



ARIZONA DEPARTMENT OF ADMINISTRATION

100 NORTH FIFTEENTH AVENUE □ SUITE 402
PHOENIX, ARIZONA 85007
(602) 542-1500



In accordance with Arizona Revised Statute (A.R.S.) §41-2632 and Arizona Administrative Code (AAC) R2-7-1002, Cooperative Purchasing, the following document shall relay all additional requirements for the State of Arizona in its use and participation in the NASPO Value Point contract for Mailing Equipment, Supplies and Maintenance, Master Agreement Contract Number CTR058804 as competitively awarded by the State of Arizona as Lead State (Master Agreement). Portions of the Master Agreement are/may be reproduced herein for ease of reference only; the most recent version of the Master Agreement is available on the NASPO Value Point website. To the extent that terms are used in the Participating Addendum that are defined in the Master Agreement, the definition in the Master Agreement shall be incorporated in this Participating Addendum, as if stated herein.

All requirements stated within this document are allowable under the Arizona Procurement Code Arizona Procurement Code (A.R.S. §§ 41-2501 *et seq.*, and the rules promulgated thereunder, AAC R2-7-101 *et seq.*) Any attempt to modify or change this document without consent from the State of Arizona shall be null and void.

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Attachment 1 – Participating Addendum

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

Contract: **CTR058808**
Contractor: **Pitney Bowes, Inc.**
Description: **NASPO Mailing Equipment, Supplies, and Maintenance**
Led by the State of: **Arizona**

TO THE STATE OF ARIZONA:

The Undersigned hereby agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments as set forth in the Master Agreement and the Participating Addendum.

Pitney Bowes Inc.

Company Name

3001 Summer St.

Address

Stamford, CT 06926

City

State

Zip

Art.adams@pb.com

Email

Signature of Person Authorized to Sign Offer

Arthur E. Adams, Jr.

Printed Name

Director, Government Contract Compliance

Title

203-351-7866

Phone Number

By signature in the section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009- 09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror 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 shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization ~~IS~~ **IS NOT** a small business with less than 100 employees or has gross revenues of \$4 million or less.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

State of Arizona

Awarded this 12 day of August, 2022

Stephen Nettles
Statewide Procurement Group Manager

Mailing Equipment, Supplies, and Maintenance
Lead by the State of Arizona

Master Agreement #: CTR058808

Contractor: **Pitney Bowes Inc.**

Participating Entity: **State of Arizona**

The following products or services are included in this contract portfolio:

- *All services, products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the Mailing Equipment, Supplies, and Maintenance led by the State of Arizona "Lead State", Master Agreement number CTR058809 "MA" for use by state agencies and other entities located in the State of Arizona authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

This reflects the lease and/or rental options Participating State/Entity has agreed to use. Any underlying leases to this agreement will remain in full force and effect throughout the stated lease term of such lease agreement, subject to termination provisions stipulated with such lease. The following, together with their respective terms and conditions are offered for lease or rental transactions under this Participating Addendum. The lease agreement terms and conditions documents can be viewed on the NASPO Valuepoint website link that is located in Attachment D.

- a) Pitney Bowes Global Financial Services LLC "GFS" Term Rental (Installment Purchase) – Option A,
- b) FMV Rental – Option B, and
- c) State & Local Fair Market Value Lease – Option C

2. Participation: This NASPO ValuePoint Master Agreement may be used by the State of Arizona, and its departments, agencies, boards, commissions, universities, and other entities authorized by an individual state's statutes to use statewide contracts in the State of Arizona. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. Cooperative members that are also Non-Profits that are eligible to utilize this Contract shall use Vendor's standard commercial terms and conditions.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Mailing Equipment, Supplies, and Maintenance
Lead by the State of Arizona

Contractor

Name:	Art Adams, Director Government Contract Compliance
Address:	Pitney Bowes Inc., 3001 Summer St., Stamford, CT 06926
Telephone:	(203) 351-7866
Email:	art.adams@pb.com

Contractor – Government Sales Channel Director – West Region

Name:	Bill Walter, Vice President, Government Sales
Address:	Pitney Bowes Inc., 3001 Summer St., Stamford, CT 06926
Telephone:	(480) 206-2984
Email:	Bill.walter@pb.com

