Attachment 1

Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide Error! Reference source not found.AV Equipment and Services in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	1. 07/25/2017 date	CR initial				
Revised Offers:	2. x date #1	initial	3. x date #1	initial	4. x date #1	initial
	5. x date #4	initial	6. x date #5	initial	7. x date #6	initial
Best and Final Offer:	8. 9/28/2017 date	CR initial				

ExhibitOne Corporation

Offeror company name

14601 S. 50th St.

Address

Suite 120

City | State | ZIP

Phoenix, AZ 85044

Federal tax identifier (EIN or SSN)

Signature of person authorized to sign Offer — Initials

x Chad L. Rowley — CR

Printed name and title

Chad Rowley, CFO & COO

Contact name and title

Crowley@ExhibitOne.com — 480-763-1002 x115

Contact Email Address — Contact phone number

CERTIFICATION: By signature in the above, Offeror certifies that it:

1. will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
2. has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
3. complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
4. is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER: State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by number # at the top of this form, and which was dated date (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: [redacted] **The effective date of the Contract is:** [redacted] **Contract awarded** [redacted] 10/2/2017

ADSPO17-184596 Deepika Bajpayee — 10/16/2017 **Deepika Bajpayee**

Procurement Officer signature — Procurement Officer, Deepika Bajpayee

Part 2: Scope, Pricing and Terms and Conditions

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SECTION 2-A: Scope of Work

1.0 Purpose and Background

1.1 **Purpose:** The State of Arizona is seeking one (1) or more Contractors to provide Audio and Video (AV) Equipment and Services. This includes AV equipment and related services such as design, installation, maintenance etc.

1.2 **Background:** The State acknowledges that the AV industry and its suppliers are changing rapidly and as such desires to establish manufacturer-based contracts allowing flexibility to accommodate open-standards-based products and new technology. Contracts resulting from this solicitation will be used by multiple Eligible Agencies with delivery locations throughout the State. The State intends to consider value-added-reseller, distributor, as well as manufacturer-direct proposals and may award multiple manufacturer offerings to a successful value-added-reseller and/or distributor. The State prefers to contract with vendors who represent multiple manufacturers as well as vendors who represent manufacturers that produce specialized or custom AV products.

2.0 Scope Summary

2.1 The Contract shall be on an "as needed, if needed" basis. There is no guarantee as to the amount of products and/or services purchased under any resulting Contract.

2.2 The Contractor(s) shall provide Audio and Video Equipment and Services under this Contract which includes:

2.2.1 Actual manufacturer's products and/or services and all labor, materials, transportation, equipment and other necessities for the installation, integration, and implementation, including engineering analysis, design and configuration of the manufacturer's product and/or service.

2.2.2 Software and/or hardware maintenance of the manufacturer's product or service.

2.2.3 Ancillary services in conjunction with the implementation, or extension of a manufacturer's product.

3.0 Scope of Products and Services

3.1 The contract(s) shall provide a broad range of Audio and Video Equipment and Services as well as all necessary account and delivery services. Equipment offered in the following categories shall be considered for award. These categories shall be defined by similar types of products and include all related parts and accessories:

Category	Description
Audio	Compact Disc (CD) Systems, Public Address (PA) Systems, Speakers, Tape Players/Recorders, Assistive Listening Devices, and other associated equipment & services
Cameras	Digital, Document, Video, Camcorders, Security, Weatherized, and other associated equipment & services.

Presentation Systems	Projectors, Projector Screens, Interactive Boards, Mounting systems, and other associated equipment & services.
Televisions	Digital, LCD, LED, OLED, Plasma, Mounting Systems, Swivels, DVD or Blu-ray Disc Players, and other associated equipment & services.
Video Conferencing	Video Conferencing Equipment, Systems, Services and other associated equipment & services.
Interactive Educational Response Systems	

3.2 The following list of items are examples of AV equipment and related accessories that are currently eligible for purchase ("ITEMS INCLUDED") and any applicable exclusions ("ITEMS EXCLUDED").

3.2.1 ITEMS INCLUDED (but not limited to):

- Still photography cameras priced at $150 or higher
- Video cameras priced at $150 or higher
- Camera batteries for eligible cameras priced at $150 or higher
- Digital video camera disk drives
- Monitors (including video, broadcast, televisions, etc.)
- Projectors (including hand-held projectors)
- Projector lamps
- Projector Screens (including Automated and Portable)
- Cases
- Mounting brackets/yokes
- Swivels
- OEM Software that is part of the AV solution
- Editing Equipment
- Light kits
- Mixers/Processors
- AV Switchers
- AV Controllers
- Tripods
- Tripod dollies
- Microphones
- Podiums
- AV tables/Carts
- Rack Mounts
- Speakers
- Switchers
- Soundboards

- PA Systems (including portable)
- Media Players (CD, DVD, Blu-ray, MP3 etc.)
- Recorders (including media recording and publishing systems that capture, manage, and deliver web presentations)
- Integrated Room Systems
- Desktop Systems
- Digital Video Servers
- Decoders/receivers
- Duplicators/CD Burners
- Interactive Boards
- Ancillary Power
- AV Cabling
- Audio and Video Accessories not otherwise specified above
- Custom AV Equipment and Accessories as needed

3.2.2 ITEMS EXCLUDED (specifically from this contract):

- Rented or leased products
- Computers - unless the intended design of the computer is specifically for Audio and/or Video purposes
- Computer monitors, keyboards, mouse, and/or related accessories
- Radio related Products and Services, including Public Safety Communication Equipment, 2-way radios, 900MHz Digital Microwave Radio Systems, and Digital Microwave Radio Equipment
- Wireless products and services (Cellular, Data, PDAs, Pagers)
- Carrier Services, both regulated and unregulated
- Any software that is not part of the AV solution
- Cameras priced below $150 and their related accessories

4.0 Service Requirements

4.1 The services that may be offered in correlation with this solicitation are categorized as follows:

4.1.1 Design

4.1.1 (a) The Contractor shall clearly define and communicate to the State what is specifically included in their Design Services.

