	NASPO Value Point Cloud Services **Arizona Participating Addendum** **Contract No. CTR048566** **Contractor: Hewlett Packard Enterprise Company**	Arizona Department of Administration **State Procurement Office** 100 N 15th Ave., Suite 402 Phoenix, AZ 85007

In accordance with A.R.S. §41-2632, 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 Cloud Services as awarded by the State of Utah, Lead State, for this competitively procured contract.

Contractors are strongly encouraged to read this document in its entirety. All requirements stated within this document are allowable under any respective Master contract, and shall be viewed as such. Any attempt to modify or change this document without consent from the State of Arizona shall result in the nullification of this contract.

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OFFER

TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

Hewlett Packard Enterprise Company
Company Name

02/24/2020
Signature of Person Authorized to Sign Offer

6280 America Center Drive
Address

Chris Backs
Printed Name

San Jose, CA 95002
City State Zip

Sr. Contract Negotiator
Title

Phone: (480) 636-0267

Nancy Schwarz, email: nancy.schwarz@hpe.com
Contact Email Address

Fax:

By signature in the Offer 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 2009-9 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/ __X_ IS NOT a small business with less than 100 employees or has gross revenues of $4 million or less.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No: CTR048566.

The effective date of the Contract is FEBRUARY 25, 2020.

The Contractor is 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 25 **day of** February **20** 20

Stephen Nettles
Procurement Officer Stephen Nettles

Scope of Work

1. Introduction

The State of Arizona, its Agencies, Boards and Commissions (State), as well as authorized Cooperative Members, have an ongoing requirement for the products and services as described herein. This NASPO Value Point Participating Addendum (PA) is developed by and for the State of Arizona. This PA is based on the award of a competitively solicited procurement, performed in concert with NASPO Value Point and the State of Utah.

2. Background

The State of Utah competitively solicited offers from national and regional Contractors for the provision of Cloud Services. Specifically, the categories are; IaaS, PaaS and SaaS. Per the procedure outlined on the NASPO Value Point website and other materials, an interested participating state, must develop a Participating Addendum (PA) with the Contractors of their choosing.

The Participating Addendum (PA) must adhere to the requirements of the Master Contract as awarded and negotiated by the State of Utah. However, each individual PA may stipulate specific requirements, such as terms and conditions and other contract features are mandated or desired by each participating State.

3. State of Arizona Requirements

The State of Arizona shall engage Hewlett Packard Enterprise Company through the PA process and award. As per award, the Contractor shall provide the services as specified and awarded in the Utah Master Contract **AR3104.**

4. Participating Addendum Allowances and Restrictions

This PA shall allow and restrict the following:

A. Any services, or other items awarded under the Master Contract AR3104 shall be allowed.

B. Wireless phone is not allowed;

C. Cellular equipment and accessories are not allowed;

D. Managed Print Services is not allowed

E. Employee Purchase Programs are not allowed in this PA; and

F. Trade-In and Recycle Programs or other similar offerings are not allowed in this PA.

5. Reporting

At a minimum the Contractor shall provide sales reports as outlined in the Master contract and sample

Participating Addendum, as provided by NASPO Value Point. Sales reports will only be requested as needed by either the State or any Ordering Entity. More importantly for this PA, is Contractor's compliance to Item 8, Administrative Fee and Usage Reports as stated in the Special Terms and Conditions of this document.

6. Utilization of Partners

The Contractor may offer partners to provide additional services in support of this contract. The partners may provide the following:

A. Marketing and Sales;

B. Product Fulfillment;

C. Customer Service;

D. Expediting Services; and

E. Administrative Services;

E1. Purchase Order Acceptance, and

E2. Accounts Receivable

If the Contractor chooses to allow partners to provide administrative services as noted above, Contractor has the responsibility to vet or ensure the partners capabilities including their financial systems and business processes to accept and process contract obligation and financial documents timely and accurately. The ultimate responsibility for the performance of these partners rests with the Contractor. The State or any Ordering Entity shall not be obligated or forced to utilize a partner or partners.

Contractor may remove and add partners within the contract term, as long as the State receives timely notification of these changes. All notifications shall be in writing. At a minimum, the notification shall include:

A. The name of the Partner;

B. Address;

C. Contact Name(s};

D. Phone and Email Contact Information; and

E. Description of the Services they will provide.

7. Current Product and Pricing Schedules

The Contractor is responsible to ensure that any changes made to the Product and Pricing Schedules are current and are accurate. It is required that the Contractor provide a Product and Pricing Schedule update to the State for each update provided to the NASPO Value Point Lead State. Notification regarding any changes

shall be made in writing within thirty (30) days of when notification was provided to the NASPO Value Point Lead State.