Participating Entity

Name:	Francine Whittington
Address:	100 N. 15 th Ave, Suite 402, Phoenix, AZ 85007
Telephone:	(602) 542-3929
Email:	Francine.whittington@azdoa.gov

1. Participating Entity Modifications Or Additions To The Master Agreement

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below:

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

4.1. Definition

- 4.1.1. "Contract" For the purpose of this Participating Addendum, the term Contract refers to the NASPO ValuePoint Master Agreement resulting from the NASPO ValuePoint Solicitation, as defined therein, and as modified by this Participating Addendum (including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work) and any Amendments to either the NASPO ValuePoint Master Agreement or the Participating Addendum.

Mailing Equipment, Supplies, and Maintenance
Lead by the State of Arizona

- 4.2. The following attachments are hereby incorporated into this Participating Addendum "MPA":
 - 4.2.1. Attachment A – State of Arizona Special Terms and Conditions
 - 4.2.2. Attachment B – State of Arizona Uniform Terms and Conditions
 - 4.2.3. Attachment C – Participation In Boycott of Israel
2. Subcontractors: All Contractors, subcontractors, dealers, resellers and Authorized Sales and Services Representatives authorized in the State of Arizona, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
3. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
4. Software: As applicable, software license terms and conditions shall be mutually agreed upon in writing by the purchasing entity's authorized individual and the Contractor.
5. All purchasing entities requiring the use of a Postage Meter will comply with all United States Postal Service regulations and meter terms and conditions applicable to the rental and use of postage meters supplied under this Participating Addendum.
6. Purchase Order Instructions:

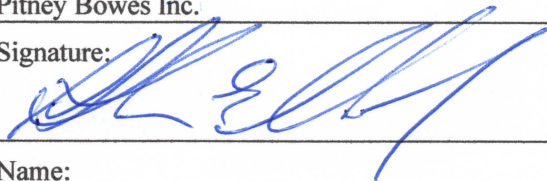
All orders under this PA are to be made out to and processed by Pitney Bowes and should contain the following (1) Mandatory Language "PO is subject to NASPO ValuePoint Master Agreement number CTR058808" (2) Your Name, Address, Contact, & Phone-Number.
7. Price Agreement Number:

All purchase orders issued by Purchasing Entities within the jurisdiction of this Participating Addendum shall include the Lead State price agreement number: CTR058808.
8. Sales & Purchase Tax

Sales & Purchase Tax will be charged, if required under your State Statute.

Mailing Equipment, Supplies, and Maintenance
Lead by the State of Arizona

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Arizona	Contractor: Pitney Bowes Inc.
Signature: 	Signature: 
Name: Stephen Nettles CPIM, CPSM	Name: Arthur E. Adams Jr.
Title: Senior Procurement Group Manager	Title: Director, Government Contract Compliance
Date: 8/12/2022	Date: August 12, 2022

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Nyesha Daley
Email:	Nyesha.Daley@azdoa.gov

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

to support documentation of participation and posting in appropriate data bases.]

	Attachment A – Special Terms and Conditions Contract: CTR058808 Contractor: Pitney Bowes Inc. Description: NASPO Mailing Equipment, Supplies, and Maintenance Led by the State of: Arizona	Arizona Department of Administration State Procurement Office 100 N. 15th Avenue Phoenix, AZ 85007
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STATE OF ARIZONA 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. Definition of Terms

- 1.1. Acceptance: “Acceptance” means the document headed “Participating Addendum” bearing the State contract number once Procurement Officer has signed it to signify (1) State’s formal acceptance of the Master Agreement 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. Arizona Procurement Code; A.R.S.; A.A.C. - “Arizona Procurement Code” means, collectively, Title 41 Chapter 23, *et. sequitur*, in the Arizona Revised Statutes (abbreviated “A.R.S.”) and administrative rules R2-7-101 *et. sequitur* in the Arizona Administrative Code (abbreviated “A.A.C.”).