4.1.2 Installation

4.1.2 (a) Time of Purchase of new equipment

4.1.2 (b) Previously purchased equipment

4.1.3 Training

4.1.3 (a) User Training/Transfer of Knowledge: This training shall be completed by the Contractor after equipment installation at no additional cost to the State.

(a) i. If this training is not completed immediately after the equipment installation is complete, then the Contractor shall schedule a time to conduct this training and transfer of knowledge with the State-designated personnel. There will be no additional cost to the State of any kind in this situation.

4.1.3 (b) Formal Classroom Training: This will be allowed if this training consists of at least five (5) or more participants from the State. This training shall be billed at an hourly rate and shall be held at the State unless otherwise approved by the State.

4.1.3 (c) In the case of both User Training and Formal Classroom Training, the training participants shall receive, and can retain individual copies of applicable training materials at the time the training is conducted. The State reserves the right to make additional copies of training materials and AV system documentation provided. The State also reserves the right to use the materials to train additional State-designated personnel.

4.1.4 Maintenance

4.1.4 (a) Preventative

(a) i. The Contractor shall perform work in accordance with the manufacturer's recommendation to ensure it is performing to all defined technical and environmental specifications for the system. The Contractor shall perform a minimum of two (2) to a maximum of four (4) inspections a year. The Contractor shall also conduct initial preventative maintenance ensuring performance begins at the optimal level.

4.1.4 (b) Legacy

(b) i. In addition to maintenance of new equipment purchases, the Contractor shall also offer maintenance of legacy equipment. Legacy equipment is defined as any existing audio and/or video equipment and its associated supplies or accessories, that have been purchased prior to the RFP issuance and resulting contract award.

4.1.5 Integration

4.1.5 (a) Integration services shall be offered at an hourly rate by the Contractor. The Contractor shall clearly list and communicate to the State what is specifically included in their Integration Services.

5.0 Pricing Requirements

5.1 The Offeror may bid solely on equipment or on equipment and services related to new

equipment purchases (including but not limited to design, installation, maintenance etc.).

5.1.1 Offeror shall make available a complete family or line of products offered by a manufacturer at a fixed minimum discount percentage off the published manufacturer's list price. Discounts shall be offered in whole percentage numbers, with only one minimum discount percentage per manufacturer per category. Offerors may provide a greater discount percentage per manufacturer per category, whenever possible. Proposed manufacturers shall provide equipment in current production and marketed to the general public and education/government agencies at the time the bid is submitted.

5.1.2 Offeror shall provide services, as described herein, at an hourly price for design, installation, maintenance and integration. Offeror shall describe clearly the specific services being provided under each type of AV service.

5.1.3 Offeror shall provide services, as described herein, at an hourly price for hardware/software maintenance for equipment within a complete family or line of products offered by a manufacturer.

No Exhibits apply to the Scope of Work.

End of Section 2-A

SECTION 2-B: Pricing Document

1.0 Compensation

1.1 COMPENSATION METHOD

Contractor will be compensated based on the pricing provided in ADSPO17-00007302_Attachment 4 Pricing Sheet, for satisfactorily carrying out its obligations under the Contract. Pricing shall be defined based on all numbers submitted in ADSPO17-00007302_Attachment 4 Pricing Sheet. For AV Equipment, pricing is based on discount percentage off published manufacturer list price for equipment under each category. For AV services, pricing is based on hourly prices for each service.

2.0 Pricing

2.1 CONTRACTOR'S BEST PRICING: Supplier warrants that, for the term of the Contract, the prices and discounts set out in ADSPO17-00007302_Attachment 4 Pricing Sheet, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.

2.1.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.1.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.1.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

2.1.4 Any manufacturer additions/deletions as well as any changes to the discount percentage off the manufacturer list price per category, that the Contractor wants to make, needs to be submitted to the State in writing via email (letter format with company letterhead). These requests need to be sent to the State on a quarterly basis during the first week of January, April, July and October. If the State approves the requested changes, then the approved changes will be made to the manufacturer discount rate sheet only during these four months of the year.

2.2 PRICING-ALL-INCLUSIVE:

2.2.1 Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

2.3 PRICE INCREASES:

2.3.1 The State Procurement Office may review a fully documented request for a price increase. The requested increase shall be in writing and be based upon a cost increase to the contractor that was

clearly unpredictable at the time of the offer and is directly correlated to the price of the product concerned. Contractor must provide conclusive evidence of a need for any price increases such as being substantiated by the Producer Price Index, Consumer Price Index, or similar pricing guide.

(a) Initial Contract prices will be honored for one year after award of Contract.

(b) All written requests for price adjustments made by the contractor shall be initiated thirty (30) days in advance of any desired price increase to allow State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.

(c) All price adjustments will be implemented by a formal contract change order. State shall determine whether the requested price increase or an alternate option is in the best interest of State.

2.4 PRICE REDUCTIONS:

2.4.1 Price reductions shall be immediately passed along to the State and may be submitted in writing to the State for consideration at any time during the Contract period. The contractor shall offer the State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost.

