant so that both the ADHS and Grantee will be in compliance with HIPAA, including cooperation and coordination with the Arizona Department of Administration-Arizona Strategic Enterprise Technology (ADOA-ASET) Office, the ADOA-ASET Arizona State Chief Information Security Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Grantee will sign any documents that are reasonably necessary to keep ADHS and Grantee in compliance with HIPAA, including, but not limited to, business associate agreements.
- 15.2. If requested by Vitalyst or the ADHS, Grantee agrees to sign a "Pledge To Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Grantee agrees to attend or participate in HIPAA training offered by the ADHS or to provide written verification that the Grantee has attended or participated in job related HIPAA training that is: (1) intended to make the Grantee proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ADOAASET Arizona State Chief Information Security Officer and HIPAA Coordinator.

16. AUTHORIZATION FOR PROVISION OF SERVICES.

Authorization for the performance of services under this Grant shall be made only upon Vitalyst issuance of a Grant Agreement that is signed by an authorized agent. The Grant Agreement will indicate the Grant number and the dollar amount of the funds authorized. The Grantee shall only be authorized to perform services up to the amount of the Agreement. Vitalyst nor the ADHS shall not have any legal obligation to pay for services in excess of the amount indicated on the Grant Agreement. No further obligation for payment shall exist on behalf of Vitalyst or the ADHS unless the Grant Agreement is changed or modified in writing.

17. KEY PERSONNEL.

It is essential the Grantee provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work performed under this Grant. The Grantee must assign specific individuals to key positions of responsibility. If any of the assigned Key/Essential Personnel does not satisfactorily perform the assigned duties, the Grantee shall withdraw such Key/Essential Personnel immediately upon the ADHS' notification and shall replace the withdrawn Key/Essential Personnel with other Key/Essential Personnel.

18. INFORMATION DISCLOSURE.

The Grantee shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the State or from others in carrying out its functions under the Grant shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Grant. Persons requesting such information should be referred to the State. The Grantee also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Grantee as needed for the performance of duties under the Grant, unless otherwise agreed to in writing by the State.

19. GRANT RESTRICTIONS.

Grantees will provide a copy of all printed or broadcast media or any other educational materials developed using funds awarded under this Grant to the ADHS Program Manager for approval. Media and/or printed

educational materials will adhere to the required wording as follows: “Funded in part by the Office of Health Equity as made available through the Arizona Department of Health Services” or add the ADHS logo.

20. OFFSHORE PERFORMANCE OF WORK PROHIBITED.

Any services that are described in the specifications or scope of services that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or ‘overhead’ services, redundant back-up services or services that are incidental to the performance of the Grant. This provision applies to work performed by subcontractors at all tiers.

21. INDEMNIFICATION CLAUSE.

To the fullest extent permitted by law, Grantee shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of such Grantee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Grantee from and against any and all claims. It is agreed that the Grantee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Grantee agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Grantee for the State of Arizona.

22. INSURANCE REQUIREMENTS.

- 22.1. Grantee and subgrantees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Grant Agreement, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Grantee, its agents, representatives, employees or subgrantees. The Insurance Requirements herein are minimum requirements for this Agreement, and the Grantee is free to purchase additional insurance.
- 22.2. Minimum Scope and Limits of Insurance. Reference Insurance Requirements document included in the Request for Proposals.

23. CIVIL RIGHTS ASSURANCE STATEMENT.

The Grantee and Subgrantees are subject to Title VI of the Civil Rights Act of 1964, Section 504 of Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendment of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the Grantee on the basis of race, color, national origin, age, sex (in educational activities) or disability.

24. AMERICANS WITH DISABILITIES ACT OF 1990.

- 24.1. The Grantee shall comply with the Americans with Disabilities Act of 1990 (Public Law 101-336) and the Arizona Disability Act of 1992 (A.R.S § 41-1492 et. seq.), which prohibits discrimination on the basis of physical or mental disabilities in delivering contract services or in the employment or advancement in employment of qualified individuals.

- 24.2. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Contract Manager for the Grant. Requests should be made as early as possible to allow time to arrange the accommodation.

25. FRAUD, WASTE, AND ABUSE.

- 25.1. The ADHS requires all employees to abide by the State's Personnel System Rules, R2-5A-501; Standards of Conduct which include maintaining high standards of honesty, integrity, and impartiality, free from personal considerations and/or favoritism, and Code of Conduct for individuals engaged in Accounting, Financial and Budgeting Activities which depicts the moral, ethical, legal and professional aspects of personal conduct. The ADHS requires the same conduct of its consultants, vendors, contractors, subrecipients, or persons doing business with the agency.
- 25.2. Any State employee, consultant, vendor, contractor or subrecipient or person doing business with the Agency who receives a report of improper activity must report the information within one (1) business day. Note: Federal Award policy denotes Grantees must disclose, in a timely manner, in writing to the ADHS all violations of Federal Criminal Law, involving fraud, bribery, or gratuity violations potentially affecting Federal Awards.
- 25.3. Anyone suspecting Fraud, Waste, or Abuse related to the ADHS activities are required to report Fraud, Waste, or Abuse through any of the following reporting channels:
- 25.3.1. ADHS Ethics Action Hotline at (602) 542-2347.
- 25.3.2. ADHS Ethics Action Email at reportethics@azdhs.gov.
- 25.3.3. General Accounting Office (GAO) Fraud Reporting Email at reportfraud@azdoa.gov to report Fraud, Waste, or Abuse incidents.

26. PROTECTION OF STATE CYBERSECURITY INTERESTS.

The Grantee shall comply with State Executive Order No. 2023-10, which includes, but is not limited to, a prohibition against (a) downloading and installing of TikTok on all State-owned and State-leased information technology; and (b) accessing TikTok through State information technology.