The Arizona Department of Administration State Procurement Office provides a reference compilation of the Arizona Procurement Code on its website:

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

The Arizona State Legislature provides the official A.R.S. online at:

<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

The Office of the Arizona Secretary of State provides the official A.A.C. online at:

<http://www.azsos.gov/rules/arizona-administrative-code>

- 1.3. Arizona TPT: Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:
<https://www.azdor.gov/business/transactionprivilegetax.aspx>.
- 1.4. Attachment: any item that:
 - 1.4.1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);
 - 1.4.2. was attached to an Offer when submitted; and
 - 1.4.3. was included in the Accepted Offer.
- 1.5. Pricing Document is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.

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- 1.6. Contract Amendment: a document signed by Procurement Officer and if required, acknowledged by Contractor, that has been issued for the purpose of making changes to the Contract after execution.
- 1.7. Contract Terms and Conditions: the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.8. Contractor: the Person identified on the MPA who has entered into the Contract with State.
- 1.9. Contractor Indemnitor: Contractor or Subcontractors.
- 1.10. Co-Op Buyer: 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.
- 1.11. 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.
- 1.12. Defining Orders
 - 1.12.1. Order 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 on 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": "Release" or "Release Purchase Order" in The State's e-Procurement System;
 - 1.12.2. "task order", "service order," or "job order" when a Release Purchase Order for Services has already been committed in The State's e-Procurement System; or
 - 1.12.3. "purchase order" for buying by Co-Op Buyers, if co-op buying applies.
- 1.13. The State's e-Procurement System: 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, The State's e-Procurement System – The Official State e-Procurement System.

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

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

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- 1.14. 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.
- 1.15. State Indemnitees collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.16. 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.
- 1.17. Work 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. Contract Interpretation

- 2.1. Usage. Where the Contract:
 - 2.1.1. 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;
 - 2.1.2. 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:
 - 2.1.2.1. where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and
 - 2.1.2.2. 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;
 - 2.1.3. 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.

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- 2.1.4. 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;
- 2.1.5. 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
- 2.1.6. 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

- 2.2.1. **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.
- 2.2.2. **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.
 - 2.2.2.1. State of Arizona Participating Addendum and Exhibits A, B, and C;
 - 2.2.2.2. Master Agreement including all Addendums, in the order of precedence stated therein.
- 2.2.3. **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.

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- 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. Contract Administration and Operation

- 3.1. Term of MPA will commence on the date indicated on the Execution page of the Participating Addendum and continue for twelve (12) months unless cancelled, terminated, or permissibly extended.
- 3.2. MPA Contract Extensions. State may at its discretion extend the initial MPA 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 as set forth in the MA.
- 3.3. Notices and Correspondence
- 3.3.1. TO CONTRACTOR. State shall:
- 3.3.1.1. address all Contract correspondence other than formal notices to the email address indicated in the State's e-Procurement System Vendor Profile; and
- 3.3.1.2. address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated in this MPA, as that address might have been amended during the term of the Contract.
- 3.3.2. TO STATE. Contractor shall :
- 3.3.2.1. address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and
- 3.3.2.2. address any required notices to State to Procurement Officer identified as "Contract Owner" in the State's e-Procurement System Summary at the following mailing address:
- Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 305
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.

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3.4. Signing of Contract Amendments

- 3.4.1. Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of an amendment – is not required to give effect if the Contract Amendment only covers either:
 - 3.4.1.1. extension of the term of the Contract within the maximum aggregate term;
 - 3.4.1.2. revision to Procurement Officer appointment or contact information; or
 - 3.4.1.3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.
- 3.4.2. In every case other than those listed in (3.4.1.1), (3.4.1.2), and (3.4.1.3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of an Amendment – 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.

	Attachment A – Special Terms and Conditions		Arizona Department of Administration State Procurement Office 100 N. 15 th Avenue Phoenix, AZ 85007
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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

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.

3.9 Ownership of Intellectual Property

3.9.1 RIGHTS IN WORK PRODUCT. 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 first created as a deliverable output or conceived pursuant to or as a result of this contract and any related subcontract ("State's Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such State's Intellectual Property.

3.9.1.1 Notwithstanding anything herein, State's Intellectual Property shall not include any pre-existing Contractor intellectual property, including any Contractor manuals, systems, software methodologies, techniques, operating procedures, processes or other tools that are designed, modified, updated or otherwise customized in connection with providing Products or performing services under this Contract.