2.4.2 Sales promotions requests shall include difference in pricing, begin and end date of promotion along with the products covered. The Contractor must offer any sales promotional pricing for at least three (3) months. The State at its own discretion may or may not accept a Contractor's offer of sales promotional pricing for a shorter timeframe than the three (3) months.

2.5 ADDITIONAL CHARGES:

2.5.1 Any charges or fees not delineated in the Contract may not be added, billed, or invoiced under the Contract. All additional work shall be approved by the State in advance and be in accordance with the contract rate.

2.6 TRAVEL:

2.6.1 Contractor shall get written approval prior to any travel under the Contract in which reimbursement of expenses will be requested. Contractor will be reimbursed for actual expenses incurred in accordance with the current rates specified in State's Travel Policy. Contractor shall itemize all per diem and lodging charges. State Travel Policy, including State rates, may be located at https://gao.az.gov/travel. The Eligible Agency shall reject any claim for travel reimbursement without prior written approval.

2.7 PRICE QUOTES:

2.7.1 The State requires that the Contractor acknowledge via email any request for price quote they receive from an Eligible Agency within 24 hours of receiving this request. In this acknowledgement email the Contractor can also provide the price quote if possible. If it is not possible to provide the price quote within that 24-hour period, then the Contractor is required to give the Eligible Agency an estimated date by when the Contractor will provide the price quote to the Eligible Agency.

3.0 Funding

No particular funding considerations apart from paragraph 4.4 of the Uniform Terms and Conditions [*Availability of Funds*] have been identified as of the Solicitation date.

4.0 Invoicing

4.1 INVOICES GO TO BUYING ENTITY. Contractor shall submit all billing notices or invoices to the ordering Eligible Agency or Co-Op Buyer at the address indicated on the applicable Order document.

4.2 MINIMUM INVOICE REQUIREMENTS. Every invoice must include the following information:

Item	Required
Bill-to name and address	●
Contractor name and contact information	●
Remit-to address	●
State contract number	●
Order number (typically the ProcureAZ PO #)	●
Invoice number and date	●
Date the items shipped or services performed	●
Applicable payment terms	●
Contract line item number	●
Contract line item description	●
Quantity delivered or performed	●
Line item unit of measure	●
Item price	●
Extended pricing	●
Discount off list or catalog	●
Taxes *(as a separate invoice line item)*	●
Upcharge shipping/freight, etc. *(as a separate invoice line item)*	Materials only
Total invoice amount due	●

4.3 NO INVOICE WITHOUT AUTHORIZATION. Contractor shall not seek payment for any:

1. Materials or Services that have not been authorized on an acknowledged Order;
2. expediting, overtime, premiums, or upcharges absent State's express prior approval; or
3. Materials or Services that are the subject of a Contract Amendment or Change Order that has not been fully signed.

4.4 PRE-INVOICE REVIEW. Shortly before Contractor is scheduled to submit each invoice, the parties' representatives shall meet informally to review any issues relevant to that upcoming invoice so that the formal invoice process is thereby facilitated and made more efficient.

4.5 SUBMITTING INVOICES. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form provided or required by the ordering Eligible Agency or Co-Op Buyer. Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.

4.6 DEFECTIVE INVOICES. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Agency or Co-Op Buyer may, at its discretion, reject any materially defective invoice.

4.6.1 The ordering Eligible Agency or Co-Op Buyer shall notify Contractor within 5 (five) business days after receipt if it determines an invoice to be materially defective.

4.6.2 Invoices will be deemed automatically rejected upon delivery if they:

(a) are sent to an incorrect address;

(b) do not reference the correct State contract number;

(c) are payable to any Person other than the Contractor; or

(d) have incorrect data or line items listed

4.6.3 The ordering Eligible Agency or Co-Op Buyer will have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

4.7 INVOICING FOR TASK ORDERS. For task order Services, invoices must include the following information as applicable to the relevant task order being invoiced against (in addition to any standard information):

1. substantiation of hours worked using:
   a. a detailed daily timesheet;
   b. itemization to the task level; and
   c. breakdown by service area (if the Contract covers more than one area) and Contract Amendment (if any apply);
2. authorizations and receipts for all allowable reimbursable items being invoiced; and
3. Contractor's certification that the invoice has been examined and to the best of Contractor's knowledge and belief the invoiced amounts are entitled, correct, and accurate as can be demonstrated by the contractually-required books and records upon State's demand.

5.0 Payments

5.1 PAYMENT. The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 18.1 of the Special Terms and Conditions

5.2 JOINT CHECKS OR DIRECT PAY. The applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.

5.3 RECOVERY OF OVER-PAYMENT. If applicable Eligible Agency or Co-Op Buyer determines that an over-payment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Contractor.

5.4 PAYMENTS TO SUBCONTRACTORS. Contractor shall make payment of all undisputed amounts due to Subcontractors within thirty (30) days of receipt of funds from applicable Eligible Agency or Co-Op Buyer applicable to their services.

5.5 PURCHASING CARD. The applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders, at its discretion, using a purchasing card, credit card, debit card, warrant, federal wire, etc. Any and all fees related to payment using a Purchasing Card are the responsibility of Contractor. Unless otherwise stated in the Contract there will be no additional fees or increase in prices associated with this method of payment.