8. Ordering Instruments

Any order for equipment, or services, shall be placed with the Contractor or their approved Partner by either a valid purchase order or a government/commercially sponsored procurement card (P Card). Private and or individual credit may not be accepted.

Special Terms and Conditions

1. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona intends to establish a Contract for the Materials or Services as listed herein.

2. Term of Contract

The term of the resultant Contract shall be effective on the date specified on the Offer and Award or Signature page and shall remain unless terminated, cancelled, or extended as otherwise provided herein. The initial first term shall be from date of signature through March 13, 2023.

3. Contract Extensions

The Contract term is for the stated period only and *may not be* extended.

4. Master Contract and Participating Addendum Order of Precedence

As stated in the Participating Addendum of record, as posted on the NASPO Value Point website, the contract order of precedence for this PA is as follows:

4.1 State of Arizona Participating Addendum;

4.2 Utah NASPO ValuePoint Master Agreement;

4.3 The Solicitation including all Addendums; and

4.4 Contract Vendors response to the Solicitation

5. Non-Exclusive Contract

This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

6. Eligible Agencies

This Contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible State Purchasing Cooperative members may participate at their discretion. In order to participate in this contract, a cooperative member shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statues§ 41-2632.

Membership in the State Purchasing Cooperative is available to all Arizona political subdivisions including cities, counties, school districts, and special districts. Membership is also available to all non-profit organizations, as well as State governments, the US Federal Government and Tribal Nations. Non-profit organizations are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through501(c)(6).

7. Estimated Quantities

The State anticipates considerable activity resulting from contract(s) that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential Contractor.

8. Administrative Fee and Usage Reports

Method of Assessment. At the completion of each quarter, the Contractor reviews all sales under their contract in preparation for submission of their Usage Report. The Contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: https://spo.az.gov/procurement-services/cooperative-procurement. At its option, the State may expand or narrow the applicability of this fee. The State shall provide thirty (30) day written notice prior to exercising or changing this option. The Contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

8.1 Total sales receipts from State agencies, boards and commissions;

8.2 Total sales receipts from members of the State Purchasing Cooperative; and

8.3 Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.

Submission of Reports and Fees. Within thirty (30) days following the end of the quarter, the Contractor submits their Usage Report and if applicable, a check in the amount of one percent (1%) of their sales receipts from members of the State Purchasing Cooperative, to the Department of Administration, State Procurement Office. Contractors are required to submit their Usage Report and Administrative Fees at https://spo.az.gov/invoiceusage . Sales to state agencies and the cooperative members are to be totaled separately.

The submission schedule for Administrative Fees and Usage reports shall be as follows:

FYQ1 – July through September	Due October 31
FYQ2 – October through December	Due January 31
FYQ3 – January through March	Due April 30
FYQ4 – April through June	Due July 31

The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.

Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

9. Licenses

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

10. Authorization to Purchase

Authorization for the purchase of equipment or services shall be made only upon the issuance of a Purchase Order or a government/commercial procurement card/credit card. The Purchase Order will indicate the contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform up to the amount on the Purchase Order or the accepted quotation document, as stated on the Purchase Order. The State shall not have any legal obligation to pay for goods or services in excess of the amount indicated on the Purchase Order or accepted quotation document referenced on the Purchase Order. No further obligation for payment shall exist unless:

10.1 The Purchase Order is changed or modified with an official Change Order, and/or

10.2 An additional Purchase Order is issued for the purchase of good and services under this Contract.

11. Invoicing

All billing notices or invoices shall be sent to the agency whose address appears on the contract release order/purchase order as the 'bill to address' and should contain, at a minimum, the information listed below.

11.1 The contract number, as applicable, the Task Order number, and the contract release/purchase order number;

11.2 Name and address of the contractor;

11.3 The Contractor's remittance address;

11.4 Contractor's representative to contact concerning billing questions;

11.5 Contractual payment terms;

11.6 Applicable taxes; and

11.7 Description of Materials or Products delivered.

12. Compliance with Applicable 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 licenses and permit requirements. Contractor represents and warrants to the State that Contractor has the skill and knowledge .possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contactor and Contractor's employees and any authorized Subcontractors shall perform the Services described in this Contract.

Contractor represents and warrants that the Materials provided through this Contract shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on users or prevent the Materials from performing as required under the terms and conditions of this Contract.

13. Price Adjustment

Contractor prices accepted and subsequently awarded by a Contract shall remain in effect for a minimum of one (1) year. The Contractor may request a price adjustment, but the State will not review or approve an increase until the Contract has been in effect for one (1) year. Contractor shall provide written justification for any price adjustment requested. Any price increase adjustment, if approved, will be effective upon execution of a written Contract amendment. In the advent of a price increase authorization allowed by the Lead State of Utah, this PA will be modified accordingly.