3.9.2 PRE-EXISTING MATERIAL. All pre-existing software and other materials, including any Contractor manuals, systems, software methodologies, techniques, operating procedures, processes or other tools that are modified, updated or otherwise customized in connection with providing Products or performing Services under the Contract by or for Contractor or its affiliates 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:

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

3.9.2.2 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

3.9.2.3 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, 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.

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3.10 Subcontracts

- 3.10.1 INITIAL LIST. At the time of the Arizona's Master Contract execution, Contractor's candidate Subcontractors were to be identified. 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
- 3.10.1.1 was not identified at the time of the MMCAP Infuse Master Contract execution or
- 3.10.1.2 for any Materials or Services categories other than the ones for which they were previously consented.
- 3.10.1.3 For either case (3.10.1.1.) or (3.10.1.2.), 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

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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:
 - 3.12.4.1 the Contract is identified as being a "single-agency/single-project" contract and
 - 3.12.4.2 the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.
- 3.12.5 NO MINIMUMS OR COMMITMENTS
 - 3.12.5.1 Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders
 - 3.12.5.2 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;
 - 3.12.5.3 Contractor shall only deliver or perform as authorized by Orders; and
 - 3.12.5.4 State is not limited as to the number of Orders it may issue for the Contract.
 - 3.12.5.5 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 Provisions for Statewide Contracts: Co-Op Usage; Eligible Agencies; and Quarterly Reporting
 - 3.13.1 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.

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- 3.13.2 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.
- 3.13.3 Co-Op Usage
- 3.13.3.1 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://docs.google.com/spreadsheets/d/1UOHlKqvOZSmLo4JWexRDokXfXBnjvkAxqvX5BWdm_pY/edit#gid=0
- 3.13.3.2 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).
- 3.13.3.3 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>
- 3.13.3.4 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.
- 3.13.4 Eligible Agencies – Orders
- 3.13.4.1 Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either:
- 3.13.4.1.1 “Approving” the Order electronically in The State's e-Procurement System, which will indicate Contractor's unqualified acceptance of the Order as-issued; or,

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3.13.4.1.2 “Rejecting” the Order electronically in The State’s e-Procurement System, 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).

3.13.4.2 Unless and until Contractor has approved the Order in the State’s e-Procurement System, 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 The State’s e-Procurement System within three (3) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State’s e-Procurement System and if it does so the rejection will be void.

3.13.5 Quarterly Usage Reports. Contractor shall submit to State a Quarterly Usage Report documenting all Contract sales to both Eligible Agencies and Co Op Buyers, itemized separately. A Quarterly Usage Report shall still be submitted, even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. 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>

3.14 Multiple-Use Provisions

3.14.1 Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a “Release Purchase Order” in The State’s e-Procurement System. 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:

3.14.1.1 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.

3.14.1.2 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

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negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.

3.14.1.3 As described in (3.14.1.2.) 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.

3.14.1.4 As described in (3.14.1.3.) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

3.14.2 When evaluating the proposals under (3.14.1.3) and (3.14.1.4) 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.

3.15.1 Notwithstanding the foregoing, in the event the State or a Purchasing Entity uses someone other than Contractor to perform service or maintenance on the equipment, then Contractor's warranty will be voided immediately.

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.

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- 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 within sixty (60) days after the receipt of notice from the State, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.

4. Costs and Payments

4.1. Payments

- 4.1.1. PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statutes 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:
- 4.1.1.1. 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
 - 4.1.1.2. 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 The State's e-Procurement System 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 in the States E-procurement System.

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

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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 as any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5. 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 shall not unreasonably withhold, condition or delay. 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. 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, provided that, risk of loss for

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nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2. Contractor Insurance

- 6.2.1. 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 which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.
- 6.2.2. 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 might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and 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	\$1,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$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 vehicles used in the performance of this Contract.

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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 and its 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, leased, 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

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 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/Independent Contractor).

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. 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.
2. 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

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State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

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.

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 Contract.

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.

All such certificates required by this Contract shall be sent directly to the Arizona State Procurement Officer as listed in the E-procurement system by email. 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, certified copies of all insurance policies required by this Contract at any time.