5.6 AUTOMATED CLEARING HOUSE. The applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at:

https://gao.az.gov/afis/vendor-information

5.7 Contractor shall cooperate with the State by providing the State information including, but not limited to, Contractor's bank information to support the State's selected means of payment. The Contractor shall not charge the State an amount to recover any convenience fee, discount fee, processing fee or service fee related to the acceptance of the State's payment.

5.8 Unless otherwise specified in the Contract, the Contractor shall offer as standard payment terms a discount of 2% for payments made within 10 days and full payment due in 30 days (generally referred to as "2/10, net 30").

6.0 Online Catalog and Electronic Ordering System (Punch-Out) (OPTIONAL)

6.1 The Contractor shall make available an online catalog to allow authorized users to make purchase from this contract through the State's eProcurement System (ProcureAZ). The contractor shall have a secured website for placing online orders. The features and functions of any online ordering catalog that is created for use by the State under this contract shall include but shall not be limited to the following:

6.1.1 Access by standard web browsers

6.1.2 Product information such as unit of measure, item status, price, description and photos

6.1.3 Item status inquiry functionality that provides stock availability

6.1.4 Order tracking

6.1.5 Help functionality

6.1.6 Reflect current catalog / price list and contract pricing

6.1.7 Restricted to only those items that may be purchased under this contract that are within the general product categories establish by this contract

6.1.8 Shall not include any items that are specifically excluded from this contract.

6.2 The Contractor shall provide access to and interconnectivity with ProcureAZ for allowing authorized State system users to "Punch-Out" of the State's eProcurement system (ProcureAZ), and select contract products and services directly from the Contractor's website, and return to the State's system with pre-populated order details. Contractor shall cooperate with the State's system provider in the establishment and ongoing operations of their Punch-Out connection.

6.3 The cost associated with the Contractor's Punch-Out including development, set-up, maintenance and support shall be borne by the Contractor.

6.4 No other Contractor electronic ordering system shall be allowed.

End of Section 2-B

SECTION 2-C: Special Terms and Conditions

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

1.1	**Acceptance**	"Acceptance" means the document headed "Offer and Acceptance Form" bearing the State contract number once Procurement Officer has signed it to signify (1) State's formal acceptance of the Accepted Offer and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term "acceptance" used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.
1.2	**Accepted Offer**	If State did not request a Revised Offer, then "Accepted Offer" means the Initial Offer. If State did request a Revised Offer but not a Best and Final Offer, then "Accepted Offer" means the latest Revised Offer. If State requested a Best and Final Offer, then "Accepted Offer" means the Best and Final Offer.
1.3	**Arizona Procurement Code; A.R.S.; A.A.C.**	"Arizona Procurement Code, "A.R.S.," and "A.A.C." are each defined in the Instructions to Offerors.
1.4	**Arizona TPT**	"Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at: https://www.azdor.gov/business/transactionprivilegetax.aspx.
1.5	**Attachment**	"Attachment" means any item that: 1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO); 2. was attached to an Offer when submitted; and 3. was included in the Accepted Offer.
1.6	**Pricing Document**	"Pricing Document" means Section 2-B of Part 2 of the Solicitation Documents, provided that, if there is no such Section in the Contract, then "Pricing Document" is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
1.7	**Contract Amendment**	"Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution. The term "Change Order" in ProcureAZ is to be construed as being synonymous with "Contract Amendment".
1.8	**Contract Terms and Conditions**	"Contract Terms and Conditions" means the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
1.9	**Contractor**	"Contractor" means the Person identified on the Accepted Offer who has entered into the Contract with State.
1.10	**Contractor Indemnitor**	"Contractor Indemnitor" means Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.

1.11 Co-Op Buyer

"Co-Op Buyer" means a member of the State Purchasing Cooperative that has entered into a "Cooperative Purchasing Agreement" with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, "Co-Op Buyer" is to be construed as encompassing "eligible procurement unit" under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, "non-profit organizations" are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.

1.12 Eligible Agency

If the Special Terms and Conditions indicates that the Contract is a "single-agency" contract, then "Eligible Agency" means the particular State of Arizona agency, university, commission, or board identified therein. If the Special Terms and Conditions indicates that the Contract is a "statewide" contract, then "Eligible Agency" means any State of Arizona department, agency, university, commission, or board.

1.13 Indemnified Basic Claims

"Indemnified Basic Claims" means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys' fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.

1.14 Instructions to Offerors

"Instructions to Offerors" is Section 3-A of Part 3 of the Solicitation Documents.

1.15 Order

"Order" means the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an "Order":

4. "Release" or "Release Purchase Order" in ProcureAZ;
5. "task order", "service order," or "job order" when a Release Purchase Order for Services has already been committed in ProcureAZ; or
6. "purchase order" for buying by Co-Op Buyers, if co-op buying applies.

1.16 ProcureAZ

"ProcureAZ" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document *Technical Bulletin No. 020, ProcureAZ – The Official State eProcurement System*.

NOTE (1): Technical Bulletin No. 020 is available online at:

https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations

NOTE (2): The URL for ProcureAZ itself is:

https://procure.az.gov/

1.17 State

With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each of Eligible Agency or Co-Op Buyer who has issued the Order.

1.18 State Indemnitees

"State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.

1.19 Subcontractor

"Subcontractor" has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is "… a person who contracts to perform work or render service to … [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . ."The Contract is to be construed as "a contract with a state governmental unit" for purposes

of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.