14. Payment Procedures

Contractor shall accept electronic payment from the State principally through, but not limited to, electronic transfer via Automated Clearing House remittance. The State also may make payment, at its discretion, by payment card, credit card, debit card, warrant, federal wire, etc. Contractor shall cooperate with the State by providing the State information—including, but not limited to Contractor's bank information—to support the State's selected means of payment. The Contractor shall not charge the State an amount to recover any convenience fee, discount fee, processing fee or service fee related to the acceptance of the State's payment.

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor shall complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State shall indicate consent on the form. A written Contract Amendment shall be signed by both parties and a new W-9 form shall be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

15. Order Process

The award of a Contract shall be in accordance with the Arizona Procurement Code. Any attempt to represent any Material and/or Service not specifically awarded as being under contract with the State is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

16. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition 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.

17. First Party Limitation of Liability

Contractor's total cumulative liability to the State arising from this Contract shall be limited to two (2) time(s) the total amount of fees actually paid or payable by the State to Contractor under this Contract for the year previous to the incident giving rise to the claim. The foregoing limitation of liability shall not apply to breach of Contractor's indemnification obligations for personal injury/property damage under Section 21 ("Indemnification"). Neither party will be liable for any direct, indirect, incidental, special, punitive, and consequential damages regardless of the legal theory under which the liability is asserted.

18. Access Constraints and Requirements

Contractor access to State facilities and resources under a SOW shall be properly authorized by State personnel, based on business need and **will be restricted to least possible privilege**. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA / ASET Policies/ Procedures, and Arizona Revised Statues (ARS) 28-447, 28-449, 28-450, 38-421, 13-
2408, 13-2316, 41-770).

Failure of the Contractor, its agents or Subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

19. Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology developed by Contractor offered to the State of Arizona under this Contract shall comply with A.R.S. § 41-2531 and § 41-2532 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.

20. Health Insurance Portability and Accountability Act of 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract to the extent performance of Services under the Contract involves individually identifiable health information ("PHI"). Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the ADOA-ASET Office, the Statewide Information Security and Privacy Office (SISPO) Chief Privacy Officer and HIPAA Coordinator, and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements, provided that Contractor's performance of the Services qualify Contractor to be a "Business Associate".

21. Indemnification

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

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.

22. Intellectual Property Indemnification

Indemnification - Patent and Copyright. With respect solely to Contractor-branded Materials provided or proposed by Contractor or Contractor's agents, employees, or Subcontractors (each a "Contractor Party") for performance of this Contract, Contractor shall indemnify, defend and hold harmless the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability, including, but not limited to, reasonable costs and expenses, including attorneys' fees, for infringement or violation of any patent, trademark, copyright or trade secret, by such Materials or the State's use thereof.

In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") to the extent such Third Party Obligation is assignable.

The State shall reasonably notify the Contractor of any claim for which Contractor may be liable under this section. If the Contractor is insured pursuant to A.R.S. § 41-621 and§ 35-154, this section shall not apply. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in the defense and any related settlement negotiations.

If Contractor believes at any time that any Materials provided or in use pursuant to this Contract infringe a third party's intellectual property rights, Contractor shall, at Contractor's sole cost and expense, and upon receipt of the State's prior written consent, which shall not be unreasonably withheld, (i) replace an infringing Material with a non-infringing Material; (ii) obtain for the State the right to continue to use the infringing Material; or (iii) modify the infringing Material to be non-infringing, provided that following any replacement or modification made pursuant to the foregoing, the Material continues to function in accordance with the Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract.

Notwithstanding the foregoing, Contractor shall not be liable for any claim for infringement based solely on any Indemnitee's:

(i) modification of Materials provided by Contractor other than as contemplated by the Contract or the specifications of such Materials or as otherwise authorized or proposed in any way by Contractor or a Contractor Party;

(ii) use of the Materials in a manner other than as contemplated by this Contract or the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party; or

(iii) use of the Materials in combination, operation, or use with other products in a manner not contemplated by the Contract, or, the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party.

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.

23. Insurance

Contractor and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, employees or Subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that 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.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

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

- General Aggregate $2,000,000
- Products - Completed Operations Aggregate $2,000,000
- Personal and Advertising Injury $1,000,000
- Damages to Rented Premises $1,000,000
- Each Occurrence $1,000,000

a. The policy shall include the following additional insureds: **"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be included as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

b. Policy shall contain a waiver of subrogation endorsement 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.

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

a. The policy shall be endorsed to include the following additional insureds: **"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be included 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 or borrowed by the Contractor."** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

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

3. Worker's Compensation and Employers' Liability

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

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

4. Technology Errors & Omissions Insurance

• Each Claim	$5,000,000
• Annual Aggregate	$5,000,000

a. Such insurance shall cover any, and all errors, omissions, or negligent acts in the Contractor's performance under this contract.
b. Coverage shall include copyright infringement, infringement of trade dress, domain name, title or slogan.
c. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time Work under this Contract is completed.