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

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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. Indemnification

- 6.3.1. 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 "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, reasonable 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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 judgement 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, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor. Each party to this Contract is responsible for its own negligence.
- 6.3.2. 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

- 6.4.1. 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 for the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

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- 6.4.1.1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
- 6.4.1.2. 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;
- 6.4.1.3. State may elect to participate in such action at its own expense; and
- 6.4.1.4. 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.

6.4.2. 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, nor deemed in default, 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 prevent the delayed party from performing in accordance with this Contract.

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- 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. Warranties

7.1. Conformity to Requirements

- 7.1.1. 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:
- 7.1.1.1. conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, drawings identified, and any Contractor affirmations included as part of the Contract;
 - 7.1.1.2. be free from defects of material and workmanship;
 - 7.1.1.3. conform to or perform in a manner consistent with current industry standards; and
 - 7.1.1.4. be fit for the intended purpose or use described in the Contract.
- 7.1.2. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services required under a specific Order, but 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.

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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 5.2 [Assignment and Delegation] that expressly recognizes the event.

7.6. Performance in Public Health Emergency

7.6.1. Contractor warrants that it will:

7.6.1.1. 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:

7.6.1.1.1. identification of response personnel by name;

7.6.1.1.2. key succession and performance responses in the event of sudden and significant decrease in workforce; and

7.6.1.1.3. alternative avenues to keep sufficient product on hand or in the supply chain; and

7.6.1.1.4. provide a copy of its summary 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.

7.6.2. 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.

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7.7.1.1. Contractor warrants that:

- 7.7.1.1.1. 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
- 7.7.1.1.2. 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.

7.7.1.2. Contractor shall implement and maintain adequate controls to assure compliance with above.

7.7.1.3. 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. State's Contractual Remedies

8.1 No modifications to uniform terms and conditions section

9. Contract Termination

9.1 No modifications to uniform terms and conditions section

10. 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.

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11. General Provisions for Materials

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, neither 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 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:

- 11.5.1. in current and ongoing production;
- 11.5.2. in its advertised product lines;
- 11.5.3. as models or types that are actively functioning in other paying customer environments; and
- 11.5.4. 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

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11.7.1. State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories via master, 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:

11.7.1.1. 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

11.7.1.2. 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 this 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

11.8.1. 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, 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 if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide:

11.8.1.1. manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number;

11.8.1.2. 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

11.8.1.3. 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.

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11.9. Forced Substitutes

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 or an Order, 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 20 (twenty) 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

- 11.13.1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
- 11.13.2. 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;

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11.13.3. 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

11.13.4. if the Contract is for unrestricted statewide use, then:

11.13.4.1. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;

11.13.4.2. 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,

11.13.4.3. if the Commercial Document or Order 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. If the State does not, within 30 days of delivery, notify Contractor that the Materials have been rejected by the State, then the Materials are deemed to be accepted by the State. 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

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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 as determined by both Contractor and the State.

- 11.16.1. 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.
- 11.16.2. 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.
- 11.16.3. Whether State will permit Contractor to repair in place or demands that Contractor remove and will be mutually agreed upon by the State and the Contractor 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 supplies unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered supplies, 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 supplies 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 Cancellations

- 11.18.1. State may cancel orders within a reasonable period after issuance, excluding any order that contains configurable Materials and Services, 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:

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11.18.1.1. 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 one (1) additional business day

11.18.1.2. reimburse Contractor for:

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

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

11.18.1.3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice.

11.18.2. 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. Notwithstanding anything to the contrary in this Contract, any cancellation shall be subject to the provisions of the applicable lease or purchase terms.

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:

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- 11.20.1. identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or
- 11.20.2. subject to statutory or regulatory requirement governing special handling, disposal or cleanup

12. 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, via the Master Agreement, modify the range of services 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.

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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. Acceptance criteria, if any, shall be set forth in a mutually agreed upon statement of work. 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,

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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.