1.20 Work

"Work" means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

2.0 Contract Interpretation

2.1 Usage

Where the Contract:

1. assigns obligations to Contractor, any reference to "Contractor" is to be construed to be a reference to "Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor's and the Subcontractors' respective agents, representatives, and employees" in every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;
2. uses the permissive "may" with respect to a party's actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [*Definitions*]. For clarity of intent, any right given to State using "State may" or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written "may, at its discretion," the discretion extends to whatever is most advantageous to State; and (b) where written only as "may," the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
3. uses the imperative "shall" with respect to a party's actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [*Definitions*]. Conversely, the phrase "shall not" is to be interpreted as an imperative prohibition.
4. uses the term "must" with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written "*must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes*" in every instance;
5. uses the term "might" with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
6. uses the term "will" or the phrases "is to be" or "are to be" with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that "shall" is either unnecessary or irrelevant in that instance.

2.2 Contract Order of Precedence

COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

(a) Contract Amendments;

(b) the Solicitation Documents, in the order:

(1) Special Terms and Conditions;

(2) Exhibits to the Special Terms and Conditions;

(3) Uniform Terms and Conditions;

(4) Scope of Work;

(5) Exhibits to the Scope of Work;

(6) Pricing Document;

(7) Exhibits to the Pricing Document;

(8) Specifications; and

(9) any other documents referenced or included in the Solicitation;

(c) Orders, in reverse chronological order; and

(d) Accepted Offer.

ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

2.3 Independent Contractor

Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

2.4 Complete Integration

The Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3.0 Contract Administration and Operation

3.1 Term of Contract

The term of the Contract will commence on the date indicated on the Acceptance and continue for one (1) year unless canceled, terminated, or permissibly extended.

3.2 Contract Extensions

State may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of 5 (five) years.

3.3 Notices and Correspondence

3.3.1 TO CONTRACTOR. State shall:

(a) address all Contract correspondence other than formal notices to the email address indicated as "Default for Type" for "General Mailing Address" in Contractor's corresponding ProcureAZ Vendor Profile; and

(b) address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 TO STATE. Contractor shall :

(a) address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the ProcureAZ Summary for State; and

(b) address any required notices to State to Procurement Officer identified as "Purchaser" in the ProcureAZ Summary at the following mailing address:

Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 402
Phoenix, AZ 85007

3.3.3 CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

3.4 Signing of Contract Amendments

Contractor's counter-signature – or "approval" in ProcureAZ, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:

1. extension of the term of the Contract within the maximum aggregate term;
2. revision to Procurement Officer appointment or contact information; or
3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in *(1)*, *(2)*, and *(3)* above, both parties' signature – or "approval" in ProcureAZ, in the case of a Change Order – are required to give it effect.

3.5 Click-Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.6 Books and Records

3.6.1 RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.

3.6.2 RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.

3.6.3 AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State's demand, the choice of which being at State's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.7 Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

3.8 Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor's or Subcontractors' plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials

that are be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

(a) "Government Purpose Rights" are:

i. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;

ii. the right to release or disclose that work product to third parties for any State government purpose; and

iii. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

(b) "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2 JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3 PRE-EXISTING MATERIAL. All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

(a) any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;

(b) any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and

(c) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing materials.

3.9.4 DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

3.10 Subcontracts

3.10.1 INITIAL LIST. At the time of Contract execution, Contractor's candidate Subcontractors were identified in Attachment 3-C to the Accepted Offer [*Proposed Subcontractors*]. Agreeing to them being included in the Accepted Offer signified Procurement Officer's

advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.

3.10.2 ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor that (a) was not listed on Attachment 3-C at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case *(a)* or *(b)*, Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3 FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

3.11 Offshore Performance of Certain Work Prohibited

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

3.12 Orders

3.12.1 ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.12.2 ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.12.3 ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.12.4 SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required: (a) the Contract is identified as being a "single-agency/single-project" contract and (b) the Contract was created in ProcureAZ as something other than a "Master/ Blanket" type.

3.12.5 NO MINIMUMS OR COMMITMENTS. (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c) Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing

applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

3.12.6 NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

3.13 Statewide Contract Provisions

The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a "delivery order" sub-type of ID/IQ contract to the extent the Work is Materials, and a "task order" sub-type to the extent the Work is Services.

1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

   https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative

2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

   https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

4. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

   https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

5. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) "approving" the Order electronically in ProcureAZ, which will indicate Contractor's unqualified acceptance of the Order as-issued; or (b) "rejecting" the Order electronically in ProcureAZ, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in ProcureAZ, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in ProcureAZ within 3 (three) business days. Contractor shall thereafter be

barred from subsequently rejecting the Order in ProcureAZ and if it does so the rejection will be void.

6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

3.14 Multiple-Use Provisions

Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in ProcureAZ. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
3. As described in *(2)* above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.
4. As described in *(3)* above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

When evaluating the proposals under *(3)* and *(4)* above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

3.15 Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

3.16 Work on State Premises

3.16.1 COMPLIANCE WITH RULES. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.16.2 PROTECTION OF GROUNDS AND FACILITIES. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

3.17 Volume Sales Report

The Contractor shall furnish the State an annual sales report delineating all the equipment and services order activity under the contract. The format of the report shall be approved by the State. At a minimum, it shall disclose Customers Name (Eligible Agency or Co-op Buyer), Purchase Order Number, Manufacturer, Product Description, Product # / SKU, Quantity, Cost of Equipment/Service, Contract Category, Location delivered/Installed, Date of delivery or installation, for all sales transacted within the year. The volume sales report shall be submitted annually by July 31st to the State. The State at its discretion may request this sales report as needed during the year and the Contractor shall furnish this report within one week's notice.