5. Network Security (Cyber) and Privacy Liability (Included in Technology Errors & Omissions Insurance

• Each Claim	$1,000,000

a. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.
b. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be

exercised for a period of two (2) years beginning at the time Work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance for claims arising from Contractor's sole negligence 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.RS.§ 41-621 (E).
2. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to **the Department** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Contractors 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.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the State of Arizona before Work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of Work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **the Department**. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to review applicable insurance policies in the event the State asserts a potential claim under the policy required by this Contract with reasonable prior notice to Contractor. Review shall be conducted at a location of Contractor's reasonable choice, with disclosure subject to the protection of Contractor's confidential or proprietary information under a confidentiality agreement acceptable to Contractor.

F. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will require a formal Contract amendment.

G. 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 then none of the above shall apply.

24. Compliance Requirements for A.R.S. § 41-4401, Government Procurement: e-Verify Requirement

The 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. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)

A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract and the Contractor may be subject to penalties up to and including termination of the Contract.

25. Negotiated Uniform Terms and Conditions

The following terms and conditions have been negotiated, and based on contract order of precedence shall be placed in the Special Terms and Conditions for greater clarity and position.

25.1 Property of the State

Any reports, computer programs, studies, photographs, negatives, databases, computer programs, or other documents ("Created Materials') first created by Contractor in the performance of its obligations under this Contract and paid for by the State are the sole property of the State. Created Materials shall not include the preexisting intellectual property or modifications thereto of the Contractor. The Contractor is not entitled to a patent or copyright on those Created 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 the foregoing, Contractor shall be entitled to a worldwide, irrevocable, royalty-free license to use and modify any Created Materials that directly pertain to information technology infrastructure.

25.2 Ownership of Intellectual Property

The State will own any document or report that Contractor prepares for and delivers to the State under this Contract, and any product manuals purchased under this Contract, shall belong to the State unless otherwise agreed by the Parties in writing. No other transfer of Intellectual Property is intended under this Contract.

25.3 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 liability of the State for third party claims as a result of entering into this contract to the extent the damage is attributable to Contractor's negligent performance or willful misconduct. 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.

25.4 Indemnification – Patent and Copyright

Subject to and in accordance with Section 22 of the Special Terms and Conditions, The Contractor shall indemnify and hold harmless the State against any third-party claims for liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of Contractor-branded 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.

25.5 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 and to the extent the assignment is necessary for the State or purchasing entity to overcome the Federal or State's bar on indirect purchaser actions under Federal or State anti-trust laws.

25.6 Warranty – Liens

The Contractor confirms that the materials supplied under this Contract are free of liens, except to the extent equipment is provided as-a-service.

25.7 Warranty – Quality

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

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

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

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

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

25.8 Warranty – Fitness

The Contractor confirms that any material supplied to the State shall fully conform to all requirements of the Contract and all written manufacturer specifications.

25.9 Inspection/Testing

Except as modified, the warranties as set forth above this paragraph are not affected by inspection or testing of or payment for the materials by the State.

25.10 Purchase Orders

The Contractor shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all purchase orders received and accepted 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.

25.11 Right of Offset – State will make a reasonable attempt to provide Contractor 30 days prior notice of its decision to Offset.

25.12 Termination for Default

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 material term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor, along with an opportunity to cure for twenty (20) business days.

25.13 Upon termination under this paragraph, all goods, materials, documents, non-HP proprietary data and reports prepared by the Contractor under the Contract, and paid for by the State, shall become the property of and be delivered to the State on demand.

25.14 Continuation of Performance Through Termination

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

25.15 Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through non-binding 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).

Uniform Terms and Conditions

1. Definition of Terms

As used in this Solicitation and any resulting 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 Offerers, 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"* means the furnishing of labor, time or effort by a contractor or subcontractor 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.

1.11. *"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.

1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal* Year" means the period beginning with July 1 and ending June 30.

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

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

2.3.1. Special Terms and Conditions;

2.3.2. Uniform Terms and Conditions;

2.3.3. Statement or Scope of Work;

2.3.4. Specifications;

2.3.5. Attachments;

2.3.6. Exhibits;

2.3.7. Documents referenced or included in the Solicitation.

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

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

2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records. Under A.RS. § 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 non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

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

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

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

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

3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.RS. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.RS. § 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.RS. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

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

4.3. Applicable Taxes.

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

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

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

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.RS. 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.

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; 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;

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 Applicable 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.RS. § 12-510, except as provided in A.RS. § 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.

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 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 this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

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

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

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

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

9. Contract Termination

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

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

9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply

9.5. Termination for Default.

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

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

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

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

10. **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 402, Phoenix, Arizona, 85007.