- 12.10.1. 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).
- 12.10.2. 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.
- 12.10.3. 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. Data and Information Handling

13.1. Applicability

- 13.1.1. Article 13 applies to the extent the Work includes handling of any:
 - 13.1.1.1. State's proprietary and sensitive data or
 - 13.1.1.2. confidential or access-restricted information obtained from State or from others at State's behest.

13.2. Data Protection and Confidentiality of Information

- 13.2.1. Contractor warrants that it maintains 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:
 - 13.2.1.1. Contractor shall:
 - 13.2.1.1.1. notify State within 72 hours of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse;

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13.2.1.1.2. cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and

13.2.1.1.3. notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and

13.2.1.2. Contractor shall not:

13.2.1.2.1. release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers or other authorized representatives 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, unless required by law to do so; or

13.2.1.2.2. 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, unless required by law to do so.

13.3. Personally Identifiable Information.

13.3.1. 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:

13.3.1.1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information", January 3, 2017; and

13.3.1.2. "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://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>

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

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

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13.4. Protected Health Information

- 13.4.1. 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:
- 13.4.1.1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection:
 - 13.4.1.1.1. the “Privacy Rule” in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996;
 - 13.4.1.1.2. 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
 - 13.4.1.1.3. State’s current and published PHI/ePHI privacy and security policies and procedures;
 - 13.4.1.2. 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 (13.4.1.1.) above; and
 - 13.4.1.3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (13.4.1.1.) 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. 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

If applicable, 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

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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 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.

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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:

- 14.4.2.1. State reserves the right to elect to participate in the action at its own expense;
- 14.4.2.2. State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
- 14.4.2.3. 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:

- 14.6.1.1. replace any infringing items with non-infringing ones;
- 14.6.1.2. obtain for State the right to continue using the infringing items; or
- 14.6.1.3. 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, 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:

- 14.6.1.4. for any software created for State under the Contract, the amount State paid to Contractor for creating it;
- 14.6.1.5. for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
- 14.6.1.6. 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:

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- 14.6.1.7. modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
- 14.6.1.8. operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
- 14.6.1.9. 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 as specified in the applicable Order.
- 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:
 - 14.7.2.1. Indemnified Claim against which Contractor has indemnified State Indemniteses under paragraph 6.3;
 - 14.7.2.2. claim against which Contractor has indemnified State Indemniteses under paragraph 6.4; or
 - 14.7.2.3. provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.
- 14.7.3. 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 Contract Amendments 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.
- 14.7.4. 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.

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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:
- 14.8.1.1. modified or altered by anyone not authorized by Contractor to do so;
 - 14.8.1.2. maintained in a way inconsistent to any applicable manufacturer recommendations; or
 - 14.8.1.3. 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:
- 14.8.2.1. to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;
 - 14.8.2.2. 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
 - 14.8.2.3. identifiable information, or prevent products from performing as required by the Contract; and
 - 14.8.2.4. 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, or replacement, or refund of any amounts paid by State for the nonconforming Work. 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.

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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

- 14.11.1. 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.
 - 14.11.1.1. 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.
 - 14.11.1.2. 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. Contractor will provide to the State an executive summary of the most recent Penetration test, upon a written request from the State and the State will keep such report confidential and will not disclose to any party without Contractor’s prior written consent
 - 14.11.1.3. Contractor must submit copy of system logs from cloud system to State of Arizona security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System). In the event of a detected intrusion, Contractor will submit copy of appropriate logs for forensic purposes and to determine the scope of the event.
- 14.11.2. Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data. As of the date of this Participating Addendum, there shall be no sensitive or regulated state data provided by the State to Contractor.

END OF ATTACHMENT A: SPECIAL TERMS AND CONDITION

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STATE OF ARIZONA UNIFORM TERMS AND CONDITIONS

1. Definition of Terms

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

- 1.1. "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2. "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" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. "Contractor" means any Person who has a Contract with the State.
- 1.5. "Days" means calendar days unless otherwise specified.
- 1.6. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. "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" 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" 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" 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" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.13. "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.

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2. 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.

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3. 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.

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3.7. Property of the State

Any materials, including reports, computer programs and other deliverables, first created as a deliverable output under this Contract (“Materials Work Product”) 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. Notwithstanding anything herein, Materials Work Product shall not include any pre-existing Contractor intellectual property, including any Contractor manuals, systems, software methodologies, techniques, operating procedures, processes or other tools that are designed, modified, updated or otherwise customized in connection with providing Products or performing services under this Contract.