4.0 Costs and Payments

4.1 Payments

4.1.1 PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statues Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in ProcureAZ and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2 PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated on the Accepted Offer.

4.2 Applicable Taxes

4.2.1 CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

4.2.2 TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5.0 Contract Changes

5.1 Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement

Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

5.2 Assignment and Delegation

5.2.1 IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

5.2.2 IN PART. Subject to paragraph 3.10 [*Subcontracts*] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.

6.0 Risk and Liability

6.1 Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2 Contractor Insurance

Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, 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 Contractor, his agents, representatives, employees or subcontractors.

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage

General Aggregate	$2,000,000
Products – Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Blanket Contractual Liability – Written and Oral	$1,000,000
Damage to Rented Premises (Fire Legal Liability)	$50,000
Each Occurrence	$1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions,

universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

Combined Single Limit (CSL)	$1,000,000

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$1,000,000
Disease – Each Employee	$1,000,000
Disease – Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor that is exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

4. Professional Liability (Errors and Omissions Liability)

Each Claim	$ 2,000,000
Annual Aggregate	$ 4,000,000

a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the Policy shall precede the effective date of this Contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

b. The Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this Contract.

5. Installation Floater
Coverage amount is $1,000,000

a. Policy shall contain an Additional Insured endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees.

b. The State of Arizona and the Department shall be named as loss payee as our interest may appear.

c. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing/commissioning.

d. Policy shall be maintained until whichever of the following shall first occur: (1) final payment has been made; or, (2) until no person or entity, other than the State of Arizona, has an insurable interest in the property required to be covered.

e. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the State of Arizona.

f. The Installation Floater must provide coverage from the time the equipment/material becomes the responsibility of the Contractor and shall continue without interruption during the installation, including any time during which the equipment/material is being transported to the installation site, or awaiting installation, whether on or off site.

g. Policy shall contain a Waiver of Subrogation endorsement, as required by written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by the Contractor for the State of Arizona.

h. Contractor is responsible for the payment of all deductibles under the Installation Floater.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

a. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

b. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

NOTICE OF CANCELLATION: Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to **(Deepika Bajpayee, 100 N 15th Ave, Suite 402, Phoenix AZ 85007, Fax number 602-542-5508).**

ACCEPTABILITY OF INSURERS: Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of

not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

a. All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
b. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
c. All certificates required by this Contract shall be sent directly to **(Deepika Bajpayee 100 N 15th Ave, Suite 402, Phoenix AZ 85007)**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum insurance requirements identified above. The State reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

APPROVAL and MODIFICATIONS: The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

EXCEPTIONS: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

6.3 Basic Indemnification

6.3.1 CONTRACTOR/VENDOR (NOT PUBLIC AGENCY).

To the fullest extent permitted by law, Contractor 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 "Indemnitee") 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 Contractor 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 Contractor 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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor 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 Contractor 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 Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.4 Patent and Copyright Indemnification

CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
3. State may elect to participate in such action at its own expense; and
4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this paragraph 6.4 does not apply.

6.5 Force Majeure

6.5.1 DEFINITION. For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

6.5.2 RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

6.5.3 EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated

profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

6.5.4 DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

6.6 Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

7.0 Warranties

7.1 Conformity to Requirements

Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance: (1) conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any Contractor affirmations included as part of the Contract; (2) be free from defects of material and workmanship; (3) conform to or perform in a manner consistent with current industry standards; and (4) be fit for the intended purpose or use described in the Contract. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

7.2 Contractor Personnel

Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.

7.3 Intellectual Property

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.4 Licenses and Permits

Contractor warrants that it will maintain all licenses required under paragraph 3.7 [*Contractor Licenses*] and all required permits valid and in force.

7.5 Operational Continuity

Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [*Assignment and* Delegation] that expressly recognizes the event.

7.6 Performance in Public Health Emergency

Contractor warrants that it will:

1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
2. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.

7.7 Lobbying

7.7.1 PROHIBITION.

(a) Contractor warrants that:

i. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and

ii. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

(b) Contractor shall implement and maintain adequate controls to assure compliance with *(a)* above.

(c) Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.7.2 EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.8 Survival of Warranties

All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

9.0 Contract Termination

No modifications to uniform terms and conditions section

10.0 Contract Claims

10.1 Claim Resolution

Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.

10.2 Mandatory Arbitration

In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

11.0 General Provisions for Products

11.1 Applicability

Article 11 applies to the extent the Work is or includes Materials.

11.2 Off-Contract Materials

Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders; State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, in either case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in

the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.

11.3 Compensation for Late Deliveries

Contractor shall have clear, published policies in place regarding late delivery, order cancelation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them.

11.4 Indicate Shipping Costs on Order

Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one).

11.5 Current Products

Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract.

11.6 Maintain Comprehensive Selection

Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co-Op Buyers if applicable.

11.7 Additional Products

State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of *(b)* typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products.

11.8 Discontinued Products

If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer's notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide: (a) manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number; (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones (with demonstration being as described in subparagraph 11.7).

11.9 Forced Substitutions

Forced substitutions will not be permitted; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.

11.10 Recalls

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product. Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall.

11.11 Delivery

11.11.1 PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller's dock) Incoterms®2010, with "seller's dock" meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to "F.O.B. Origin, Contractor's Facility" under FAR 52.247-30.

11.11.2 LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor's liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to "F.O.B. Destination, Within Consignee's Premises" under FAR 52.247-35.

11.11.3 PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller's dock) with no mark-up, which Contractor shall itemize and invoice separately.

11.12 Delivery Time

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order.