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 first created as a deliverable output or conceived pursuant to or as a result of this Contract and any related subcontract (“State’s Intellectual Property”), shall be work made for hire and the State shall be considered the creator of such State’s Intellectual Property. Notwithstanding anything herein, State’s Intellectual Property shall not include any pre-existing Contractor intellectual property, including any Contractor manuals, systems, software methodologies, techniques, operating procedures, processes or other tools that are designed, modified, updated or otherwise customized in connection with providing Products or performing services under this Contract. 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 State’s Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any State’s 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 State’s Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the State’s Intellectual Property in any entity other than the State. The State’s Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written 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.

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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. **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.

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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. 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.

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6. 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;

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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. 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;

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- 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. 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

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- 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

All materials and services 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. 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

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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.

Any underlying leases to this agreement shall remain in full force and effect throughout the stated lease term of such lease agreement, subject to termination provisions stipulate with such lease.

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. Supplier shall have a 30 day cure period, prior to Contract cancellation. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

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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, except as set forth otherwise in the lease agreement.

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. 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. 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. 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 201, Phoenix, Arizona, 85007.

END OF ATTACHMENT B: UNIFORM TERMS AND CONDITIONS

	Attachment C Participation in Boycott of Israel Contract: CTR058808 Contractor: Pitney Bowes, Inc. Description: NASPO Mailing Equipment, Supplies, and Maintenance Led by the State of: Arizona	Arizona Department of Administration State Procurement Office 100 N. 15th Avenue Phoenix, AZ 85007
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Boycott of Israel Disclosure

Please note that if any of the following apply to this Solicitation, Contract, or Contractor, then the Offeror shall select the "Exempt Solicitation, Contract, or Contractor" option below:

- The Solicitation or Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. §35-393.01, public entities are prohibited from entering into contracts "unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, Limited Liability Company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
3. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

The certification below does not include boycotts prohibited by 50 United States Code Section 4842 or a regulation issued pursuant to that section. See A.R.S. §35-393.03.

In compliance with A.R.S. §§35-393 *et seq.*, all offerors must select one of the following:

- ☒ The Company submitting this Offer **does not** participate in, and agrees not to participate in during the term of the contract, a boycott of Israel in accordance with A.R.S. §§35-393 *et seq.* I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.
- ☐ The Company submitting this Offer **does** participate in a boycott of Israel as described in A.R.S. §§35-393 *et seq.*



Attachment C Participation in Boycott of Israel

Contract: **CTR058808**
Contractor: **Pitney Bowes, Inc.**
Description: **NASPO Mailing Equipment, Supplies, and Maintenance**
Led by the State of: **Arizona**

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

Exempt Solicitation, Contract, or Contractor. Indicate which of the following statements applies to this Contract:

- ☐ Solicitation or Contract has an estimated value of less than \$100,000;
- ☐ Contractor is a sole proprietorship;
- ☐ Contractor has fewer than ten (10) employees; and/or
- ☐ Contractor is a non-profit organization.

Pitney Bowes Inc.

Company Name

3001 Summer St.

Address

Stamford

CT

06926

City

State

Zip

Signature of Person Authorized to Sign

Arthur E. Adams Jr.

Printed Name

Director, Government Contract Compliance

Title

END OF ATTACHMENT C: BOYCOTT OF ISRAEL

	Attachment D – Link to Additional Pitney Bowes Product Terms and Conditions Documents and Summary of Leasing/Rental Programs Terms and Conditions Under Solicitation # CTR058808 Contract: CTR058808 Contractor: Pitney Bowes, Inc. Description: NASPO Mailing Equipment, Supplies, and Maintenance Led by the State of: Arizona	Arizona Department of Administration State Procurement Office 100 N. 15th Avenue Phoenix, AZ 85007
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Please refer to the product documents found on Contractor's page on NASPO Value point – Link Below:

<https://www.naspovaluepoint.org/portfolio/mailing-equipment-supplies-and-maintenance-2022-2027/pitney-bowes-inc/>