11.13 Delivery Locations

Contractor shall offer deliveries to every location served under the scope of the Contract, specifically:

1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
2. if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency's location in Arizona;
3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
4. if the Contract is for unrestricted statewide use, then:
   (a) Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
   (b) if a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and
   (c) if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

11.14 Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain

institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions.

11.15 Materials Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

11.16 Correcting Defects

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials.

1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.
3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

11.17 Returns

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within 30 (thirty) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.

11.18 Order Cancellation

State may cancel Orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus 1 (one) additional business day;
2. reimburse Contractor for:

(a) its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus 1 (one) additional business day; and

(b) the cost of any obligations it incurred as of the cancellation effective date plus 1 (one) additional business day that demonstrably cannot be canceled, or that have pre-established cancelation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question; and

3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancelation notice plus 1 (one) business day or for any lost profits or opportunity.

By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order.

11.19 Product Safety

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant.

11.20 Hazardous Materials

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup.

12.0 General Provisions for Services

12.1 Applicability

Article 12 applies to the extent the Work is or includes Services.

12.2 Comprehensive Services Offering

Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co-Op Buyers if co-op buying applies.

12.3 Additional Services

State at its discretion may modify the scope of the Contract by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.

12.4 Off-Contract Services

Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, "off-contract service" refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded service" refers to any service expressly excluded from the scope of the Contract.

12.5 Removal of Personnel

Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.

12.6 Transitions

During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

12.7 Accuracy of Work

Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

12.8 Requirements at Services Location

Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

12.9 Services Acceptance

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.

12.10 Corrective Action Required

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet

agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.
3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

13.0 Data and Information Handling

13.1 Applicability

Article 13 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State's behest.

13.2 Data Protection and Confidentiality of Information

Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:

1. Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
2. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

13.3 Personally Identifiable Information.

Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract.

For purposes of this paragraph:

1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information*; and
2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA)

Directive CIO P 2180*.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf

NOTE (2): For convenience of reference only, the GSA directive is available at:

http://www.gsa.gov/portal/directive/d0/content/658222

13.4 Protected Health Information

Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;
2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in *(1)* above; and
3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in *(1)* above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

http://www.hhs.gov/hipaa/for-professionals/privacy/index.html

14.0 Information Technology Work

14.1 Applicability

Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. § 41-3501(6) 6: " . . . computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects" if and to the extent that the Work is or includes Information Technology.

14.2 Background Checks

Each of Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S § 41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.

14.3 Information Access

14.3.1 SYSTEM MEASURES. Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State's proprietary data or confidential information.

14.3.2 INDIVIDUAL MEASURES. Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the

access IDs and passwords and corresponding access levels currently assigned to its personnel.

14.3.3 ACCESS CONTROL. Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.

14.4 Pass-Through Indemnity

14.4.1 INDEMNITY FROM THIRD PARTY. For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.

14.4.2 NOTIFY OF CLAIMS. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:

(a) State reserves the right to elect to participate in the action at its own expense;

(b) State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and

(c) State shall in any case cooperate in the defense and any related settlement negotiations.

14.5 Systems and Controls

In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.6 Redress of Infringement.

14.6.1 REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Contractor shall at its sole cost and expense and in consultation with State either:

(a) replace any infringing items with non-infringing ones;

(b) obtain for State the right to continue using the infringing items; or

(c) modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.

14.6.2 CANCELLATION OPTION. In every case under 14.6.1, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:

(a) for any software created for State under the Contract, the amount State paid to Contactor for creating it;

(b) for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and

(c) for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.

14.6.3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:

(a) modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;

(b) operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or

(c) combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

14.7 First Party Liability Limitation

14.7.1 LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of $1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.

14.7.2 PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:

(a) Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;

(b) claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or

(c) provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

14.7.2 PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.

14.7.3 NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

14.8 Information Technology Warranty

14.8.1 SPECIFIED DESIGN. Where the Scope of Work for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:

(a) modified or altered by anyone not authorized by Contractor to do so;

(b) maintained in a way inconsistent to any applicable manufacturer recommendations; or

(c) operated in a manner not within its intended use or environment.

14.8.2 COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:

(a) to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;

(b) the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally identifiable information, or prevent products from performing as required by the Contract; and

(c) it will provide a new or clean install of any COTS software that State has reason to believes contains harmful code.

14.8.3 PAYMENT HAS NO EFFECT. The warranties in this paragraph are not affected by State's inspection, testing, or payment.

14.9 Specific Remedies

Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty under paragraph 14.8 includes, at State's discretion, re-performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable costs to procure materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the forgoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

14.10 Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

14.11 Cloud Applications

The following are required for Contractor of any "cloud" solution that hosts State data outside of the State's network, or transmits and/or receives State data.

1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: https://aset.az.gov/resources/policies-standards-and-procedures, and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.
2. State reserves the right to conduct Penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.
3. Contractor must submit copy of system logs from cloud system to State of AZ security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

End of Section 2-B

SECTION 2-D: Uniform Terms and Conditions

Version: 9 (7/1/2013)

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

1.1	**Attachment**	"Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
1.2	**Contract**	"Contract" " means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
1.3	**Contract Amendment**	"Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
1.4	**Contractor**	"Contractor" means any Person who has a Contract with the State.
1.5	**Days**	"Days" means calendar days unless otherwise specified.
1.6	**Exhibit**	"Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
1.7	**Gratuity**	"Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
1.8	**Materials**	"Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
1.9	**Procurement Officer**	"Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
1.10	**Services**	"Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "… the furnishing of labor, time, or effort by [the] [C]ontractor or [S}ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8.
1.11	**State**	"State" means the State of Arizona and Department or Agency of the State that executes the Contract.
1.12	**State Fiscal Year**	"State Fiscal Year" means the period beginning with July 1 and ending June 30.
1.13	**Subcontract**	"Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor 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 the Contract.

2.0 Contract Interpretation

2.1	**Arizona Law**	The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised

Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2 Implied Terms

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1. Special Terms and Conditions;

2.3.2. Uniform Terms and Conditions;

2.3.3. Statement or Scope of Work;

2.3.4. Specifications;

2.3.5. Attachments;

2.3.6. Exhibits;

2.3.7. Documents referenced or included in the Solicitation.

2.4 Relationship of Parties

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract..

2.6 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 and no other understanding either oral or in writing shall be binding.

2.7 No Waiver

Either party's failure to insist on strict performance of any term or condition of the Contract 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.

3.0 Contract Administration and Operation

3.1 Records

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2 Non-Discrimination

The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3 Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection and Materials Testing

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5 Notices

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6 Advertising, Publishing and Promotion of Contract

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8 Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9 Federal Immigration and Nationality Act

The contractor 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 contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements

In accordance with A.R.S. § 41-4401, Contractor 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.

3.11 Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work 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 contract. This provision applies to work performed by subcontractors at all tiers.

4.0 Costs and Payments

4.1 Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors 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.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law

4.4 Availability of Funds for the Next State fiscal year

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements

5.0 Contract Changes

5.1 Amendments

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6.0 Risk and Liability

6.1 Risk of Loss

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3 Indemnification – Patent and Copyright

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract 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; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall **not** include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. 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 Contract Amendment for a period of time

equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. 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.

6.5 Third Party Antitrust Violations

The Contractor 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 Contractor, toward fulfillment of this Contract.

7.0 Warranties

7.1 Liens

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

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

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance with Laws

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract 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.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8.0 State's Contractual Remedies

8.1 Right to Assurance

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor 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 Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated

by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor 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.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies

The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9.0 Contract Termination

9.1 Cancellation for Conflict of Interests

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand.

The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10.0 Contract Claims

10.1 Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11.0 Arbitration

11.1 Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12.0 Comments Welcome

12.1 Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 402, Phoenix, Arizona, 85007.

End of Section 2-D

End of Part 2

Solicitation Amendment

Solicitation No.: **ADSPO17-00007302**

Description: AV Equipment and Services

Amendment No.: **One (1)**

Page **1** OF **1**

State of Arizona
State Procurement Office
100 N. 15TH Avenue,
Suite 402
Phoenix, AZ 85007

Pursuant to Section 3-A: Instructions to Offerors, Item 4.5 Solicitation Amendments, the above referenced solicitation shall be amended to make the following revisions:

1. **Due date and time of the solicitation has been extended to July 26, 2017 3:00:00pm MST (AZ time).**

2. **Section 2-A: Scope of Work sub-section 3.2.2 "ITEMS EXCLUDED" third bullet point has been updated to:**
   - Computer monitors, keyboards, mouse, and/or related accessories – unless any of these are necessary to be included as part of the AV Solution

3. **Section 2-B: Pricing Document, 4.0 Invoicing, sub-section 4.5 Submitting Invoices has been updated to below:**

   If it is required by the ordering Eligible Agency or Co-Op Buyer, the Contractor shall submit an invoice using the form provided or required by that ordering Eligible Agency or Co-Op Buyer. Every invoice must be accompanied by all supporting information and documentation required by the Contract and applicable laws.

4. **Section 2-C: Special Terms and Conditions, section 11.0 General Provisions for Products:**
   - The term "Commercial Document" throughout this section is replaced by "Pricing Document".
   - Subsection 11.4 Indicate Shipping Costs on Order has been updated to below:
     - If shipping cost is additional to the contracted price or rate for an item, the Contractor shall identify the shipping cost it intends to add for shipping, as a separate line item on the price quote provided to the Eligible Agency or Co-op Buyer. The Contractor shall also provide the required substantiating documentation for the shipping cost with the price quote. If the ordering Eligible Agency or Co-op Buyer approves paying a shipping cost, they will list the agreed upon shipping cost as a line item on their Order, when it is issued. If there is no additional shipping cost, the Contractor shall indicate on the price quote that shipping is included in the Order price.
   - Subsection 11.12 Delivery Time has been updated to below:
     - Unless stated otherwise in the Pricing Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order. If Contractor is unable to make delivery within 2 (two) business days after receiving the Order, this needs to be indicated on the Contractor's price quote and communicated to the Eligible Agency or Co-op Buyer.

5. **ADSPO17-00007302_Attachment 4 Pricing Sheet: "AV Sample Items List" tab MFR part number correction**
   Line Item # 31 – Extron HDMI to Eight Output DTP Distribution Amplifier. Delete MFR Part # "DTP HD DA4 4K 230" and replace with "DTP HD DA8 4K 230" in the MFR Part # column for this line item.

ALL OTHER REQUIREMENTS, SPECIFICATIONS, TERMS AND CONDITIONS REMAIN UNCHANGED.

ACKNOWLEDGEMENT

ACKNOWLEDGEMENT OF SOLICITATION AMENDMENT SHALL BE DONE ELECTRONICALLY PRIOR TO OFFER DUE DATE AND TIME. All other terms, conditions, specifications and amendments to the Solicitation remain unchanged.